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Title 12

Banks and Banking

Parts 900 to 1025

Revised as of January 1, 2024

Containing a codification of documents of general applicability and future effect

As of January 1, 2024

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Cite this Code:

CFR

To cite the regulations in this volume use title, part and section number. Thus,

12 CFR 1001.1

Explanation

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16

as of January 1

Title 17 through Title 27

as of April 1

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as of July 1

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as of October 1

The appropriate revision date is printed on the cover of each volume.

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Oliver A. Potts,

Director,

Office of the Federal Register

January 1, 2024

THIS TITLE

Title 12

Banks and Banking

For this volume, Christine Colaninno was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Stephen J. Frattini.

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Federal Housing Finance Board

Title 12Banks and Banking

(This book contains parts 900 to 1025)

Part

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Department of Transportation

CHAPTER IX [RESERVED]

12 CFR Ch. X (1-1-24 Edition)

Consumer Financial Protection Bureau

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PART 1000 [RESERVED]

Pt. 1001

PART 1001 FINANCIAL PRODUCTS OR SERVICES

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Authority and purpose.

1001.2

Definitions.

Authority:

12 U.S.C. 5481(15)(A)(xi); and 12 U.S.C. 5512(b)(1).

Source:

80 FR 37526, June 30, 2015, unless otherwise noted.

§ 1001.1

Authority and purpose.

Under 12 U.S.C. 5481(15)(A)(xi), the Bureau is authorized to define certain financial products or services for purposes of title X of the Dodd-Frank Act, Public Law 111-203, 124 Stat. 1376 (2010) (Title X) in addition to those defined in 12 U.S.C. 5481(15)(A)(i)-(x). The purpose of this part is to implement that authority.

§ 1001.2

Definitions.

Except as otherwise provided in Title X, in addition to the definitions set forth in 12 U.S.C. 5481(15)(A)(i)-(x), the term financial product or service means, for purposes of Title X:

(a) Extending or brokering leases of an automobile, as automobile is defined by 12 CFR

1090.108(a), where the lease:

(1) Qualifies as a full-payout lease and a net lease, as provided by 12 CFR 23.3(a), and has an initial term of not less than 90 days, as provided by 12 CFR 23.11; and

(2) Is not a financial product or service under 12 U.S.C. 5481(15)(A)(ii).

(b) [Reserved]

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Appendix B to Part 1002Model Application Forms

Appendix C to Part 1002Sample Notification Forms

Appendix D to Part 1002Issuance of Official Interpretations

Appendix E to Part 1002Sample Form for Collecting Certain Applicant-Provided Data Under Subpart B

Appendix F to Part 1002Tolerances for Bona Fide Errors in Data Reported Under Subpart B

Supplement I to Part 1002Official Interpretations

Authority:

12 U.S.C. 5512, 5581; 15 U.S.C. 1691b. Subpart B is also issued under 15 U.S.C. 1691c-2.

Source:

76 FR 79445, Dec. 21, 2011, unless otherwise noted.

Subpart A General

§ 1002.1

Authority, scope and purpose.

(a)

Authority and scope.

et seq.

et seq.

(b)

Purpose.

[76 FR 79445, Dec. 21, 2011, as amended at 88 FR 35527, May 31, 2023]

§ 1002.2

Definitions.

For the purposes of this part, unless the context indicates otherwise or as otherwise defined in subpart B, the following definitions apply:

(a)

Account

(b)

Act

(c)

Adverse action.

(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 substantially all 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) The term 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 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 substantially all 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 (c)(1) and (c)(2) of this section is governed by paragraph (c)(2) of this section.

(d)

Age

(e)

Applicant

(f)

Application

completed application

(g)

Business credit

(h)

Consumer credit

(i)

Contractually liable

(j)

Credit

(k)

Credit card

(l)

Creditor

(m)

Credit transaction

(n)

Discriminate against an applicant

(o)

Elderly

(p)

Empirically derived and other credit scoring systems

A credit scoring system

empirically derived, demonstrably and statistically sound, credit scoring system,

(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

(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 (p)(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 (p)(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.

(q)

Extend credit

extension of credit

(r)

Good faith

(s)

Inadvertent error

(t)

Judgmental system of evaluating applicants

(u)

Marital status

(v)

Negative factor or value,

(w)

Open-end credit

(x)

Person

(y)

Pertinent element of creditworthiness,

(z)

Prohibited basis

(aa)

State

[76 FR 79445, Dec. 21, 2011, as amended at 88 FR 35527, May 31, 2023]

§ 1002.3

Limited exceptions for certain classes of transactions.

(a)

Public utilities credit

Definition.

(2)

Exceptions.

(i) Section 1002.5(d)(1) concerning information about marital status; and

(ii) Section 1002.12(b) relating to record retention.

(b)

Securities credit

Definition.

(2)

Exceptions.

(i) Section 1002.5(b) concerning information about the sex of an applicant;

- (ii) Section 1002.5(c) concerning information about a spouse or former spouse;
- (iii) Section 1002.5(d)(1) concerning information about marital status;
- (iv) Section 1002.7(b) relating to designation of name to the extent necessary to comply with rules regarding an account in which a broker or dealer has an interest, or rules regarding the aggregation of accounts of spouses to determine controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;
- (v) Section 1002.7(c) relating to action concerning open-end accounts, to the extent the action taken is on the basis of a change of name or marital status;
- (vi) Section 1002.7(d) relating to the signature of a spouse or other person;
- (vii) Section 1002.10 relating to furnishing of credit information; and
- (viii) Section 1002.12(b) relating to record retention.

(c)

Incidental credit

Definition.

- (i) That are not made pursuant to the terms of a credit card account;
- (ii) That are not subject to a finance charge (as defined in Regulation Z, 12 CFR 1026.4); and
- (iii) That are not payable by agreement in more than four installments.

(2)

Exceptions.

- (i) Section 1002.5(b) concerning information about the sex of an applicant, but only to the extent necessary for medical records or similar purposes;
- (ii) Section 1002.5(c) concerning information about a spouse or former spouse;
- (iii) Section 1002.5(d)(1) concerning information about marital status;
- (iv) Section 1002.5(d)(2) concerning information about income derived from alimony, child support, or separate maintenance payments;
- (v) Section 1002.7(d) relating to the signature of a spouse or other person;

- (vi) Section 1002.9 relating to notifications;
- (vii) Section 1002.10 relating to furnishing of credit information; and
- (viii) Section 1002.12(b) relating to record retention.

(d)

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Definition.

(2)

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§ 1002.4

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(b)

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(c)

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(d)

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(2)

Disclosures in electronic form.

et seq.

(e)

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[76 FR 79445, Dec. 21, 2011, as amended at 78 FR 7248, Jan. 31, 2013]

§ 1002.5

Rules concerning requests for information.

(a)

General rules

Requests for information.

(2)

Required collection of information.

(3)

Special-purpose credit.

(4)

Other permissible collection of information.

(i) A creditor that is a financial institution under 12 CFR 1003.2(g) may collect information regarding the ethnicity, race, and sex of an applicant for a closed-end mortgage loan that is an excluded transaction under 12 CFR 1003.3(c)(11) if it submits HMDA data concerning such closed-end mortgage loans and applications or if it submitted HMDA data concerning closed-end mortgage loans for any of the preceding five calendar years;

(ii) A creditor that is a financial institution under 12 CFR 1003.2(g) may collect information regarding the ethnicity, race, and sex of an applicant for an open-end line of credit that is an excluded transaction under 12 CFR 1003.3(c)(12) if it submits HMDA data concerning such open-end lines of credit and applications or if it submitted HMDA data concerning open-end lines of credit for any of the preceding five calendar years;

(iii) A creditor that submitted HMDA data for any of the preceding five calendar years but is not currently a financial institution under 12 CFR 1003.2(g) may collect information regarding the ethnicity, race, and sex of an applicant for a loan that would otherwise be a covered loan under 12 CFR 1003.2(e) if not excluded by 12 CFR 1003.3(c)(11) or (12);

(iv) A creditor that exceeded an applicable loan volume threshold in the first year of the two-year threshold period provided in 12 CFR 1003.2(g), 1003.3(c)(11), or 1003.3(c)(12) may, in the

(v) A creditor that is a financial institution under 12 CFR 1003.2(g), or that submitted HMDA data for any of the preceding five calendar years but is not currently a financial institution under 12 CFR 1003.2(g), may collect information regarding the ethnicity, race, and sex of an applicant for a loan that would otherwise be a covered loan under 12 CFR 1003.2(e) if the loan were not excluded by 12 CFR 1003.3(c)(10).

(vi) A creditor that is collecting information regarding the ethnicity, race, and sex of an applicant or first co-applicant may collect information regarding the ethnicity, race, and sex of a second or additional co-applicant for a covered loan under 12 CFR 1003.2(e) or for a second or additional co-applicant for a loan described in paragraphs (a)(4)(i) through (v) of this section.

(vii) A creditor that was required to report small business lending data pursuant to § 1002.109 for any of the preceding five calendar years but is not currently a covered financial institution under § 1002.105(b) may collect information pursuant to subpart B of this part for covered applications from small businesses as defined in §§ 1002.103 and 1002.106(b) regarding whether an applicant is a minority-owned business, a women-owned business, or an LGBTQI+-owned business, and the ethnicity, race, and sex of the applicant's principal owners if it complies with the requirements for covered financial institutions pursuant to §§ 1002.107(a)(18) and (19), 1002.108, 1002.111, and 1002.112 for that application. Such a creditor is permitted, but not required, to report data to the Bureau collected pursuant to subpart B of this part if it complies with the requirements of subpart B as otherwise required for covered financial institutions pursuant to §§ 1002.109 and 1002.110.

(viii) A creditor that exceeded the loan-volume threshold in the first year of the two-year threshold period provided in § 1002.105(b) may, in the second year, collect information pursuant to subpart B of this part for covered applications from small businesses as defined in §§ 1002.103 and 1002.106(b) regarding whether an applicant is a minority-owned business, a women-owned business, or an LGBTQI+-owned business, and the ethnicity, race, and sex of the applicant's principal owners if it complies with the requirements for covered financial institutions pursuant to §§ 1002.107(a)(18) and (19), 1002.108, 1002.111, and 1002.112 for that application. Such a creditor is

permitted, but not required, to report data to the Bureau collected pursuant to subpart B of this part if it complies with the requirements of subpart B as otherwise required for covered financial institutions pursuant to §§ 1002.109 and 1002.110.

(ix) A creditor that is not currently a covered financial institution under § 1002.105(b), and is not otherwise a creditor to which § 1002.5(a)(4)(vii) or (viii) applies, may collect information pursuant to subpart B of this part for covered applications from small businesses as defined in §§ 1002.103 and 1002.106(b) regarding whether an applicant for a covered credit transaction is a minority-owned business, a women-owned business, or an LGBTQI+-owned business, and the ethnicity, race, and sex of the applicant's principal owners for a transaction if it complies with the requirements for covered financial institutions pursuant to §§ 1002.107 through 1002.112 for that application.

(x) A creditor that is collecting information pursuant to subpart B of this part or as described in paragraphs (a)(4)(vii) through (ix) of this section for covered applications from small businesses as defined in §§ 1002.103 and 1002.106(b) regarding whether an applicant for a covered credit transaction is a minority-owned business, a women-owned business, or an LGBTQI+-owned business, and the ethnicity, race, and sex of the applicant's principal owners may also collect that same information for any co-applicants provided that it also complies with the relevant requirements of subpart B of this part or as described in paragraphs (a)(4)(vii) through (ix) of this section with respect to those co-applicants.

(b)

Limitation on information about race, color, religion, national origin, or

(1)

Self-test.

(i) The applicant will not be required to provide the information;

(ii) The creditor is requesting the information to monitor its compliance with the Federal Equal Credit Opportunity Act;

(iii) Federal law prohibits the creditor from discriminating on the basis of this information, or on the

basis of an applicant's decision not to furnish the information; and

(iv) If applicable, certain information will be collected based on visual observation or surname if not provided by the applicant or other person.

(2)

Sex.

(c)

Information about a spouse or former spouse

General rule.

(2)

Permissible inquiries.

(i) The spouse will be permitted to use the account;

(ii) The spouse will be contractually liable on the account;

(iii) The applicant is relying on the spouse's income as a basis for repayment of the credit requested;

(iv) The applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested; or

(v) The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

(3)

Other accounts of the applicant.

(d)

Other limitations on information requests

Marital status.

married, unmarried,

separated.

(2)

Disclosure about income from alimony, child support, or separate maintenance.

(3)

Childbearing, childrearing.

(e)

Permanent residency and immigration status.

[76 FR 79445, Dec. 21, 2011, as amended at 82 FR 45694, Oct. 2, 2017; 88 FR 35527, May 31, 2023]

§ 1002.6

Rules concerning evaluation of applications.

(a)

General rule concerning use of information.

Griggs

Duke Power Co.,

Albemarle Paper Co.

Moody,

(b)

Specific rules concerning use of information.

(2)

Age, receipt of public assistance.

(ii) In an empirically derived, demonstrably and statistically sound, credit scoring system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

(iii) In a judgmental system of evaluating creditworthiness, a creditor may consider an applicant's age or whether an applicant's income derives from any public assistance program only for the purpose of determining a pertinent element of creditworthiness.

(iv) In any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is used to favor the elderly applicant in extending credit.

(3)

Childbearing, childrearing.

(4)

Telephone listing.

(5)

Income.

(6)

Credit history.

(i) The credit history, when available, of accounts designated as accounts that the applicant and the applicant's spouse are permitted to use or for which both are contractually liable;

(ii) On the applicant's request, any information the applicant may present that tends to indicate the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

(iii) On the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

(7)

Immigration status.

(8)

Marital status.

(9)

Race, color, religion, national origin, sex.

(c)

State property laws.

§ 1002.7

Rules concerning extensions of credit.

(a)

Individual accounts.

(b)

Designation of name.

(c)

Action concerning existing open-end accounts

Limitations.

(i) Require a reapplication, except as provided in paragraph (c)(2) of this section;

(ii) Change the terms of the account; or

(iii) Terminate the account.

(2)

Requiring reapplication.

(d)

Signature of spouse or other person

Rule for qualified applicant.

(2)

Unsecured credit.

(3)

Unsecured creditcommunity property states.

(i) Applicable state law denies the applicant power to manage or control sufficient community property to qualify for the credit requested under the creditor's standards of creditworthiness; and

(ii) The applicant does not have sufficient separate property to qualify for the credit requested without regard to community property.

(4)

Secured credit.

(5)

Additional parties.

(6)

Rights of additional parties.

(e)

Insurance.

§ 1002.8

Special purpose credit programs.

(a)

Standards for programs.

(1) Any credit assistance program expressly authorized by Federal or state law for the benefit of an economically disadvantaged class of persons;

(2) Any credit assistance program offered by a not-for-profit organization, as defined under section 501(c) of the Internal Revenue Code of 1954, as amended, for the benefit of its members or for the benefit of an economically disadvantaged class of persons; or

(3) Any special purpose credit program offered by a for-profit organization, or in which such an organization participates to meet special social needs, if:

(i) The program is established and administered pursuant to a written plan that identifies the class of persons that the program is designed to benefit and sets forth the procedures and standards for extending credit pursuant to the program; and

(ii) The program is established and administered to extend credit to a class of persons who, under the organization's customary standards of creditworthiness, probably would not receive such credit or would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.

(b)

Rules in other sections

General applicability.

(2)

Common characteristics.

(c)

Special rule concerning requests and use of information.

(d)

Special rule in the case of financial need.

§ 1002.9

Notifications.

(a)

Notification of action taken, ECOA notice, and statement of specific reasons

When notification is required.

(i) 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application;

(ii) 30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with paragraph (c) of this section;

(iii) 30 days after taking adverse action on an existing account; or

(iv) 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

(2)

Content of notification when adverse action is taken.

(i) A statement of specific reasons for the action taken; or

(ii) A disclosure of the applicant's right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor's notification. The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving the applicant's

written request for confirmation.

(3)

Notification to business credit applicants.

(i) With regard to a business that had gross revenues of \$1 million or less in its preceding fiscal year (other than an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit), a creditor shall comply with paragraphs (a)(1) and (2) of this section, except that:

(A) The statement of the action taken may be given orally or in writing, when adverse action is taken;

(B) Disclosure of an applicant's right to a statement of reasons may be given at the time of application, instead of when adverse action is taken, provided the disclosure contains the information required by paragraph (a)(2)(ii) of this section and the ECOA notice specified in paragraph (b)(1) of this section;

(C) For an application made entirely by telephone, a creditor satisfies the requirements of paragraph (a)(3)(i) of this section by an oral statement of the action taken and of the applicant's right to a statement of reasons for adverse action.

(ii) With regard to a business that had gross revenues in excess of \$1 million in its preceding fiscal year or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, a creditor shall:

(A) Notify the applicant, within a reasonable time, orally or in writing, of the action taken; and

(B) Provide a written statement of the reasons for adverse action and the

(b)

Form of ECOA notice and statement of specific reasons

ECOA notice.

(2)

Statement of specific reasons.

(c)

Incomplete applications

Notice alternatives.

(i) Of action taken, in accordance with paragraph (a) of this section; or

(ii) Of the incompleteness, in accordance with paragraph (c)(2) of this section.

(2)

Notice of incompleteness.

(3)

Oral request for information.

(d)

Oral notifications by small-volume creditors.

(e)

Withdrawal of approved application.

(f)

Multiple applicants.

(g)

Applications submitted through a third party.

[76 FR 79445, Dec. 21, 2011, as amended at 88 FR 16537, Mar. 20, 2023]

§ 1002.10

Furnishing of credit information.

(a)

Designation of accounts.

(1) Any new account to reflect the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account (other than as a guarantor, surety, endorser, or similar party); and

(2) Any existing account to reflect such participation, within 90 days after receiving a written request

to do so from one of the spouses.

(b)

Routine reports to consumer reporting agency.

(c)

Reporting in response to inquiry.

§ 1002.11

Relation to state law.

(a)

Inconsistent state laws.

(b)

Preempted provisions of state law.

(i) Requires or permits a practice or act prohibited by the Act or this part;

(ii) Prohibits the individual extension of consumer credit to both parties to a marriage if each spouse individually and voluntarily applies for such credit;

(iii) Prohibits inquiries or collection of data required to comply with the Act or this part;

(iv) Prohibits asking about or considering age in an empirically derived, demonstrably and statistically sound, credit scoring system to determine a pertinent element of creditworthiness, or to favor an elderly applicant; or

(v) Prohibits inquiries necessary to establish or administer a special purpose credit program as defined by § 1002.8.

(2) A creditor, state, or other interested party may request that the Bureau determine whether a state law is inconsistent with the requirements of the Act and this part.

(c)

Laws on finance charges, loan ceilings.

(d)

State and Federal laws not affected.

(e)

Exemption for state-regulated transactions

Applications.

- (i) The class of credit transactions is subject to state law requirements substantially similar to those of the Act and this part or that applicants are afforded greater protection under state law; and
- (ii) There is adequate provision for state enforcement.

(2)

Liability and enforcement.

- (ii) After an exemption has been granted, the requirements of the applicable state law (except for additional requirements not imposed by Federal law) will constitute the requirements of the Act and this part.

§ 1002.12

Record retention.

(a)

Retention of prohibited information.

- (1) From any source prior to March 23, 1977;
- (2) From consumer reporting agencies, an applicant, or others without the specific request of the creditor; or
- (3) As required to monitor compliance with the Act and this part or other Federal or state statutes or regulations.

(b)

Preservation of records

Applications.

- (i) Any application that it receives, any information required to be obtained concerning characteristics of the applicant to monitor compliance with the Act and this part or other similar law, any information obtained pursuant to § 1002.5(a)(4), and any other written or recorded information

used in evaluating the application and not returned to the applicant at the applicant's request.

(ii) A copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum made by the creditor):

(A) The notification of action taken; and

(B) The statement of specific reasons for adverse action; and

(iii) Any written statement submitted by the applicant alleging a violation of the Act or this part.

(2)

Existing accounts.

(i) Any written or recorded information concerning the adverse action; and

(ii) Any written statement submitted by the applicant alleging a violation of the Act or this part.

(3)

Other applications.

(4)

Enforcement proceedings and investigations.

(5)

Special rule for certain business credit applications.

(6)

Self-tests.

(7)

Prescreened solicitations.

(i) The text of any prescreened solicitation;

(ii) The list of criteria the creditor used to select potential recipients of the solicitation; and

(iii) Any correspondence related to complaints (formal or informal) about the solicitation.

[76 FR 79445, Dec. 21, 2011, as amended at 82 FR 45694, Oct. 2, 2017; 88 FR 35528, May 31, 2023]

§ 1002.13

Information for monitoring purposes.

(a)

Information to be requested.

(i) Ethnicity and race using either:

(A) For ethnicity, the aggregate categories Hispanic or Latino and not Hispanic or Latino; and, for race, the aggregate categories American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White; or

(B) The categories and subcategories for the collection of ethnicity and race set forth in appendix B to 12 CFR part 1003.

(ii) Sex;

(iii) Marital status, using the categories married, unmarried, and separated; and

(iv) Age.

(2)

Dwelling

(b)

Obtaining information.

(c)

Disclosure to applicant(s).

(d)

Substitute monitoring program.

[76 FR 79445, Dec. 21, 2011, as amended at 82 FR 45694, Oct. 2, 2017]

§ 1002.14

Rules on providing appraisals and other valuations.

(a)

Providing appraisals and other valuations

In general.

(2)

Disclosure.

(3)

Reimbursement.

(4)

Withdrawn, denied, or incomplete applications.

(5)

Copies in electronic form.

et seq.

(b)

Definitions.

(1)

Consummation.

(2)

Dwelling.

(3)

Valuation.

[78 FR 7248, Jan. 31, 2013]

§ 1002.15

Incentives for self-testing and self-correction.

(a)

General rules

Voluntary self-testing and correction.

(2)

Corrective action required.

(3)

Other privileges.

(b)

Self-test defined

Definition.

(i) Is designed and used specifically to determine the extent or effectiveness of a creditor's compliance with the Act or this part; and

(ii) Creates data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions.

(2)

Types of information privileged.

(3)

Types of information not privileged.

(i) Information about whether a creditor conducted a self-test, the methodology used or the scope of the self-test, the time period covered by the self-test, or the dates it was conducted; or

(ii) Loan and application files or other business records related to credit transactions, and information derived from such files and records, even if the information has been aggregated, summarized, or reorganized to facilitate analysis.

(c)

Appropriate corrective action

General requirement.

(2)

Determining the scope of appropriate corrective action.

(i) Identifying the policies or practices that are the likely cause of the violation; and

(ii) Assessing the extent and scope of any violation.

(3)

Types of relief.

- (i) A creditor is not required to provide remedial relief to a tester used in a self-test;
- (ii) A creditor is only required to provide remedial relief to an applicant identified by the self-test as one whose rights were more likely than not violated; and
- (iii) A creditor is not required to provide remedial relief to a particular applicant if the statute of limitations applicable to the violation expired before the creditor obtained the results of the self-test or the applicant is otherwise ineligible for such relief.

(4)

No admission of violation.

(d)

Scope of privilege

General rule.

- (i) By a government agency in any examination or investigation relating to compliance with the Act or this part; or
- (ii) By a government agency or an applicant (including a prospective applicant who alleges a violation of § 1002.4(b)) in any proceeding or civil action in which a violation of the Act or this part is alleged.

(2)

Loss of privilege.

- (i) Voluntarily discloses any part of the report or results, or any other information privileged under this section, to an applicant or government agency or to the public;
- (ii) Discloses any part of the report or results, or any other information privileged under this section, as a defense to charges that the creditor has violated the Act or regulation; or
- (iii) Fails or is unable to produce written or recorded information about the self-test that is required to be retained under § 1002.12(b)(6) when the information is needed to determine whether the privilege applies. This paragraph does not limit any other penalty or remedy that may be available for a violation of § 1002.12.

(3)

Limited use of privileged information.

§ 1002.16

Enforcement, penalties and liabilities.

(a)

Administrative enforcement.

(2) Except to the extent that administrative enforcement is specifically assigned to some government agency other than the Bureau, and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission is authorized to enforce the requirements imposed under the Act and this part.

(b)

Penalties and liabilities.

(2) As provided in section 706(f) of the Act, a civil action under the Act or this part may be brought in the appropriate United States district court without regard to the amount in controversy or in any other court of competent jurisdiction within five years after the date of the occurrence of the violation, or within one year after the commencement of an administrative enforcement proceeding or of a civil action brought by the Attorney General of the United States within five years after the alleged violation.

(3) If an agency responsible for administrative enforcement is unable to obtain compliance with the Act or this part, it may refer the matter to the Attorney General of the United States. If the Bureau, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, or the National Credit Union Administration has reason to believe that one or more creditors have engaged in a pattern or practice of discouraging or denying applications in violation of the Act or this part, the agency shall refer the matter to the Attorney General. If

(4) On referral, or whenever the Attorney General has reason to believe that one or more creditors

have engaged in a pattern or practice in violation of the Act or this part, the Attorney General may bring a civil action for such relief as may be appropriate, including actual and punitive damages and injunctive relief.

(5) If the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, or the National Credit Union Administration has reason to believe (as a result of a consumer complaint, a consumer compliance examination, or some other basis) that a violation of the Act or this part has occurred which is also a violation of the Fair Housing Act, and the matter is not referred to the Attorney General, the agency shall:

(i) Notify the Secretary of Housing and Urban Development; and

(ii) Inform the applicant that the Secretary of Housing and Urban Development has been notified and that remedies may be available under the Fair Housing Act.

(c)

Failure of compliance.

Subpart B Small Business Lending Data Collection

Source:

88 FR 35528, May 31, 2023, unless otherwise noted.

§ 1002.101

Authority, purpose, and scope.

(a)

Authority and scope.

(b)

Purpose.

(1) To facilitate enforcement of fair lending laws; and

(2) To enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.

§ 1002.102

Definitions.

In this subpart:

(a)

Affiliate

et seq.

affiliate

(b)

Applicant

(c)

Business

(d)

Business credit

(e)

Closed-end credit transaction

(f)

Covered application

(g)

Covered credit transaction

(h)

Covered financial institution

(i)

Credit

(j)

Financial institution

(k)

LGBTQI+ individual

(l)

LGBTQI+-owned business

(m)

Minority-owned business

(n)

Open-end credit transaction

(o)

Principal owner

(p)

Small business

(q)

Small business lending application register

register

(r)

State

(s)

Women-owned business

§ 1002.103

Covered applications.

(a)

Covered application.

(b)

Circumstances that are not covered applications.

(1) Reevaluation, extension, or renewal requests on an existing business credit account, unless the request seeks additional credit amounts.

(2) Inquiries and prequalification requests.

§ 1002.104

Covered credit transactions and excluded transactions.

(a)

Covered credit transaction

(b)

Excluded transactions.

(1)

Trade credit.

(2)

Home Mortgage

Act (HMDA)-reportable transactions.

(3)

Insurance premium financing.

(4)

Public utilities credit.

(5)

Securities credit.

(6)

Incidental credit.

§ 1002.105

Covered financial institutions and exempt institutions.

(a)

Financial institution

(b)

Covered financial institution

§ 1002.106

Business and small business.

(a)

Business

(b)

Small business definition

Small business

(2)

Inflation adjustment.

§ 1002.107

Compilation of reportable data.

(a)

Data format and itemization.

(1)

Unique identifier.

(2)

Application date.

(3)

Application method.

(4)

Application recipient.

(5)

Credit type.

(i)

Credit product.

(ii)

Guarantees.

(iii)

Loan term.

(6)

Credit purpose.

(7)

Amount applied for.

(8)

Amount approved or originated.

(ii) For a closed-end credit transaction that is originated, the amount of credit originated; or

(iii) For an application for an open-end credit transaction that is originated or approved but not accepted, the amount of the credit limit approved.

(9)

Action taken.

(10)

Action taken date.

(11)

Denial reasons.

(12)

Pricing information.

(i)

Interest rate.

(B) If the interest rate is adjustable, the margin, index value, initial rate period expressed in months (if applicable), and index name that is or would be applicable to the covered credit transaction;

(ii)

Total origination charges.

(iii)

Broker fees.

(iv)

Initial annual charges.

(v)

Additional cost for merchant cash advances or other sales-based financing.

(vi)

Prepayment penalties.

(B) Notwithstanding the response to paragraph (a)(12)(vi)(A) of this section, whether the terms of the covered credit transaction do in fact include a charge imposed for paying all or part of the transaction's principal before the date on which the principal is due.

(13)

Census tract.

(i) The address or location where the proceeds of the credit applied for or originated will be or would have been principally applied; or

(ii) If the information in paragraph (a)(13)(i) of this section is unknown, the address or location of the main office or headquarters of the applicant; or

(iii) If the information in both paragraphs (a)(13)(i) and (ii) of this section is unknown, another address or location associated with the applicant.

(iv) The financial institution shall also indicate which one of the three types of addresses or locations listed in paragraphs (a)(13)(i), (ii), or (iii) of this section the census tract is based on.

(14)

Gross annual revenue.

(15)

NAICS code.

(16)

Number of workers.

(17)

Time in business.

(18)

Minority-owned, women-owned, and LGBTQI+-owned business statuses.

(19)

Ethnicity, race, and sex of principal owners.

(20)

Number of principal owners.

(b)

Reliance on and verification of applicant-provided data.

(c)

Time and manner of collection

In general.

(2)

Applicant-provided data collected directly from the applicant.

(i) The initial request for applicant-provided data occurs prior to notifying an applicant of final action taken on a covered application;

(ii) The request for applicant-provided data is prominently displayed or presented;

(iii) The collection does not have the effect of discouraging an applicant from responding to a request for applicant-provided data; and

(iv) Applicants can easily respond to a request for applicant-provided data.

(3)

Procedures to monitor compliance.

(4)

Low response rates.

(d)

Previously collected data.

(1) To satisfy paragraphs (a)(13) and (a)(15) through (20) of this section, the data were collected within the 36 months preceding the current covered application, or to satisfy paragraph (a)(14) of this section, the data were collected within the same calendar year as the current covered application; and

(2) The financial institution has no reason to believe the data are inaccurate.

§ 1002.108

Firewall.

(a)

Definitions.

(1)

Involved in making any determination concerning a covered application from a small business

(2)

Should have access

(b)

Prohibition on access to certain information.

(c)

Exception to the prohibition on access to certain information.

(d)

Notice.

§ 1002.109

Reporting of data to the Bureau.

(a)

Reporting to the Bureau

Annual reporting.

(ii) An authorized representative of the covered financial institution with knowledge of the data shall

certify to the accuracy and completeness of the data reported pursuant to this paragraph (a).

(iii) When the last day for submission of data prescribed under paragraph (a)(1) of this section falls on a Saturday or Sunday, a submission shall be considered timely if it is submitted on the next succeeding Monday.

(2)

Reporting by subsidiaries.

(3)

Reporting obligations where multiple financial institutions are involved in a covered credit transaction.

(b)

Financial institution identifying information.

(1) Its name.

(2) Its headquarters address.

(3) The name and business contact information of a person that the Bureau or other regulators may contact about the financial institution's submission.

(4) Its Federal prudential regulator, if applicable.

(5) Its Federal Taxpayer Identification Number (TIN).

(6) Its Legal Entity Identifier (LEI).

(7) Its Research, Statistics, Supervision, and Discount identification (RSSD ID) number, if applicable.

(8) Parent entity information, if applicable, including:

(i) The name of the immediate parent entity;

(ii) The LEI of the immediate parent entity, if available;

(iii) The RSSD ID number of the immediate parent entity, if available;

(iv) The name of the top-holding parent entity;

(v) The LEI of the top-holding parent entity, if available; and

(vi) The RSSD ID number of the top-holding parent entity, if available.

(9) The type of financial institution that it is, indicated by selecting the appropriate type or types of institution from the list provided.

(10) Whether the financial institution is voluntarily reporting covered applications from small businesses.

(c)

Procedures for the submission of data to the Bureau.

<https://www.consumerfinance.gov/data-research/small-business-lending/filing-instructions-guide/>.

§ 1002.110

Publication of data and other disclosures.

(a)

Publication of small business lending application registers and associated financial institution information.

(b)

Publication of aggregate data.

(c)

Statement of financial institution's small business lending data available on the Bureau's website.

(d)

Availability of statements.

(e)

Further disclosure prohibited

Disclosure by a financial institution.

(2)

Disclosure by a third party.

§ 1002.111

Recordkeeping.

(a)

Record retention.

(b)

Certain information kept separate from the rest of the application.

(c)

Limitation on personally identifiable information in certain records retained under this section.

§ 1002.112

Enforcement.

(a)

Administrative enforcement and civil liability.

(b)

Bona fide errors.

(c)

Safe harbors

Incorrect entry for application date.

(2)

Incorrect entry for census tract.

(3)

Incorrect entry for NAICS code.

(i) Relying on an applicant's representations or on an appropriate third-party source, in accordance with § 1002.107(b), regarding the NAICS code; or

(ii) Identifying the NAICS code itself, provided that the financial institution maintains procedures reasonably adapted to correctly identify a 3-digit NAICS code.

(4)

Incorrect determination of small business status, covered credit transaction, or covered application.

§ 1002.113

Severability.

If any provision of this subpart, or any application of a provision, is stayed or determined to be invalid, the remaining provisions or applications are severable and shall continue in effect.

§ 1002.114

Effective date, compliance date, and special transitional rules.

(a)

Effective date.

(b)

Compliance date.

(1) A covered financial institution that originated at least 2,500 covered credit transactions for small businesses in each of calendar years 2022 and 2023 shall comply with the requirements of this subpart beginning October 1, 2024.

(2) A covered financial institution that is not subject to paragraph (b)(1) of this section and that originated at least 500 covered credit transactions for small businesses in each of calendar years 2022 and 2023 shall comply with the requirements of this subpart beginning April 1, 2025.

(3) A covered financial institution that is not subject to paragraphs (b)(1) or (2) of this section and that originated at least 100 covered credit transactions for small businesses in each of calendar years 2022 and 2023 shall comply with the requirements of this subpart beginning January 1, 2026.

(4) A financial institution that did not originate at least 100 covered credit transactions for small businesses in each of calendar years 2022 and 2023 but subsequently originates at least 100 such transactions in two consecutive calendar years shall comply with the requirements of this subpart in accordance with § 1002.105(b), but in any case no earlier than January 1, 2026.

(c)

Special transitional rules

Collection of certain information prior to a financial institution's compliance date.

(2)

Determining which compliance date applies to a financial institution that does not collect information sufficient to determine small business status.

Pt. 1002, App. A

Appendix A to Part 1002 Federal Agencies To Be Listed in Adverse Action Notices

The following list indicates the Federal agency or agencies that should be listed in notices provided by creditors pursuant to § 1002.9(b)(1). Any questions concerning a particular creditor may be directed to such agencies. This list is not intended to describe agencies' enforcement authority for ECOA and Regulation B. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

1.

Banks, savings associations, and credit unions with total assets of over \$10 billion and their affiliates:

2. To the extent not included in item 1 above:

a.

National Banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks:

b.

State member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of

c.

Nonmember Insured Banks, Insured State Branches of Foreign Banks, and Insured State Savings Associations:

d.

Federal Credit Unions:

3.

Air Carriers:

4.

Creditors Subject to Surface Transportation Board:

5.

Creditors Subject to Packers and Stockyards Act:

6.

Small Business Investment Companies:

7.

Brokers and Dealers:

8.

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and
Production Credit Associations:

9.

Retailers, Finance Companies, and All Other Creditors Not Listed Above:

[88 FR 58065, Aug. 25, 2023]

Pt. 1002, App. B

Appendix B to Part 1002 Model Application Forms

1. This appendix contains four model credit application forms, each designated for use in a particular type of consumer credit transaction as indicated by the bracketed caption on each form. The first sample form is intended for use in open-end, unsecured transactions; the second for closed-end, secured transactions; the third for closed-end transactions, whether unsecured or secured; and the fourth in transactions involving community property or occurring in community property States. This appendix also contains a data collection model form for collecting information concerning an applicant's ethnicity, race, and sex that complies with the requirements of § 1002.13(a)(1)(i)(A) and (ii). Appendix B to 12 CFR part 1003 provides a data collection model form for collecting information

concerning an applicant's ethnicity, race, and sex that complies with the requirements of § 1002.13(a)(1)(i)(B) and (ii). All forms contained in this appendix are models; their use by creditors is optional.

2. The use or modification of these forms is governed by the following instructions. A creditor may change the forms: by asking for additional information not prohibited by § 1002.5; by deleting any information request; or by rearranging the format without modifying the substance of the inquiries. In any of these three instances, however, the appropriate notices regarding the optional nature of courtesy titles, the option to disclose alimony, child support, or separate maintenance, and the limitation concerning marital status inquiries must be included in the appropriate places if the items to which they relate appear on the creditor's form.

3. If a creditor uses an appropriate appendix B model form, or modifies a form in accordance with the above instructions, that creditor shall be deemed to be acting in compliance with the provisions of paragraphs (b), (c) and (d) of § 1002.5 of this part.

ER21DE11.046

ER21DE11.047

ER21DE11.048

ER21DE11.049

ER21DE11.050

ER21DE11.051

ER21DE11.052

ER21DE11.053

ER02OC17.000

[76 FR 79445, Dec. 21, 2011, as amended at 82 FR 45694, 45695, Oct. 2, 2017]

Pt. 1002, App. C

Appendix C to Part 1002Sample Notification Forms

1. This Appendix contains ten sample notification forms. Forms C-1 through C-4 are intended for

use in notifying an applicant that adverse action has been taken on an application or account under §§ 1002.9(a)(1) and (2)(i) of this part. Form C-5 is a notice of disclosure of the right to request specific reasons for adverse action under §§ 1002.9(a)(1) and (2)(ii). Form C-6 is designed for use in notifying an applicant, under § 1002.9(c)(2), that an application is incomplete. Forms C-7 and C-8 are intended for use in connection with applications for business credit under § 1002.9(a)(3). Form C-9 is designed for use in notifying an applicant of the right to receive a copy of appraisals under § 1002.14. Form C-10 is designed for use in notifying an applicant for nonmortgage credit that the creditor is requesting applicant characteristic information.

2. Form C-1 contains the Fair Credit Reporting Act disclosure as required by sections 615(a) and (b) of that act. Forms C-2 through C-5 contain only the section 615(a) disclosure (that a creditor obtained information from a consumer reporting agency that was considered in the credit decision). A creditor must provide the section 615(a) disclosure when adverse action is taken against a consumer based on information from a consumer reporting agency. A creditor must provide the section 615(b) disclosure when adverse action is taken based on information from an outside source other than a consumer reporting agency. In addition, a creditor must provide the section 615(b) disclosure if the creditor obtained information from an affiliate other than information in a consumer report or other than information concerning the affiliate's own transactions or experiences with the consumer. Creditors may comply with the disclosure requirements for adverse action based on information in a consumer report obtained from an affiliate by providing either the section 615(a) or section 615(b) disclosure. Optional language in Forms C-1 through C-5 may be used to direct the consumer to the entity that provided the credit score for any questions about the credit score, along with the entity's contact information. Creditors may use or not use this additional language without losing the safe harbor, since the language is optional.

3. The sample forms are illustrative and may not be appropriate for all creditors. They were designed to include some of the factors that creditors most commonly consider. If a creditor chooses to use the checklist of reasons provided in one of the sample

4. If the reasons listed on the forms are not the factors actually used, a creditor will not satisfy the notice requirement by simply checking the closest identifiable factor listed. For example, some creditors consider only references from banks or other depository institutions and disregard finance company references altogether; their statement of reasons should disclose insufficient bank references, not insufficient credit references. Similarly, a creditor that considers bank references and other credit references as distinct factors should treat the two factors separately and disclose them as appropriate. The creditor should either add such other factors to the form or check other and include the appropriate explanation. The creditor need not, however, describe how or why a factor adversely affected the application. For example, the notice may say length of residence rather than too short a period of residence.

5. A creditor may design its own notification forms or use all or a portion of the forms contained in this Appendix. Proper use of Forms C-1 through C-4 will satisfy the requirement of § 1002.9(a)(2)(i). Proper use of Forms C-5 and C-6 constitutes full compliance with §§ 1002.9(a)(2)(ii) and 1002.9(c)(2), respectively. Proper use of Forms C-7 and C-8 will satisfy the requirements of §§ 1002.9(a)(2)(i) and (ii), respectively, for applications for business credit. Proper use of Form C-9 will satisfy the requirements of § 1002.14 of this part. Proper use of Form C-10 will satisfy the requirements of § 1002.5(b)(1).

Form C-1 Sample Notice of Action Taken and Statement of Reasons

Statement of Credit Denial, Termination or Change

Date:

Applicant's Name:

Applicant's Address:

Description of Account, Transaction, or Requested Credit:

Description of Action Taken:

Part I Principal Reason(s) for Credit Denial, Termination, or Other Action Taken Concerning Credit

This section must be completed in all instances.

- ____ Credit application incomplete
- ____ Insufficient number of credit references provided
- ____ Unacceptable type of credit references provided
- ____ Unable to verify credit references
- ____ Temporary or irregular employment
- ____ Unable to verify employment
- ____ Length of employment
- ____ Income insufficient for amount of credit requested
- ____ Excessive obligations in relation to income
- ____ Unable to verify income
- ____ Length of residence
- ____ Temporary residence
- ____ Unable to verify residence
- ____ No credit file
- ____ Limited credit experience
- ____ Poor credit performance with us
- ____ Delinquent past or present credit obligations with others
- ____ Collection action or judgment
- ____ Garnishment or attachment
- ____ Foreclosure or repossession
- ____ Bankruptcy
- ____ Number of recent inquiries on credit bureau report
- ____ Value or type of collateral not sufficient
- ____ Other, specify: _____

Part II Disclosure of Use of Information Obtained From an Outside Source

This section should be completed if the credit decision was based in whole or in part on information

that has been obtained from an outside source.

____Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Name:

Address:

[Toll-free] Telephone number:

[We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score:

Date:

Scores range from a low of _____ to a high of _____.

Key factors that adversely affected your credit score:

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address:

[[Toll-free] Telephone number: _____]

____Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting

Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

If you have any questions regarding this notice, you should contact:

Creditor's name:

Creditor's address:

Creditor's telephone number:

Notice:

Form C-2Sample Notice of Action Taken and Statement of Reasons

Date

Dear Applicant: Thank you for your recent application. Your request for [a loan/a credit card/an increase in your credit limit] was carefully considered, and we regret that we are unable to approve your application at this time, for the following reason(s):

Your Income:

____is below our minimum requirement.

____is insufficient to sustain payments on the amount of credit requested.

____could not be verified.

Your Employment:

____is not of sufficient length to qualify.

____could not be verified.

Your Credit History:

____of making payments on time was not satisfactory.

____could not be verified.

Your Application:

____lacks a sufficient number of credit references.

____lacks acceptable types of credit references.

____reveals that current obligations are excessive in relation to income.

Other:

The consumer reporting agency contacted that provided information that influenced our decision in whole or in part was [name, address and [toll-free] telephone number of the reporting agency]. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. Any questions regarding such information should be directed to [consumer reporting agency]. If you have any questions regarding this letter, you should contact us at [creditor's name, address and telephone number].

[We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score:

Date:

Scores range from a low of _____ to a high of _____.

Key factors that adversely affected your credit score:

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address:

[[Toll-free] Telephone number: _____]

Notice:

Form C-3Sample Notice of Action Taken and Statement of Reasons (Credit Scoring)

Date

Dear Applicant: Thank you for your recent application for _____. We regret that we are unable to approve your request.

[Reasons for Denial of Credit]

Your application was processed by a [credit scoring] system that assigns a numerical value to the various items of information we consider in evaluating an application. These numerical values are based upon the results of analyses of repayment histories of large numbers of customers.

The information you provided in your application did not score a sufficient number of points for approval of the application. The reasons you did not score well compared with other applicants were:

Insufficient bank references

Type of occupation

Insufficient credit experience

Number of recent inquiries on credit bureau report

[Your Right to Get Your Consumer Report]

In evaluating your application the consumer reporting agency listed below provided us with information that in whole or in part influenced our decision. The consumer reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. It can be obtained by contacting: [Name, address, and [toll-free] telephone number of the consumer reporting agency]. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

[Information about Your Credit Score]

[Information about Your Credit Score]

We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score:

Date:

Scores range from a low of _____ to a high of _____.

Key factors that adversely affected your credit score:

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address:

[Toll-free] Telephone number: _____]

If you have any questions regarding this letter, you should contact us at

Creditor's Name:

Address:

Telephone:

Sincerely,

Notice:

Form C-4Sample Notice of Action Taken, Statement of Reasons and Counteroffer

Date

Dear Applicant: Thank you for your application for _____. We are unable to offer you credit on the terms that you requested for the following reason(s):_____

We can, however, offer you credit on the following terms: _____

If this offer is acceptable to you, please notify us within [amount of time] at the following address: _____.

Our credit decision on your application was based in whole or in part on information obtained in a

report from [name, address and [toll-free] telephone number of the consumer reporting agency]. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to

[We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score:

Date:

Scores range from a low of _____ to a high of _____.

Key factors that adversely affected your credit score:

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address:

[Toll-free] Telephone number:_____]

You should know that the Federal Equal Credit Opportunity Act prohibits creditors, such as ourselves, from discriminating against credit applicants on the basis of their race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because they receive income from a public assistance program, or because they may have exercised their rights under the Consumer Credit Protection Act. If you believe there has been discrimination in handling your application you should contact the [name and address of the appropriate Federal enforcement agency listed in appendix A].

Sincerely,

Form C-5 Sample Disclosure of Right To Request Specific Reasons for Credit Denial

Date

Dear Applicant: Thank you for applying to us for _____.

After carefully reviewing your application, we are sorry to advise you that we cannot [open an account for you/grant a loan to you/increase your credit limit] at this time. If you would like a statement of specific reasons why your application was denied, please contact [our credit service manager] shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

Creditor's name

Address

Telephone number

If we obtained information from a consumer reporting agency as part of our consideration of your application, its name, address, and [toll-free] telephone number is shown below. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. [You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency.] You have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you received is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. You can find out about the information contained in your file (if one was used) by contacting:

Consumer reporting agency's name

Address

[Toll-free] Telephone number

[We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report.

Your credit score can change, depending on how the information in your consumer report changes.

Your credit score:

Date:

Scores range from a low of _____ to a high of _____.

Key factors that adversely affected your credit score:

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address:

[Toll-free] Telephone number: _____]

Sincerely,

Notice:

Form C-6 Sample Notice of Incomplete Application and Request for Additional Information

Creditor's name

Address

Telephone number

Date

Dear Applicant: Thank you for your application for credit. The following information is needed to make a decision on your application: _____

We need to receive this information by _____ (date). If we do not receive it by that date, we will regrettably be unable to give further consideration to your credit request.

Sincerely,

Form C-7 Sample Notice of Action Taken and Statement of Reasons (Business Credit)

Creditor's name

Creditor's address

Date

Dear Applicant: Thank you for applying to us for credit. We have given your request careful consideration, and regret that we are unable to extend credit to you at this time for the following reasons:

(Insert appropriate reason, such as: Value or type of collateral not sufficient; Lack of established earnings record; Slow or past due in trade or loan payments)

Sincerely,

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in appendix A].

Form C-8Sample Disclosure of Right To Request Specific Reasons for Credit Denial Given at Time of Application (Business Credit)

Creditor's name

Creditor's address

If your application for business credit is denied, you have the right to a written statement of the specific reasons for the denial. To obtain the statement, please contact [name, address and telephone number of the person or office from which the statement of reasons can be obtained] within 60 days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request for the statement.

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in

good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in appendix A].

Form C-9 Sample Disclosure of Right To Receive a Copy of Appraisals

We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close.

You can pay for an additional appraisal for your own use at your own cost.

[In your letter, give us the following information:]

Form C-10 Sample Disclosure About Voluntary Data Notation

We are requesting the following information to monitor our compliance with the Federal Equal Credit Opportunity Act, which prohibits unlawful discrimination. You are not required to provide this information. We will not take this information (or your decision not to provide this information) into account in connection with your application or credit transaction. The law provides that a creditor may not discriminate based on this information, or based on whether or not you choose to provide it.

[If you choose not to provide the information, we will note it by visual observation or surname].

[76 FR 79445, Dec. 21, 2011, as amended at 78 FR 7248, Jan. 31, 2013]

Pt. 1002, App. D

Appendix D to Part 1002 Issuance of Official Interpretations

1.

Official Interpretations.

2.

Requests for Issuance of Official Interpretations.

3.

Scope of Interpretations.

[76 FR 79445, Dec. 21, 2011, as amended at 88 FR 16538, Mar. 20, 2023]

Pt. 1002, App. E

Appendix E to Part 1002Sample Form for Collecting Certain Applicant-Provided Data Under Subpart B

ER31MY23.211

ER31MY23.212

[88 FR 35534, May 31, 2023]

Pt. 1002, App. F

Appendix F to Part 1002Tolerances for Bona Fide Errors in Data Reported Under Subpart B

As set out in § 1002.112(b) and in comment 112(b)-1, a financial institution is presumed

Table 1 to Appendix FTolerance Thresholds for Bona Fide Errors

Small business lending application register count

Random

sample

size

986

Threshold

(#)

Threshold

(%)

(A)

(B)

(C)

(D)

100-130

47

3

6.4

131-190

56

3

5.4

191-500

59

3

5.1

501-100,000

79

4

5.1

100,001+

159

4

2.5

The size of the random sample, under column B, shall depend on the size of the financial institution's small business lending application register, as shown in column A of the Threshold Table.

986

The thresholds in column C of the Threshold Table reflect the number of unintentional errors a financial institution may make within a particular data field (

e.g.,

For instance, a financial institution that submitted a small business lending application register containing 105 applications would be subject to a threshold of three errors per data field. If the financial institution had made two errors in reporting loan amount and two errors reporting gross

annual income, all of these errors would be covered by the bona fide error provision of § 1002.112(b) and would not constitute a violation of the Act or this part. If the same financial institution had made four errors in reporting loan amount and two errors reporting gross annual income, the bona fide error provision of § 1002.112(b) would not apply to the four loan amount errors but would still apply to the two gross annual income errors.

Even when the number of errors in a particular data field do not equal or exceed the threshold in column C, if either there is a reasonable basis to believe that errors in that field were intentional or there is evidence that the financial institution did not maintain procedures reasonably adapted to avoid such errors, then the errors are not bona fide errors under § 1002.112(b).

For purposes of determining bona fide errors under § 1002.112(b), the term data field generally refers to individual fields. Some data fields may allow for more than one response. For example, with respect to information on the ethnicity or race of an applicant's principal owners, a data field may identify more than one race or more than one ethnicity for a given person. If one or more of the ethnicities or races identified in a data field are erroneous, they count as one (and only one) error for that data field.

[88 FR 35534, May 31, 2023]

Pt. 1002, Supp. I

Supplement I to Part 1002 Official Interpretations

Following is an official interpretation of Regulation B (12 CFR part 1002) issued by the Bureau of Consumer Financial Protection. References are to sections of the regulation or the Equal Credit Opportunity Act (15 U.S.C. 1601 et seq.

Introduction

1.

Official status.

2.

Issuance of interpretations.

Federal Register.

3.

Comment designations.

Section 1002.1 Authority, Scope, and Purpose

1(a) Authority and scope.

1.

Scope.

2.

Foreign applicability.

3.

Bureau.

Bureau,

Section 1002.2 Definitions

2(c) Adverse action.

Paragraph 2(c)(1)(i).

1.

Application for credit.

Paragraph 2(c)(1)(ii).

1.

Move from service area.

2.

Termination based on credit limit.

Paragraph 2(c)(2)(ii).

1.

Default exercise of due-on-sale clause.

2.

Current delinquency or default.

Paragraph 2(c)(2)(iii).

1.

Point-of-sale transactions.

i. A credit cardholder presents an expired card or a card that has been reported to the card issuer as lost or stolen.

ii. The amount of a transaction exceeds a cash advance or credit limit.

iii. The circumstances (such as excessive use of a credit card in a short period of time) suggest that fraud is involved.

iv. The authorization facilities are not functioning.

v. Billing statements have been returned to the creditor for lack of a forwarding address.

2.

Application for increase in available credit.

Paragraph 2(c)(2)(v).

1.

Terms of credit versus type of credit offered.

2(e) Applicant.

1.

Request to assume loan.

2(f) Application.

1.

General.

2.

Procedures used.

3.

When an inquiry or prequalification request becomes an application.

4.

Examples of inquiries that are not applications.

- i. A consumer calls to ask about loan terms and an employee explains the creditor's basic loan terms, such as interest rates, loan-to-value ratio, and debt-to-income ratio.
- ii. A consumer calls to ask about interest rates for car loans, and, in order to quote the appropriate rate, the loan officer asks for the make and sales price of the car and the amount of the downpayment, then gives the consumer the rate.
- iii. A consumer asks about terms for a loan to purchase a home and tells the loan officer her income and intended downpayment, but the loan officer only explains the creditor's loan-to-value ratio policy and other basic lending policies, without telling the consumer whether she qualifies for the loan.
- iv. A consumer calls to ask about terms for a loan to purchase vacant land and states his income and the sales price of the property to be financed, and asks whether he qualifies for a loan; the employee responds by describing the general lending policies, explaining that he would need to look at all of the consumer's qualifications before making a decision, and offering to send an application form to the consumer.

5.

Examples of an application.

- i. A person asks a financial institution to preapprove her for a loan (for example, to finance a house or a vehicle she plans to buy) and the institution reviews the request under a program in which the institution, after a comprehensive analysis of her creditworthiness, issues a written commitment valid for a designated period of time to extend a loan up to a specified amount. The written commitment may not be subject to conditions other than conditions that require the identification of adequate collateral, conditions that require no material change in the applicant's financial condition or creditworthiness prior to funding the loan, and limited conditions that are not related to the financial condition or creditworthiness of the applicant that the lender ordinarily attaches to a traditional

application (such as certification of a clear termite inspection for a home purchase loan, or a maximum mileage requirement for a used car loan). But if the creditor's program does not provide for giving written commitments, requests for preapprovals are treated as prequalification requests for purposes of the regulation.

ii. Under the same facts as above, the financial institution evaluates the person's creditworthiness and determines that she does not qualify for a preapproval.

6.

Completed application diligence requirement.

2(g) Business credit.

1.

Definition.

2(j) Credit.

1.

General.

2(l) Creditor.

1.

Assignees.

2.

Referrals to creditors.

2(p) Empirically derived and other credit scoring systems.

1.

Purpose of definition.

2.

Periodic revalidation.

3.

Pooled data scoring systems.

4.

Effects test and disparate treatment.

2(w) Open-end credit.

1.

Open-end real estate mortgages.

2(z) Prohibited basis.

1.

Persons associated with applicant.

2.

National origin.

3.

Public assistance program.

Section 1002.3 Limited Exceptions for Certain Classes of Transactions

1.

Scope.

3(a) Public-utilities credit.

1.

Definition.

2.

Security deposits.

3.

Telephone companies.

3(c) Incidental credit.

1.

Examples.

3(d) Government credit.

1.

Credit to governments.

Section 1002.4 General Rules

Paragraph 4(a).

1.

Scope of rule.

2.

Examples.

i. Disparate treatment would exist, for example, in the following situations:

A. A creditor provides information only on subprime and similar products to minority applicants who request information about the creditor's mortgage products, but provides information on a wider variety of mortgage products to similarly situated nonminority applicants.

B. A creditor provides more comprehensive information to men than to similarly situated women.

C. A creditor requires a minority applicant to provide greater documentation to obtain a loan than a similarly situated nonminority applicant.

D. A creditor waives or relaxes credit standards for a nonminority applicant but not for a similarly situated minority applicant.

ii. Treating applicants differently on a prohibited basis is unlawful if the creditor lacks a legitimate nondiscriminatory reason for its action, or if the asserted reason is found to be a pretext for discrimination.

Paragraph 4(b).

1.

Prospective applicants.

i. A statement that the applicant should not bother to apply, after the applicant states that he is retired.

ii. The use of words, symbols, models or other forms of communication in advertising that express,

imply, or suggest a discriminatory preference or a policy of exclusion in violation of the Act.

iii. The use of interview scripts that discourage applications on a prohibited basis.

2.

Affirmative advertising.

Paragraph 4(c).

1.

Requirement for written applications.

2.

Telephone applications.

3.

Computerized entry.

Applications through electronic media and Applications through video.

Paragraph 4(d).

1.

Clear and conspicuous.

2.

Form of disclosures.

i. If an applicant accesses a credit application electronically (other than as described under ii below), such as online at a home computer, the creditor must provide the disclosures in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the creditor instead mailed paper disclosures to the applicant, this requirement would not be met.

ii. In contrast, if an applicant is physically present in the creditor's office, and accesses a credit application electronically, such as via a terminal or kiosk (or if the applicant uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the creditor to provide applications to consumers), the creditor may provide disclosures in either electronic or paper form,

provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.

Section 1002.5 Rules Concerning Requests for Information

5(a) General rules.

Paragraph 5(a)(1).

1.

Requests for information.

5(a)(2) Required Collection of Information

1.

Local laws.

2.

Information required by Regulation C.

3.

Collecting information on behalf of creditors.

4.

Information required by subpart B.

I

5(a)(4) Other Permissible Collection of Information

1.

Other permissible collection of information.

5(d) Other limitations on information requests.

Paragraph 5(d)(1).

1.

Indirect disclosure of prohibited information.

i. The applicant's obligation to pay alimony, child support, or separate maintenance income.

ii. The source of income to be used as the basis for repaying the credit requested, which could

disclose that it is the income of a spouse.

iii. Whether any obligation disclosed by the applicant has a co-obligor, which could disclose that the co-obligor is a spouse or former spouse.

iv. The ownership of assets, which could disclose the interest of a spouse.

Paragraph 5(d)(2).

1.

Disclosure about income.

2.

General inquiry about source of income.

3.

Specific inquiry about sources of income.

Section 1002.6 Rules Concerning Evaluation of Applications

6(a) General rule concerning use of information.

1.

General.

2.

Effects test.

et seq.,

6(b) Specific rules concerning use of information.

Paragraph 6(b)(1).

1.

Prohibited basis

Paragraph 6(b)(2).

1.

Favoring the elderly.

2.

Consideration of age in a credit scoring system.

i.

Age-split scorecards.

3.

Consideration of age in a judgmental system.

i. A creditor may consider the applicant's occupation and length of time to retirement to ascertain whether the applicant's income (including retirement income) will support the extension of credit to its maturity.

ii. A creditor may consider the adequacy of any security offered when the term of the credit extension exceeds the life expectancy of the applicant and the cost of realizing on the collateral could exceed the applicant's equity. An elderly applicant might not qualify for a 5 percent down, 30-year mortgage loan but might qualify with a larger downpayment or a shorter loan maturity.

iii. A creditor may consider the applicant's age to assess the significance of length of employment (a young applicant may have just entered the job market) or length of time at an address (an elderly applicant may recently have retired and moved from a long-term residence).

4.

Consideration of age in a reverse mortgage.

5.

Consideration of age in a combined system.

6.

Consideration of public assistance.

i. The length of time an applicant will likely remain eligible to receive such income.

ii. Whether the applicant will continue to qualify for benefits based on the status of the applicant's dependents (as in the case of Temporary Aid to Needy Families, or social security payments to a minor).

iii. Whether the creditor can attach or garnish the income to assure payment of the debt in the event

of default.

Paragraph 6(b)(5).

1.

Consideration of an individual applicant.

2.

Payments consistently made.

3.

Consideration of income.

i. A creditor need not consider income at all in evaluating creditworthiness. If a creditor does consider income, there are several acceptable methods, whether in a credit scoring or a judgmental system:

A. A creditor may score or take into account the total sum of all income stated by the applicant without taking steps to evaluate the income for reliability.

B. A creditor may evaluate each component of the applicant's income, and then score or take into account income determined to be reliable separately from other income; or the creditor may disregard that portion of income that is not reliable when it aggregates reliable income.

C. A creditor that does not evaluate all income components for reliability must treat as reliable any component of protected income that is not evaluated.

ii. In considering the separate components of an applicant's income, the creditor may not automatically discount or exclude from consideration any protected income. Any discounting or exclusion must be based on the applicant's actual circumstances.

4.

Part-time employment, sources of income.

Paragraph 6(b)(6).

1.

Types of credit references.

Paragraph 6(b)(7).

1.

National originimmigration status.

2.

National origincitizenship.

Paragraph 6(b)(8).

1.

Prohibited basismarital status.

Section 1002.7Rules Concerning Extensions of Credit

7(a) Individual accounts.

1.

Open-end creditauthorized user.

2.

Open-end creditchoice of authorized user.

3.

Overdraft authority on transaction accounts.

7(b) Designation of name.

1.

Single name on account.

7(c) Action concerning existing open-end accounts.

Paragraph 7(c)(1).

1.

Termination coincidental with marital status change.

i. Repudiate responsibility for future charges on the joint account.

ii. Request separate accounts in their own names.

iii. Request that the joint account be closed.

2.

Updating information.

Paragraph 7(c)(2).

1.

Procedure pending reapplication.

7(d) Signature of spouse or other person.

1.

Qualified applicant.

2.

Unqualified applicant.

Paragraph 7(d)(1).

1.

Signature of another person.

2.

Joint applicant.

3.

Evidence of joint application.

Paragraph 7(d)(2).

1.

Jointly owned property.

i.

Valuation of applicant's interest.

ii.

Other options to support credit.

A. Providing a co-signer or other party (§ 1002.7(d)(5));

B. Requesting that the credit be granted on a secured basis (§ 1002.7(d)(4)); or

C. Providing the signature of the joint owner on an instrument that ensures access

2.

Need for signature reasonable belief.

Paragraph 7(d)(3).

1.

Residency.

Paragraph 7(d)(4).

1.

Creation of enforceable lien.

2.

Need for signature reasonable belief.

3.

Integrated instruments.

Paragraph 7(d)(5).

1.

Qualifications of additional parties.

2.

Reliance on income of another person

individual credit.

3.

Renewals.

Paragraph 7(d)(6).

1.

Guarantees.

2.

Spousal guarantees.

7(e) Insurance.

1.

Differences in terms.

2.

Insurance information.

Section 1002.8 Special Purpose Credit Programs

8(a) Standards for programs.

1.

Determining qualified programs.

2.

Compliance with a program authorized by Federal or state law.

3.

Expressly authorized.

4.

Creditor liability.

5.

Determining need.

6.

Elements of the program.

8(b) Rules in other sections.

1.

Applicability of rules.

8(c) Special rule concerning requests and use of information.

1.

Request of prohibited basis information.

2.

Examples.

- i. Energy conservation programs to assist the elderly, for which the creditor must consider the applicant's age.
- ii. Programs under a Minority Enterprise Small Business Investment Corporation, for which a creditor must consider the applicant's minority status.

8(d) Special rule in the case of financial need.

1.

Request of prohibited basis information.

2.

Examples.

- i. Subsidized housing programs for low-to moderate-income households, for which a creditor may have to consider the applicant's receipt of alimony or child support, the spouse's or parents' income, etc.
- ii. Student loan programs based on the family's financial need, for which a creditor may have to consider the spouse's or parents' financial resources.

3.

Student loans.

Section 1002.9 Notifications

1.

Use of the term adverse action.

2.

Expressly withdrawn applications.

3.

When notification occurs.

4.

Location of notice.

5.

Prequalification requests.

9(a) Notification of action taken, ECOA notice, and statement of specific reasons.

Paragraph 9(a)(1).

1.

Timing of notice when an application is complete.

2.

Notification of approval.

3.

Incomplete application denial for incompleteness.

4.

Incomplete application denial for reasons other than incompleteness.

5.

Length of counteroffer.

6.

Counteroffer combined with adverse action notice.

7.

Denial of a telephone application.

Paragraph 9(a)(3).

1.

Coverage.

2.

Trade credit.

3

. Factoring.

4.

Manner of compliance.

5.

Timing of notification.

9(b) Form of ECOA notice and statement of specific reasons.

Paragraph 9(b)(1).

1.

Substantially similar notice.

Paragraph 9(b)(2).

1.

Number of specific reasons.

2.

Source of specific reasons.

3.

Description of reasons.

4.

Credit scoring system.

5.

Credit scoring

method for selecting reasons.

6.

Judgmental system.

7.

Combined credit scoring and judgmental system.

8.

Automatic denial.

9.

Combined ECOA-FCRA disclosures.

9(c) Incomplete applications.

Paragraph 9(c)(1).

1.

Exception for preapprovals.

Paragraph 9(c)(2).

1.

Reapplication.

Paragraph 9(c)(3).

1.

Oral inquiries for additional information.

9(g) Applications submitted through a third party.

1.

Third parties.

2.

Third party noticeenforcement agency.

3.

Third-party noticeliability.

Section 1002.10Furnishing of Credit Information

1.

Scope.

2.

Reporting on all accounts.

3.

Designating accounts.

4.

File and index systems.

10(a) Designation of accounts.

1.

New parties.

2.

Request to change designation of account.

Section 1002.11 Relation to State Law

11(a) Inconsistent state laws.

1.

Preemption determination New York.

i. Article 15, section 296a(1)(b). Unlawful discriminatory practices in relation to credit on the basis of race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars taking a prohibited basis into account when establishing eligibility for certain special-purpose credit programs.

ii. Article 15, section 296a(1)(c). Unlawful discriminatory practice to make any record or inquiry based on race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars a creditor from requesting and considering information regarding the particular characteristics (for example, race, national origin, or sex) required for eligibility for special-purpose credit programs.

2.

Preemption determination Ohio.

i. Section 4112.021(B)(1) Unlawful discriminatory practices in credit transactions. This provision is preempted to the extent that it bars asking or favorably considering the age of an elderly applicant; prohibits the consideration of age in a credit scoring system; permits without limitation the consideration of age in real estate transactions; and limits the consideration of age in special-purpose credit programs to certain government-sponsored programs identified in the state

law.

Section 1002.12 Record Retention

12(a) Retention of prohibited information.

1.

Receipt of prohibited information.

2.

Use of retained information.

12(b) Preservation of records.

1.

Copies.

2.

Computerized decisions.

Paragraph 12(b)(3).

1.

Withdrawn and brokered applications.

i. An application is withdrawn by the applicant.

ii. An application is submitted to more than one creditor on behalf of the applicant, and the application is approved by one of the other creditors.

12(b)(6) Self-tests.

1. The rule requires all written or recorded information about a self-test to be retained

12(b)(7) Preapplication Marketing Information

1.

Prescreened credit solicitations.

2.

List of criteria.

3.

Correspondence.

Section 1002.13 Information for Monitoring Purposes

13(a) Information to be requested.

1.

Natural person.

2.

Principal residence.

3.

Temporary financing.

4.

New principal residence.

5.

Transactions not covered.

6.

Refinancings.

7.

Data collection under Regulation C.

See also

8.

Application-by-application basis.

13(b) Obtaining of Information

1.

Forms for collecting data.

2.

Written applications.

3.

Telephone, mail applications.

ii. A creditor that accepts an application by mail need not make a special request for the monitoring information if the applicant has failed to provide it on the application form returned to the creditor.

iii. If it is not evident on the face of an application that it was received by mail, telephone, or via an electronic medium, the creditor should indicate on the form or other application record how the application was received.

4.

Video and other electronic-application processes.

ii. If an applicant applies through an electronic medium without video capability, the creditor treats the application as if it were received by mail.

5.

Applications through loan-shopping services.

6.

Inadvertent notation.

13(c) Disclosure to applicants.

1.

Procedures for providing disclosures.

13(d) Substitute monitoring program.

1.

Substitute program.

Section 1002.14 Rules on Providing Appraisals and Valuations

14(a) Providing appraisals and other valuations.

1.

Multiple applicants.

14(a)(1) In general.

1.

Coverage.

2.

Renewals.

3.

Written.

4.

Timing.

i. For purposes of this timing requirement, provide means deliver. Delivery occurs three business days after mailing or delivering the copies to the last-known address of the applicant, or when evidence indicates actual receipt by the applicant, whichever is earlier. Delivery to or actual receipt by the applicant by electronic means must comply with the E-Sign Act, as provided for in § 1002.14(a)(5).

ii. The application and meaning of the promptly upon completion standard depends upon the facts and circumstances, including but not limited to when the creditor receives the appraisal or other written valuation, and the extent of any review or revision after the creditor receives it.

iii. Completion occurs when the last version is received by the creditor, or when the creditor has reviewed and accepted the appraisal or other written valuation to include any changes or corrections required, whichever is later.

See also

iv. In a transaction that is being consummated (for closed-end credit) or in which the account is being opened (for open-end credit), if an appraisal or other written valuation has been developed but is not yet complete, the deadline for providing a copy of three business days before consummation or account opening still applies, unless the applicant waived that deadline as provided under § 1002.14(a)(1), in which case the copy must be provided at or before consummation or account opening.

v. Even if the transaction will not be consummated (for closed-end credit) or the account will not be

opened (for open-end credit), the copy must be provided promptly upon completion as provided for in § 1002.14(a)(1), unless the applicant has waived that deadline as provided under § 1002.14(a)(1), in which case as provided for in § 1002.14(a)(1) the copy must be provided to the applicant no later than 30 days after the creditor determines the transaction will not be consummated or the account will not be opened.

5.

Promptly upon completion-examples.

i.

Sending a copy of an appraisal within a week of completion with sufficient time before consummation (or account opening for open-end credit).

ii.

Sending a copy of a revised appraisal within a week after completion and with sufficient time before consummation (or account opening for open-end credit).

iii.

Sending a copy of an AVM report within a week after its receipt and with sufficient time before consummation (or account opening for open-end credit).

iv.

Delay in sending an appraisal.

v.

Delay in sending an AVM report while waiting for completion of a second valuation.

6.

Waiver.

i. If, no later than three business days prior to consummation or account opening, the applicant provides the creditor an affirmative oral or written statement waiving the timing requirement under this rule; or

ii. If, within three business days of consummation or account opening, the applicant provides the

creditor an affirmative oral or written statement waiving the timing requirement under this rule and the waiver pertains solely to the applicant's receipt of a copy of an appraisal or other written valuation that contains only clerical changes from a previous version of the appraisal or other written valuation provided to the applicant three or more business days prior to consummation or account opening. For purpose of this second type of waiver, revisions will only be considered to be clerical in nature if they have no impact on the estimated value, and have no impact on the calculation or methodology used to derive the estimate. In addition, under § 1002.14(a)(1) the applicant still must receive the copy of the revision at or prior to consummation or account opening.

7.

Multiple versions of appraisals or valuations.

See also

14(a)(2) Disclosure.

1.

Appraisal independence requirements not affected.

14(a)(3) Reimbursement.

1.

Photocopy, postage, or other costs.

2.

Reasonable fee for reimbursement.

14(b) Definitions.

14(b)(1) Consummation.

1.

State law governs.

2.

Credit vs. sale.

14(b)(2) Dwelling.

1.

Motor vehicles not covered.

14(b)(3) Valuation.

1.

Valuation examples.

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

2.

Attachments and exhibits.

3.

Other documentation.

- i. Internal documents that merely restate the estimated value of the dwelling contained in an appraisal or written valuation being provided to the applicant.
- ii. Governmental agency statements of appraised value that are publically available.
- iii. Publicly-available lists of valuations (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges).
- iv. Manufacturers' invoices for manufactured homes.
- v. Reports reflecting property inspections that do not provide an estimate of the value of the property and are not used to develop an estimate of the value of the property.

vi. Appraisal reviews that do not include the appraiser's estimate of the property's value or opinion of value.

Section 1002.15 Incentives for Self-Testing and Self-Correction

15(a) General rules.

15(a)(1) Voluntary self-testing and correction.

1. Activities required by any governmental authority are not voluntary self-tests. A governmental authority includes both administrative and judicial authorities for Federal, State, and local governments.

15(a)(2) Corrective action required.

1. To qualify for the privilege, appropriate corrective action is required when the results of a self-test show that it is more likely than not that there has been a violation of the ECOA or this part. A self-test is also privileged when it identifies no violations.

2. In some cases, the issue of whether certain information is privileged may arise before the self-test is complete or corrective actions are fully under way. This would not necessarily prevent a creditor from asserting the privilege. In situations where the self-test is not complete, for the privilege to apply the lender must satisfy the regulation's requirements within a reasonable period of time. To assert the privilege where the self-test shows a likely violation, the rule requires, at a minimum, that the creditor establish a plan for corrective action and a method to demonstrate progress in implementing the plan. Creditors must take appropriate corrective action on a timely basis after the results of the self-test are known.

3. A creditor's determination about the type of corrective action needed, or a finding that no corrective action is required, is not conclusive in determining whether the requirements of this paragraph have been satisfied. If a creditor's claim of privilege is challenged, an assessment of the need for corrective action or the type of corrective action that is appropriate must be based on a review of the self-testing results, which may require an

in camera

15(a)(3) Other privileges.

1. A creditor may assert the privilege established under this section in addition to asserting any other privilege that may apply, such as the attorney-client privilege or the work-product privilege. Self-testing data may be privileged under this section whether or not the creditor's assertion of another privilege is upheld.

15(b) Self-test defined.

15(b)(1) Definition.

Paragraph 15(b)(1)(i).

1. To qualify for the privilege, a self-test must be sufficient to constitute a determination of the extent or effectiveness of the creditor's compliance with the Act and Regulation B. Accordingly, a self-test is only privileged if it was designed and used for that purpose. A self-test that is designed or used to determine compliance with other laws or regulations or for other purposes is not privileged under this rule. For example, a self-test designed to evaluate employee efficiency or customers' satisfaction with the level of service provided by the creditor is not privileged even if evidence of discrimination is uncovered incidentally. If a self-test is designed for multiple purposes, only the portion designed to determine compliance with the ECOA is eligible for the privilege.

Paragraph 15(b)(1)(ii).

1. The principal attribute of self-testing is that it constitutes a voluntary undertaking by the creditor to produce new data or factual information that otherwise would not be available and could not be derived from loan or application files or other records related to credit transactions. Self-testing includes, but is not limited to, the practice of using fictitious applicants for credit (testers), either with or without the use of matched pairs. A creditor may elect to test a defined segment of its business, for example, loan applications processed by a specific branch or loan officer, or applications made for a particular type of credit or loan program. A creditor also may use other methods of generating information that is not available in loan and application files, such as surveying mortgage loan applicants. To the extent permitted by law, creditors might also develop new methods that go

beyond traditional pre-application testing, such as

2. The privilege does not protect a creditor's analysis performed as part of processing or underwriting a credit application. A creditor's evaluation or analysis of its loan files, Home Mortgage Disclosure Act data, or similar types of records (such as broker or loan officer compensation records) does not produce new information about a creditor's compliance and is not a self-test for purposes of this section. Similarly, a statistical analysis of data derived from existing loan files is not privileged.

15(b)(3) Types of information not privileged.

Paragraph 15(b)(3)(i).

1. The information listed in this paragraph is not privileged and may be used to determine whether the prerequisites for the privilege have been satisfied. Accordingly, a creditor might be asked to identify the self-testing method, for example, whether preapplication testers were used or data were compiled by surveying loan applicants. Information about the scope of the self-test (such as the types of credit transactions examined, or the geographic area covered by the test) also is not privileged.

Paragraph 15(b)(3)(ii).

1. Property appraisal reports, minutes of loan committee meetings or other documents reflecting the basis for a decision to approve or deny an application, loan policies or procedures, underwriting standards, and broker compensation records are examples of the types of records that are not privileged. If a creditor arranges for testers to submit loan applications for processing, the records are not related to actual credit transactions for purposes of this paragraph and may be privileged self-testing records.

15(c) Appropriate corrective action.

1. The rule only addresses the corrective actions required for a creditor to take advantage of the privilege in this section. A creditor may be required to take other actions or provide additional relief if a formal finding of discrimination is made.

15(c)(1) General requirement.

1. Appropriate corrective action is required even though no violation has been formally adjudicated or admitted by the creditor. In determining whether it is more likely than not that a violation occurred, a creditor must treat testers as if they are actual applicants for credit. A creditor may not refuse to take appropriate corrective action under this section because the self-test used fictitious loan applicants. The fact that a tester's agreement with the creditor waives the tester's legal right to assert a violation does not eliminate the requirement for the creditor to take corrective action, although no remedial relief for the tester is required under paragraph 15(c)(3).

15(c)(2) Determining the scope of appropriate corrective action.

1. Whether a creditor has taken or is taking corrective action that is appropriate will be determined on a case-by-case basis. Generally, the scope of the corrective action that is needed to preserve the privilege is governed by the scope of the self-test. For example, a creditor that self-tests mortgage loans and discovers evidence of discrimination may focus its corrective actions on mortgage loans, and is not required to expand its testing to other types of loans.

2. In identifying the policies or practices that are a likely cause of the violation, a creditor might identify inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes. The extent and scope of a likely violation may be assessed by determining which areas of operations are likely to be affected by those policies and practices, for example, by determining the types of loans and stages of the application process involved and the branches or offices where the violations may have occurred.

3. Depending on the method and scope of the self-test and the results of the test, appropriate corrective action may include one or more of the following:

- i. If the self-test identifies individuals whose applications were inappropriately processed, offering to extend credit if the application was improperly denied and compensating such persons for out-of-pocket costs and other compensatory damages;
- ii. Correcting institutional policies or procedures that may have contributed to the likely violation, and

adopting new policies as appropriate;

iii. Identifying and then training and/or disciplining the employees involved;

iv. Developing outreach programs, marketing strategies, or loan products to serve more effectively segments of the lender's markets that may have been affected by the likely discrimination; and

v. Improving audit and oversight systems to avoid a recurrence of the likely violations.

15(c)(3) Types of relief.

Paragraph 15(c)(3)(ii).

1. The use of pre-application testers to identify policies and practices that illegally discriminate does not require creditors to review existing loan files for the purpose of identifying and compensating applicants who might have been adversely affected.

2. If a self-test identifies a specific applicant who was discriminated against on a prohibited basis, to qualify for the privilege in this section the creditor must provide appropriate remedial relief to that applicant; the creditor is not required to identify other applicants who might also have been adversely affected.

Paragraph 15(c)(3)(iii).

1. A creditor is not required to provide remedial relief to an applicant that would not

15(d)(1) Scope of privilege.

1. The privilege applies with respect to any examination, investigation or proceeding by Federal, State, or local government agencies relating to compliance with the Act or this part. Accordingly, in a case brought under the ECOA, the privilege established under this section preempts any inconsistent laws or court rules to the extent they might require disclosure of privileged self-testing data. The privilege does not apply in other cases (such as in litigation filed solely under a State's fair lending statute). In such cases, if a court orders a creditor to disclose self-test results, the disclosure is not a voluntary disclosure or waiver of the privilege for purposes of paragraph 15(d)(2); a creditor may protect the information by seeking a protective order to limit availability and use of the self-testing data and prevent dissemination beyond what is necessary in that case. Paragraph

15(d)(1) precludes a party who has obtained privileged information from using it in a case brought under the ECOA, provided the creditor has not lost the privilege through voluntary disclosure under paragraph 15(d)(2).

15(d)(2) Loss of privilege.

Paragraph 15(d)(2)(i).

1. A creditor's corrective action, by itself, is not considered a voluntary disclosure of the self-test report or results. For example, a creditor does not disclose the results of a self-test merely by offering to extend credit to a denied applicant or by inviting the applicant to reapply for credit. Voluntary disclosure could occur under this paragraph, however, if the creditor disclosed the self-test results in connection with a new offer of credit.

2. The disclosure of self-testing results to an independent contractor acting as an auditor or consultant for the creditor on compliance matters does not result in loss of the privilege.

Paragraph 15(d)(2)(ii).

1. The privilege is lost if the creditor discloses privileged information, such as the results of the self-test. The privilege is not lost if the creditor merely reveals or refers to the existence of the self-test.

Paragraph 15(d)(2)(iii).

1. A creditor's claim of privilege may be challenged in a court or administrative law proceeding with appropriate jurisdiction. In resolving the issue, the presiding officer may require the creditor to produce privileged information about the self-test.

Paragraph 15(d)(3) Limited use of privileged information.

1. A creditor may be required to produce privileged documents for the purpose of determining a penalty or remedy after a violation of the ECOA or Regulation B has been formally adjudicated or admitted. A creditor's compliance with such a requirement does not evidence the creditor's intent to forfeit the privilege.

Section 1002.16 Enforcement, Penalties, and Liabilities

16(c) Failure of compliance.

1.

Inadvertent errors.

2.

Correction of error.

Section 1002.102Definitions

102(b) Applicant

1.

General.

102(l) LGBTQI+-Owned Business

1.

General.

2.

Purpose of definition.

3.

Further clarifications of terms used in the definition of LGBTQI+-owned business.

I

4.

Ownership.

I

i.e.,

5.

Control.

e.g.,

6.

Accrual of net profits or losses.

102(m) Minority-Owned Business

1.

General.

2.

Purpose of definition.

3.

Further clarifications of terms used in the definition of minority-owned business.

4.

Ownership.

i.e.,

5.

Control.

e.g.,

6.

Accrual of net profits or losses.

7.

Multi-racial and multi-ethnic individuals.

8.

Relationship to disaggregated subcategories used to determine ethnicity and race of principal owners.

102(o) Principal Owner

1.

Individual.

2.

Trustee.

3.

Purpose of definition.

102(s) Women-Owned Business

1.

General.

2.

Purpose of definition.

3.

Further clarifications of terms used in the definition of women-owned business.

4.

Ownership.

i.e.,

5.

Control.

e.g.,

6.

Accrual of net profits or losses.

Section 1002.103 Covered Applications

103(a) Covered Application

1.

General.

2.

Procedures used.

3.

Consistency with subpart A.

4.

Solicitations and firm offers of credit.

5.

Requests for multiple covered credit transactions at one time.

6.

Initial request for a single covered credit transaction that would result in the origination of multiple covered credit transactions.

7.

Requests for multiple lines of credit at one time.

8.

Duplicate applications.

i.e.,

9.

Changes in whether there is a covered credit transaction.

10.

Multiple unaffiliated co-applicants.

11.

Refinancings and evaluation, extension, or renewal requests that request additional credit amounts.

103(b) Circumstances That Are Not Covered Applications

1.

In general.

2.

Reevaluation, extension, or renewal requests that do not request additional credit amounts.

3.

Reevaluation, extension, or renewal requests that request additional credit amounts.

4.

Reviews or evaluations initiated by the financial institution.

5.

Inquiries and prequalification requests.

Section 1002.104 Covered Credit Transactions and Excluded Transactions

104(a) Covered Credit Transaction

1.

General.

104(b) Excluded Transactions

1.

Factoring.

2.

Leases.

3.

Consumer-designated credit.

4.

Credit transaction purchases, purchases of an interest in a pool of credit transactions, and purchases of a partial interest in a credit transaction.

104(b)(1) Trade Credit

1.

General.

2.

Trade credit under subpart A.

Section 1002.105 Covered Financial Institutions and Exempt Institutions

105(a) Financial Institution

1.

Examples.

2.

Motor vehicle dealers.

105(b) Covered Financial Institution

1.

Preceding calendar year.

2.

Origination threshold.

3.

Counting originations when multiple financial institutions are involved in originating a covered credit transaction.

4.

Counting originations after adjustments to the gross annual revenue threshold due to inflation.

5.

Reevaluation, extension, or renewal requests, as well as credit line increases and other requests for additional credit amounts.

6.

Annual consideration.

7.

Merger or acquisition coverage of surviving or newly formed institution.

8.

Merger or acquisition coverage specific to the calendar year of the merger or acquisition.

i. Two institutions that are not covered financial institutions merge. The surviving or newly formed institution meets all of the requirements necessary to be a covered financial institution. No data are required to be compiled, maintained, or reported for the calendar year of the merger (even though the merger creates an institution that meets all of the requirements necessary to be a covered financial institution).

ii. A covered financial institution and an institution that is not covered merge. The covered financial institution is the surviving institution, or a new covered financial institution is formed. For the

calendar year of the merger, data are required to be compiled, maintained, and reported for covered applications from the covered financial institution and is optional for covered applications from the financial institution that was previously not covered.

iii. A covered financial institution and an institution that is not covered merge. The institution that is not covered is the surviving institution and remains not covered after the merger, or a new institution that is not covered is formed. For the calendar year of the merger, data are required to be compiled and maintained (and subsequently reported) for covered applications from the previously covered financial institution that took place prior to the merger. After the merger date, compiling, maintaining, and reporting data is optional for applications from the institution that was previously covered for the remainder of the calendar year of the merger.

iv. Two covered financial institutions merge. The surviving or newly formed financial institution is a covered financial institution. Data are required to be compiled and maintained (and subsequently reported) for the entire calendar year of the merger. The surviving or newly formed financial institution files either a consolidated submission or separate submissions for that calendar year.

9.

Foreign applicability.

10.

Voluntary collection and reporting.

Section 1002.106 Business and Small Business

106(b) Small Business Definition

106(b)(1) Small Business

1.

Change in determination of small business status business is ultimately not a small business.

2.

Change in determination of small business status business is ultimately a small business.

3.

Applicant's representations regarding gross annual revenue; inclusion of affiliate revenue; updated or verified information.

4.

Multiple unaffiliated co-applicant size determination.

106(b)(2) Inflation Adjustment

1.

Inflation adjustment methodology.

e.g.,

2.

Substitute for CPI-U.

Section 1002.107 Compilation of Reportable Data

107(a) Data Format and Itemization

1.

General.

i. A covered financial institution reports these data even if the credit originated pursuant to the reported application was subsequently sold by the institution.

ii. A covered financial institution annually reports data for covered applications for which final action was taken in the previous calendar year.

iii. A covered financial institution reports data for a covered application on its small business lending application register for the calendar year during which final action was taken on the application, even if the institution received the application in a previous calendar year.

2.

Free-form text fields.

3.

Filing Instructions Guide.

<https://www.consumerfinance.gov/data-research/small-business-lending/filing-instructions-guide/>.

4.

Additional data point response options.

107(a)(1) Unique Identifier

1.

Unique within the financial institution.

2.

Does not include directly identifying information.

107(a)(2) Application Date

1.

Consistency.

2.

Application received.

3.

Indirect applications.

4.

Safe harbor.

107(a)(3) Application Method

1.

General.

i.

In-person.

ii.

Telephone.

iii.

Online.

iv.

Mail.

107(a)(4) Application Recipient

1.

Agents.

107(a)(5) Credit Type

1.

Reporting credit product in general.

i. Term loan unsecured.

ii. Term loan secured.

iii. Line of credit unsecured.

iv. Line of credit secured.

v. Credit card account, not private-label.

vi. Private-label credit card account.

vii. Merchant cash advance.

viii. Other sales-based financing transaction.

ix. Other.

x. Not provided by applicant and otherwise undetermined.

2.

Credit card account, not private-label.

3.

Private-label credit card account.

4.

Credit product not provided by the applicant and otherwise undetermined.

5.

Reporting credit product involving counteroffers.

6.

Other sales-based financing transaction.

7.

Guarantees.

i. Personal guaranteeowner(s).

ii. Personal guaranteenon-owner(s).

iii. SBA guarantee7(a) program.

iv. SBA guarantee504 program.

v. SBA guaranteeother.

vi. USDA guarantee.

vii. FHA insurance.

viii. Bureau of Indian Affairs guarantee.

ix. Other Federal guarantee.

x. State government guarantee.

xi. Local government guarantee.

xii. Other.

xiii. No guarantee.

8.

Loan term.

107(a)(6) Credit Purpose

1.

General.

i. Purchase, construction/improvement, or refinance of non-owner-occupied real property.

ii. Purchase, construction/improvement, or refinance of owner-occupied real property.

iii. Purchase, refinance, or rehabilitation/repair of motor vehicle(s) (including light and heavy trucks).

iv. Purchase, refinance, or rehabilitation/repair of equipment.

v. Working capital (includes inventory or floor planning).

- vi. Business start-up.
- vii. Business expansion.
- viii. Business acquisition.
- ix. Refinance existing debt (other than refinancings listed above).
- x. Line increase.
- xi. Overdraft.
- xii. Other.
- xiii. Not provided by applicant and otherwise undetermined.
- xiv. Not applicable.

2.

More than one purpose.

3.

Other credit purpose.

4.

Credit purpose not provided by applicant and otherwise undetermined.

5.

Not applicable.

6.

Collecting credit purpose.

7.

Owner-occupied real property.

8.

Overdraft.

107(a)(7) Amount Applied For

1.

Initial amount requested.

2.

No amount requested.

3.

Firm offers.

4.

Additional amounts on an existing account.

5.

Initial amount otherwise undetermined.

107(a)(8) Amount Approved or Originated

1.

General.

2.

Multiple approval amounts.

3.

Amount approved or originatedclosed-end credit transaction.

4.

Amount approved or originatedrefinancing.

5.

Amount approved or originatedcounteroffer.

6.

Amount approved or originatedexisting accounts.

107(a)(9) Action Taken

1.

General.

i.

Originated.

ii.

Approved but not accepted.

iii.

Denied.

iv.

Withdrawn by the applicant.

v.

Incomplete.

2.

Treatment of counteroffers.

3.

Treatment of rescinded transactions.

4.

Treatment of pending applications.

5.

Treatment of conditional approvals.

i.

Conditional approvaldenial.

ii.

Conditional approvalincompleteness.

iii.

Conditional approvalapproved but not accepted.

iv.

Conditional approvalwithdrawn by the applicant.

107(a)(10) Action Taken Date

1.

Reporting action taken date for denied applications.

2.

Reporting action taken date for applications withdrawn by applicant.

3.

Reporting action taken date for applications that are approved but not accepted.

4.

Reporting action taken date for originated applications.

5.

Reporting action taken date for incomplete applications.

107(a)(11) Denial Reasons

1.

Reason for denial in general.

i.

Credit characteristics of the business.

ii.

Credit characteristics of the principal owner(s) or guarantor(s).

iii.

Use of credit proceeds.

iv.

Cashflow.

v.

Collateral.

vi.

Time in business.

vii.

Government loan program criteria.

viii.

Aggregate exposure.

ix.

Unverifiable information.

x.

Other.

2.

Reason for denialnot applicable.

107(a)(12) Pricing Information

1.

General.

107(a)(12)(i) Interest Rate

1.

General.

2.

Interest rateinitial period.

3.

Multiple interest rates.

4.

Index names.

5.

Index value.

107(a)(12)(ii) Total Origination Charges

1.

Charges in comparable cash transactions.

2.

Charges by third parties.

i. Requires the use of a third party as a condition of or an incident to the extension of credit, even if the applicant can choose the third party; or

ii. Retains a portion of the third-party charge, to the extent of the portion retained.

3.

Special rule; broker fees.

4.

Bundled services.

5.

Origination chargesexamples.

6.

Net lender credit.

107(a)(12)(iii) Broker Fees

1.

Amount.

2.

Fees paid directly to a broker by an applicant.

107(a)(12)(iv) Initial Annual Charges

1.

Charges during the initial annual period.

2.

Interest excluded.

3.

Avoidable charges.

4.

Initial annual chargesexamples.

5.

Scheduled charges with variable amounts.

6.

Transactions with a term of less than one year.

107(a)(12)(v) Additional Cost for Merchant Cash Advances or Other Sales-Based Financing

1.

Merchant cash advances.

107(a)(12)(vi) Prepayment Penalties

1.

Policies and procedures applicable to the covered credit transaction.

2.

Balloon finance charges.

107(a)(13) Census Tract

1.

General.

i.

Proceeds address.

ii.

Main office or headquarters address.

iii.

Another address or location.

iv.

Type of address used.

2.

Financial institution discretion.

3.

Address or location not provided by applicant and otherwise undetermined.

4.

Safe harbor.

107(a)(14) Gross Annual Revenue

1.

Collecting gross annual revenue.

What was the gross annual revenue of the business applying for credit in its last full fiscal year?

Gross annual revenue is the amount of money the business earned before subtracting taxes and other expenses. You may provide gross annual revenue calculated using any reasonable method.

2.

Gross annual revenue not provided by applicant and otherwise undetermined.

3.

Affiliate revenue.

4.

Gross annual revenue for a startup business.

107(a)(15) NAICS Code

1.

General.

2.

NAICS not provided by applicant and otherwise undetermined.

3.

Safe harbor.

107(a)(16) Number of Workers

1.

General.

2.

Collecting number of workers.

Counting full-time, part-time and seasonal workers, as well as contractors who work primarily for the business applying for credit, but not counting principal owners of the business, how many people work for the business applying for credit?

3.

Number of workers not provided by applicant and otherwise undetermined.

107(a)(17) Time in Business

1.

Collecting time in business.

i. If a financial institution collects or otherwise obtains the number of years an applicant has been in business as part of its procedures for evaluating an application for credit, it reports the time in business in whole years, rounded down to the nearest whole year.

ii. If a financial institution does not collect time in business as described in comment 107(a)(17)-1.i, but as part of its procedures determines whether or not the applicant's time in business is less than two years, it reports the applicant's time in business as either less than two years or two or more years in business.

iii. If a financial institution does not collect time in business as part of its procedures for evaluating an application for credit as described in comments 107(a)(17)-1.i or .ii, the financial institution complies with § 1002.107(a)(17) by asking the applicant whether it has been in existence for less than two years or two or more years and reporting the information provided by the applicant accordingly.

2.

Time in business collected as part of the financial institution's procedures for evaluating an application for credit.

3.

Time in business not provided by applicant and otherwise undetermined.

107(a)(18) Minority-Owned, Women-Owned, and LGBTQI+-Owned Business Statuses

1.

General.

i.e.,

2.

Definitions.

I

3.

Combining questions.

4.

Notices.

5.

Maintaining the record of an applicant's response regarding minority-owned, women-owned, and LGBTQI+-owned business statuses separate from the application.

6.

Minority-owned, women-owned, and/or LGBTQI+-owned business statuses not provided by applicant.

7.

Applicant declines to provide information about minority-owned, women-owned, and/or LGBTQI+-owned business statuses.

e.g.,

8.

Conflicting responses provided by applicants.

9.

No verification of business statuses.

107(a)(19) Ethnicity, Race, and Sex of Principal Owners

1.

General.

i.e.,

2.

Definition of principal owner.

3.

Combining questions.

4.

Notices.

5.

Maintaining the record of an applicant's responses regarding principal owners' ethnicity, race, and sex separate from the application.

See

6.

Ethnicity, race, or sex of principal owners not provided by applicant.

7.

Applicant declines to provide information about a principal owner's ethnicity, race, or sex.

e.g.,

8.

Conflicting responses provided by applicant.

9.

No verification of ethnicity, race, and sex of principal owners.

10.

Reporting for fewer than four principal owners.

11.

Previously collected ethnicity, race, and sex information.

12.

Guarantors.

13.

Ethnicity.

Aggregate categories.

A. Hispanic or Latino.

B. Not Hispanic or Latino.

ii.

Disaggregated subcategories.

e.g.,

iii.

Selecting multiple categories.

e.g.,

e.g.,

e.g.,

14.

Race.

Aggregate categories.

A. American Indian or Alaska Native.

B. Asian.

C. Black or African American.

D. Native Hawaiian or Other Pacific Islander.

E. White.

ii.

Disaggregated subcategories.

A. The Asian aggregate category includes the following disaggregated subcategories: Asian Indian; Chinese; Filipino; Japanese; Korean; Vietnamese; and Other Asian. An applicant must also be

permitted to provide the principal owner's race using one or more of these disaggregated subcategories regardless of whether the applicant indicates that the principal owner is Asian and regardless of whether the applicant selects any aggregate categories. Additionally, if an applicant indicates that a principal owner is Other Asian, the financial institution must permit the applicant to provide additional information about the principal owner's race, by using free-form text on a paper or electronic data collection form or using language that informs the applicant of the opportunity to self-identify when taking the application by means other than a paper or electronic data collection form, such as by telephone. The financial institution must permit the applicant to provide additional information indicating, for example, that the principal owner is Cambodian, Hmong, Laotian, Pakistani, or

B. The Black or African American aggregate category includes the following disaggregated subcategories: African American; Ethiopian; Haitian; Jamaican; Nigerian; Somali; or Other Black or African American. An applicant must also be permitted to provide the principal owner's race using one or more of these disaggregated subcategories regardless of whether the applicant indicates that the principal owner is Black or African American and regardless of whether the applicant selects any aggregate categories. Additionally, if an applicant indicates that a principal owner is Other Black or African American, the financial institution must permit the applicant to provide additional information about the principal owner's race, by using free-form text on a paper or electronic data collection form or using language that informs the applicant of the opportunity to self-identify when taking the application by means other than a paper or electronic data collection form, such as by telephone. The financial institution must permit the applicant to provide additional information indicating, for example, that the principal owner is Barbadian, Ghanaian, or South African. See the sample data collection form in appendix E for sample language.

C. The Native Hawaiian or Other Pacific Islander aggregate category includes the following disaggregated subcategories: Guamanian or Chamorro; Native Hawaiian; Samoan; and Other Pacific Islander. An applicant must also be permitted to provide the principal owner's race using one

or more of these disaggregated subcategories regardless of whether the applicant indicates that the principal owner is Native Hawaiian or Other Pacific Islander and regardless of whether the applicant selects any aggregate categories. Additionally, if an applicant indicates that a principal owner is Other Pacific Islander, the financial institution must permit the applicant to provide additional information about the principal owner's race, by using free-form text on a paper or electronic data collection form or using language that informs the applicant of the opportunity to self-identify when taking the application by means other than a paper or electronic data collection form, such as by telephone. The financial institution must permit the applicant to provide additional information indicating, for example, that the principal owner is Fijian or Tongan. See the sample data collection form in appendix E for sample language.

D. If an applicant chooses to provide additional information regarding a principal owner's race, such as indicating that a principal owner is Cambodian, Barbadian, or Fijian orally or in writing on a paper or electronic form, a financial institution must report that additional information via free-form text in the appropriate data reporting field. If the applicant provides such additional information but does not also indicate that the principal owner is Other Asian, Other Black or African American, or Other Pacific Islander, as applicable (

e.g.,

i.e.,

E. In addition to permitting an applicant to indicate that a principal owner is American Indian or Alaska Native, a financial institution must permit an applicant to provide the name of an enrolled or principal tribe, by using free-form text on a paper or electronic data collection form or using language that informs the applicant of the opportunity to self-identify when taking the application by means other than a paper or electronic data collection form, such as by telephone. If an applicant chooses to provide the name of an enrolled or principal tribe, a financial institution must report that information via free-form text in the appropriate data reporting field. If the applicant provides the name of an enrolled or principal tribe but does not also indicate that the principal owner is American

Indian or Alaska Native (

e.g.,

iii.

Selecting multiple categories.

e.g.,

e.g.,

e.g.,

15.

Sex.

16.

Ethnicity and race information requested orally.

i.

Ethnicity and race categories.

ii.

More than one principal owner.

107(a)(20) Number of Principal Owners

1.

General.

2.

Number of principal owners provided by applicant; verification of number of principal owners.

3.

Number of principal owners not provided by applicant and otherwise undetermined.

107(b) Reliance on and Verification of Applicant-Provided Data

1.

Reliance on information provided by an applicant or appropriate third-party sources.

107(c) Time and Manner of Collection

107(c)(1) In General

1.

Procedures.

2. Latitude to design procedures.

3.

Applicant-provided data.

4.

Collecting applicant-provided data without a direct request to the applicant.

5.

Data updated by the applicant.

107(c)(2) Applicant-Provided Data Collected Directly From the Applicant

1.

In general.

2.

Specific components.

Timing of initial collection attempt.

ii.

The request for applicant-provided data is prominently displayed or presented.

iii.

The collection does not have the effect of discouraging an applicant from responding to a request for applicant-provided data.

B. A covered financial institution also avoids discouraging a response by requiring an applicant to provide a response to one or more requests for applicant-provided data in order to proceed with a covered application, including, as applicable, a response of I do not wish to provide this information or similar. (As described in comments 107(a)(18)-1 and 107(a)(19)-1, a financial institution must permit an applicant to decline to provide the demographic data required by § 1002.107(a)(18) and

(19), which can be satisfied by providing a response option of I do not wish to provide this information or similar.) For example, in an electronic application, a financial institution may require the applicant to either make a substantive selection about a principal owner's ethnicity, race, or sex, select an option of I do not wish to provide this information or similar, or indicate there are no principal owners before allowing the applicant to proceed to the next page of requested information.

iv.

The applicant can easily provide a response.

v.

Multiple requests for applicant-provided data.

107(c)(3) Procedures To Monitor Compliance

1.

Procedures to identify and respond to indicia of potential discouragement, including low response rates.

i.e.,

107(c)(4) Low Response Rates

1.

In general.

107(d) Previously Collected Data

1.

In general.

2.

Data that can be reused.

3.

Previously reported data without a substantive response.

4.

Updated data.

5.

Collection within the preceding 36 months.

6.

Reason to believe data are inaccurate.

7.

Collection of gross annual revenue in the same calendar year.

8.

Time in business.

i. If a financial institution previously collected data on a prior covered application that the applicant has been in business for four years, and then seeks to reuse that data for a subsequent covered application submitted one year later, it must update the data to reflect that the applicant has been in business for five years.

ii. If a financial institution previously collected data on a prior covered application that the applicant had been in business less than two years (and was not aware of the business's actual length of time in business at the time), and then seeks to reuse that data for a subsequent covered application submitted 18 months later, the financial institution reports time in business on the subsequent covered application as over two years in business.

9.

Minority-owned business status, women-owned business status, LGBTQI+-owned business status, and principal owners' ethnicity, race, and sex.

Section 1002.108Firewall

108(a) Definitions

1.

Involved in making any determination concerning a covered application from a small business.

General.

ii.

Examples of activities that do not constitute being involved in making a determination concerning a covered application from a small business.

A. Developing policies and procedures, designing or programming computer or other systems, or conducting marketing.

B. Discussing credit products, loan terms, or loan requirements with a small business before it submits a covered application.

C. Making or participating in a decision after the financial institution has taken final action on the covered application, such as a decision about servicing or collecting a covered credit transaction.

D. Using a check box form to confirm whether an applicant has submitted all necessary documents or handling a minor or clerical matter during the application process, such as suggesting or selecting a time for an appointment with an applicant.

E. Gathering information (including information collected pursuant to § 1002.107(a)(18) or (19)) and forwarding the information or a covered application to other individuals or entities.

F. Reviewing previously collected data to determine if it can be reused for a later covered application pursuant to § 1002.107(d).

iii.

Examples of activities that constitute being involved in making a determination concerning a covered application from a small business.

A. Making or participating in a decision to approve or deny a specific covered application. This includes, but is not limited to, making or participating in a decision that an applicant does not satisfy one or more of the requirements for the covered credit transaction for which it has applied.

B. Making or participating in a decision regarding the reason(s) for denial of a covered application.

C. Making or participating in a decision that a guarantor or collateral is required in order to approve a specific covered application.

D. Making or participating in a decision regarding the credit amount or credit limit that will be approved for a specific covered application.

E. Making or participating in a decision to set one or more of the other terms that will be offered for a specific covered credit transaction. This includes, but is not limited to, making or participating in a decision regarding the interest rate, the loan term, or the payment schedule that will be offered for a specific covered credit transaction.

F. Making or participating in a decision regarding a counteroffer made to a specific applicant, including a decision regarding the terms of such a counteroffer.

G. Recommending that another decision maker approve or deny a specific covered application, provide a specific reason for denying a covered application, require a guarantor or collateral in order to approve a covered application, approve a credit amount or credit limit for a covered credit transaction, set one or more other terms for a covered

2.

Should have access.

General.

ii.

When a group of employees or officers should have access.

iii.

Making a determination regarding who should have access.

108(b) Prohibition on Access to Certain Information

1.

Scope of persons subject to the prohibition.

2.

Scope of information that cannot be accessed when the prohibition applies to an employee or officer.

Information that cannot be accessed when the prohibition applies.

ii.

Information that can be accessed when the prohibition applies.

108(c) Exception to the Prohibition on Access to Certain Information

1.

General.

2.

Applying the exception to a specific employee or officer or group of similarly situated employees or officers.

108(d) Notice

1.

General.

2.

Content of the required notice.

3.

Timing for providing the notice.

Section 1002.109 Reporting of Data to the Bureau

109(a) Reporting to the Bureau

109(a)(2) Reporting by Subsidiaries

1.

Subsidiaries.

109(a)(3) Reporting Obligations Where Multiple Financial Institutions Are Involved in a Covered Credit Transaction

1.

General.

i. A financial institution shall report the action that it takes on a covered application, whether or not the covered credit transaction closed in the financial institution's name and even if the financial institution used underwriting criteria supplied by another financial institution. However, where it is necessary for more than one financial institution to make a credit decision in order to approve a

single covered credit transaction, only the last financial institution with authority to set the material terms of the covered credit transaction is required to report. Setting the material terms of the covered credit transaction include, for example, selecting among competing offers, or modifying pricing information, amount approved or originated, or repayment duration. In this situation, the determinative factor is not which financial institution actually made the last credit decision prior to closing, but rather which financial institution last had the authority for setting the material terms of the covered credit transaction prior to closing. Whether a financial institution has taken action for purposes of § 1002.109(a)(3) and comment 109(a)(3)-1 is not relevant to, and is not intended to repeal, abrogate, annul, impair, or interfere with, section 701(d) (15 U.S.C. 1691(d)) of the Act, § 1002.9, or any other provision within subpart A of this Regulation.

ii. A financial institution takes action on a covered application for purposes of § 1002.109(a)(3) if it denies the application, originates the application, approves the application but the applicant did not accept the transaction, or closes the file or denies for incompleteness. The financial institution must also report the application if it was withdrawn. For reporting purposes, it is not relevant whether the financial institution receives the application directly from the applicant or indirectly through another party, such as a broker, or (except as otherwise provided in comment 109(a)(3)-1.i) whether another financial institution also reviews and reports an action taken on a covered application involving the same credit transaction.

iii. Where it is necessary for more than one financial institution to make a credit decision in order to approve a single covered credit transaction and where more than one financial institution denies the application

2.

Examples.

i. Financial Institution A received a covered application from an applicant and approved the application before closing the covered credit transaction in its name. Financial Institution A was not acting as Financial Institution B's agent. Financial Institution B later purchased the covered credit

transaction from Financial Institution A. Financial Institution A was not acting as Financial Institution B's agent. Financial Institution A reports the application. Financial Institution B has no reporting obligation for this transaction.

ii. Financial Institution A received a covered application from an applicant. If approved, the covered credit transaction would have closed in Financial Institution B's name. Financial Institution A denied the application without sending it to Financial Institution B for approval. Financial Institution A was not acting as Financial Institution B's agent. Since Financial Institution A took action on the application, Financial Institution A reports the application as denied. Financial Institution B does not report the application.

iii. Financial Institution A reviewed a covered application and made a credit decision to approve it using the underwriting criteria provided by a Financial Institution B. Financial Institution B did not review the application and did not make a credit decision prior to closing. Financial Institution A was not acting as Financial Institution B's agent. Financial Institution A reports the application. Financial Institution B has no reporting obligation for this application.

iv. Financial Institution A reviewed and made the credit decision on a covered application based on the criteria of a third-party insurer or guarantor (for example, a government or private insurer or guarantor). Financial Institution A reports the action taken on the application.

v. Financial Institution A received a covered application from an applicant and forwarded that application to Financial Institution B. Financial Institution B reviewed the application and made a credit decision approving the application prior to closing. The covered credit transaction closed in Financial Institution A's name. Financial Institution B purchased the covered credit transaction from Financial Institution A after closing. Financial Institution B was not acting as Financial Institution A's agent. Since Financial Institution B made the credit decision prior to closing, and Financial Institution A's approval was not necessary for the credit transaction, Financial Institution B reports the origination. Financial Institution A does not report the application. Assume the same facts, except that Financial Institution B reviewed the application before the covered credit transaction would have

closed, but Financial Institution B denied the application. Financial Institution B reports the application as denied. Financial Institution A does not report the application because it did not take an action on the application. If, under the same facts, the application was withdrawn before Financial Institution B made a credit decision, Financial Institution B would report the application as withdrawn and Financial Institution A would not report the application for the same reason.

vi. Financial Institution A received a covered application and forwarded it to Financial Institutions B and C. Financial Institution A made a credit decision, acting as Financial Institution D's agent, and approved the application. Financial Institutions B and C are not working together with Financial Institutions A or D, or with each other, and are solely responsible for setting the terms of their own credit transactions. Financial

vii. Financial Institution A received a covered application and made a credit decision to approve it using the underwriting criteria provided by Financial Institution B. Financial Institution A was not acting as Financial Institution B's agent. Financial Institution A forwarded the application to Financial Institution B. Financial Institution B reviewed the application and made a credit decision approving the application prior to closing. Financial Institution A makes a credit decision on the application and modifies the credit terms (the interest rate and repayment term) offered by Financial Institution B. The covered credit transaction reflecting the modified terms closes in Financial Institution A's name. Financial Institution B purchases the covered credit transaction from Financial Institution A after closing. As the last financial institution with the authority for setting the material terms of the covered credit transaction, Financial Institution A reports the application as originated. Financial Institution B does not report the origination because it was not the last financial institution with the authority to set the material terms on the application. If, under the same facts, Financial Institution A did not modify the credit terms offered by Financial Institution B, Financial Institution A still reports the application as originated because it was still the last financial institution with the authority for setting the material terms, even if it chose not to so do in a particular instance. Financial Institution B does not report the origination.

viii. Financial Institution A received a covered application and forwarded it to Financial Institutions B, C, and D. Financial Institution A was not acting as anyone's agent. Financial Institution B and C reviewed the application and made a credit decision approving the application and Financial Institution D reviewed the application and made a credit decision denying the application. Prior to closing, Financial Institution A makes a credit decision on the application by deciding to offer to the applicant the credit terms offered by Financial Institution B and does not convey to the applicant the credit terms offered by Financial Institution C. The applicant does not accept the covered credit transaction. As the last financial institution with the authority for setting the material terms of the covered credit transaction, Financial Institution A reports the application as approved but not accepted. Financial Institutions B, C, and D do not report the application because they were not the last financial institution with the authority for setting the material terms of the covered credit transaction. Assume the same facts, except the applicant accepts the terms of the covered credit transaction from Financial Institution B as offered by Financial Institution A. The covered credit transaction closes in Financial Institution A's name. Financial Institution B purchases the transaction after closing. Here, Financial Institution A reports the application as originated. Financial Institutions B, C, and D do not report the application because they were not the last financial institution responsible for setting the material terms of the covered credit transaction.

ix. Financial Institution A receives a covered application and approves it, and then Financial Institution A elects to organize a loan participation agreement where Financial Institutions B and C agree to purchase a partial interest in the covered credit transaction. Financial Institution A reports the application. Financial Institutions B and C have no reporting obligation for this application.

x. Financial Institution A purchases an interest in a pool of covered credit transactions, such as credit-backed securities or real estate investment conduits. Financial Institution A does not report this purchase.

3.

Agents.

109(b) Financial Institution Identifying Information

1.

Changes to financial institution identifying information.

Paragraph 109(b)(4)

1.

Federal prudential regulator.

Federal prudential regulator

Paragraph 109(b)(6)

1.

Legal Entity Identifier (LEI).

Paragraph 109(b)(7)

1.

RSSD ID number.

Paragraph 109(b)(8)

1.

Immediate parent entity.

2.

Top-holding parent entity.

3.

LEI.

4.

RSSD ID numbers.

Paragraph 109(b)(9)

1.

Type of financial institution.

i. Bank or savings association.

- ii. Minority depository institution.
- iii. Credit union.
- iv. Nondepository institution.
- v. Community development financial institution (CDFI).
- vi. Other nonprofit financial institution.
- vii. Farm Credit System institution.
- viii. Government lender.
- ix. Commercial finance company.
- x. Equipment finance company.
- xi. Industrial loan company.
- xii. Online lender.
- xiii. Other.

2.

Use of other for type of financial institution.

3.

Additional types of financial institution.

Paragraph 109(b)(10)

1.

Financial institutions that voluntarily report covered applications under subpart B of this part.

Section 1002.110 Publication of Data and Other Disclosures

110(c) Statement of Financial Institution's Small Business Lending Data Available on the Bureau's Website

1.

Statement.

Small Business Lending Data Notice

Data about our small business lending are available online for review at the Consumer Financial

Protection Bureau's (CFPB's) website at

<https://www.consumerfinance.gov/data-research/small-business-lending/>. The data show the geographic distribution of our small business lending applications; information about our loan approvals and denials; and demographic information about the principal owners of our small business applicants. The CFPB may delete or modify portions of our data prior to posting it if doing so would advance a privacy interest. Small business lending data for many other financial institutions are also available at this website.

2.

Website.

3.

Revised location for publicly available data.

Section 1002.111 Recordkeeping

111(a) Record Retention

1.

Evidence of compliance.

2.

Record retention for creditors under § 1002.5(a)(4)(vii) and (viii).

111(b) Certain Information Kept Separate From the Rest of the Application

1.

Separate from the application.

2.

Number of principal owners.

111(c) Limitation on Personally Identifiable Information in Certain Records Retained Under This Section

1.

Small business lending application register.

2.

Examples.

3.

Other records.

4.

Name and business contact information for submission.

Section 1002.112 Enforcement

112(b) Bona Fide Errors

1.

Tolerances for bona fide errors.

2.

Tolerances and data fields.

<https://www.consumerfinance.gov/data-research/small-business-lending/filing-instructions-guide/>

3.

Tolerances and safe harbors.

112(c) Safe Harbors

1.

Information from a Federal agency census tract.

2.

Applicability of NAICS code safe harbor.

3.

Incorrect determination of small business status, covered credit transaction, or covered application examples.

Section 1002.114 Effective Date, Compliance Date, and Special Transition Rules

114(b) Compliance Date

1.

Application of compliance date.

2.

Initial partial year collections pursuant to § 1002.114(b).

ii. When the compliance date of April 1, 2025 specified in § 1002.114(b)(2) applies to a covered financial institution, the financial institution is required to collect data for covered applications during the period from April 1, 2025 to December 31, 2025. The financial institution must compile data for this period pursuant to § 1002.107, comply with the firewall requirements of § 1002.108, and maintain records as specified in § 1002.111. In addition, for data collected during this period, the covered financial institution must comply with §§ 1002.109 and 1002.110(c) and (d) by June 1, 2026.

3.

Informal names for compliance date provisions.

4.

Examples.

i. Financial Institution A originated 3,000 covered credit transactions for small businesses in calendar year 2022, and 3,000 in calendar year 2023. Financial Institution A is in Tier 1 and has a compliance date of October 1, 2024.

ii. Financial Institution B originated 2,000 covered credit transactions for small businesses in calendar year 2022, and 3,000 in calendar year 2023. Because Financial Institution B did not originate at least 2,500 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1. Because Financial Institution B did originate at least 500 covered credit transactions for small businesses in each of 2022 and 2023, it is in Tier 2 and has a compliance date of April 1, 2025.

iii. Financial Institution C originated 400 covered credit transactions to small businesses in calendar year 2022, and 1,000 in calendar year 2023. Because Financial Institution C did not originate at least 2,500 covered credit transactions for small businesses in each of 2022 and 2023, it is not in

Tier 1, and because it did not originate at least 500 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 2. Because Financial Institution C did originate at least 100 covered credit transactions for small businesses in each of 2022 and 2023, it is in Tier 3 and has a compliance date of January 1, 2026.

iv. Financial Institution D originated 90 covered credit transactions to small businesses in calendar year 2022, 120 in calendar year 2023, and 90 in both of the calendar years 2024 and 2025. Because Financial Institution D did not originate at least 100 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1, Tier 2, or Tier 3. Because Financial Institution D did not originate at least 100 covered credit transactions for small businesses in subsequent consecutive calendar years, it is not a covered financial institution under § 1002.105(b) and is not required to comply with the rule in 2024, 2025, or 2026.

v. Financial Institution E originated 120 covered credit transactions for small businesses in each of calendar years 2022, 2023, and 2024, and 90 in 2025. Because Financial Institution E did not originate at least 2,500 or 500 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1 or Tier 2. Because Financial Institution E originated at least 100 covered credit transactions for small businesses in each of 2022 and 2023, it is in Tier 3 and has a compliance date of January 1, 2026. However, because Financial Institution E did not originate at least 100 covered credit transactions for small businesses in each of 2024 and 2025, it no longer satisfies the definition of a covered financial institution in § 1002.105(b) at the time of the compliance date for Tier 3 institutions and thus is not required to comply with the rule in 2026.

vi. Financial Institution F originated 90 covered credit transactions for small businesses in calendar year 2022, and 120 in 2023, 2024, and 2025. Because Financial Institution F did not originate at least 100 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1, Tier 2, or Tier 3. Because Financial Institution F originated at least 100 covered credit transactions for small businesses in subsequent calendar years, § 1002.114(b)(4), which cross-references § 1002.105(b), applies to Financial Institution F. Because Financial Institution F

originated at least 100 covered credit transactions for small businesses in each of 2024 and 2025, it is a covered financial institution under § 1002.105(b) and is required to comply with the rule beginning January 1, 2026.

vii. Financial Institution G originated 90 covered credit transactions for small businesses in each of calendar years 2022, 2023, 2024, and 2025, and 120 in each of 2026 and 2027. Because Financial Institution F did not originate at least 100 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1, Tier 2, or Tier 3. Because Financial Institution G originated at least 100 covered credit transactions for small businesses in subsequent calendar years, § 1002.114(b)(4), which cross-references § 1002.105(b), applies to Financial Institution G. Because Financial Institution G originated at least 100 covered credit transactions for small businesses in each of 2026 and 2027, it is a covered financial institution under § 1002.105(b) and is required to comply with the rule beginning January 1, 2028.

114(c) Special Transition Rules

1.

Collection of certain information prior to a financial institution's compliance date.

2.

Transition rule for applications received prior to a compliance date but final action is taken after a compliance date.

3.

Has readily accessible the information needed to determine small business status.

4.

Does not have readily accessible the information needed to determine small business status.

5.

Reasonable method to estimate the number of originations.

i. A financial institution may comply with § 1002.114(c)(2) by determining the small business status of covered credit transactions by asking every applicant, prior to the closing of approved

transactions, to self-report whether it had gross annual revenue for its preceding fiscal year of \$5 million or less, during the period October 1 through December 31, 2023. The financial institution may annualize the number of covered credit transactions it originates to small businesses from October 1 through December 31, 2023 by quadrupling the originations for this period, and apply the annualized number of originations to both calendar years 2022 and 2023.

ii. A financial institution may comply with § 1002.114(c)(2) by assuming that every covered credit transaction it originates for business customers in calendar years 2022 and 2023 is to a small business.

iii. A financial institution may comply with § 1002.114(c)(2) by using another methodology provided that such methodology is reasonable and documented in writing.

6.

Examples.

i. Prior to October 1, 2023, Financial Institution A did not collect gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022 and 2023. Financial Institution A chose to use the methodology set out in comment 114(c)-5.i and as of October 1, 2023 began to collect information on gross annual revenue as defined in § 1002.107(a)(14) for its covered credit transactions originated for businesses. Using this information, Financial Institution A determined that it had originated 750 covered credit transactions for businesses that were small as defined in § 1002.106. On an annualized basis, Financial Institution A originated 3,000 covered credit transactions for small businesses ($750 \text{ originations} \times 4 = 3,000 \text{ originations per year}$). Applying this annualized figure of 3,000 originations to both calendar years 2022 and 2023, Financial Institution A is in Tier 1 and has a compliance date of October 1, 2024.

ii. Prior to July 1, 2023, Financial Institution B collected gross annual revenue information for some applicants for business credit, but such information was only noted in its paper loan files. Financial Institution B thus does not have reasonable access to information that would allow it to determine

the small business status of the businesses for whom it originated covered credit transactions for calendar years 2022 and 2023. Financial Institution B chose to use the methodology set out in comment 114(c)-5.i, and as of October 1, 2023, Financial Institution B began to ask all businesses for whom it was closing covered credit transactions if they had gross annual revenues in the preceding fiscal year of \$5 million or less. Using this information, Financial Institution B determined that it had originated 350 covered credit transactions for businesses that were small as defined in § 1002.106. On an annualized basis, Financial Institution B originated 1,400 covered credit transactions for small businesses (350 originations * 4 = 1,400 originations per year). Applying this estimated figure of 1,400 originations to both calendar years 2022 and 2023, Financial Institution B is in Tier 2 and has a compliance date of April 1, 2025.

iii. Prior to April 1, 2023, Financial Institution C did not collect gross annual revenue or other information that would allow it to

iv. Financial Institution D did not collect gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022 and 2023. Financial Institution D determined that it had originated 3,000 total covered credit transactions for businesses in each of 2022 and 2023. Applying the methodology specified in comment 114(c)-5.ii, Financial Institution D assumed that all 3,000 covered credit transactions originated in each of 2022 and 2023 were to small businesses. On that basis, Financial Institution D is in Tier 1 and has a compliance date of October 1, 2024.

v. Financial Institution E did not collect gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022 and 2023. Financial Institution E determined that it had originated 700 total covered credit transactions for businesses in each of 2022 and 2023. Applying the methodology specified in comment 114(c)-5.ii, Financial Institution E assumed that all such transactions in each of 2022 and 2023 were originated for small businesses. On that basis, Financial Institution E is in Tier 2 and has a compliance date of April 1, 2025.

vi. Financial Institution F did does not have readily accessible gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022 and 2023. Financial Institution F determined that it had originated 80 total covered credit transactions for businesses in 2022 and 150 total covered credit transactions for businesses in 2023. Applying the methodology set out in comment 114(c)-5.ii, Financial Institution F assumed that all such transactions originated in 2022 and 2023 were originated for small businesses. On that basis, Financial Institution E is not in Tier 1, Tier 2 or Tier 3, and is subject to the compliance date provision specified in § 1002.114(b)(4).

Appendix C Sample Notification Forms

1.

Form C-9.

i. A telephone number that applicants may call to leave their name and the address to which a copy of the appraisal or other written valuation should be sent.

ii. A notice of the cost the applicant will be required to pay the creditor for the appraisal or other valuation.

[76 FR 79445, Dec. 21, 2011, as amended at 78 FR 7248, Jan. 31, 2013; 82 FR 45695, Oct. 2, 2017; 88 FR 35536, May 31, 2023]

Pt. 1003

PART 1003 HOME MORTGAGE DISCLOSURE (REGULATION C)

Sec.

1003.1

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Appendix B to Part 1003 Form and Instructions for Data Collection on Ethnicity, Race, and Sex

Appendix C to Part 1003 Procedures for Generating a Check Digit and Validating a ULI

Supplement I to Part 1003 Official Interpretations

Authority:

12 U.S.C. 2803, 2804, 2805, 5512, 5581.

Source:

76 FR 78468, Dec. 19, 2011, unless otherwise noted.

§ 1003.1

Authority, purpose, and scope.

(a)

Authority.

et seq.,

et seq.

(b)

Purpose.

(i) To help determine whether financial institutions are serving the housing needs of their communities;

(ii) To assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and

(iii) To assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

(2) Neither the act nor this part is intended to encourage unsound lending practices or the allocation of credit.

(c)

Scope.

[76 FR 78468, Dec. 19, 2011, as amended at 80 FR 66308, Oct. 28, 2015]

§ 1003.2

Definitions.

In this part:

(a)

Act

et seq.

(b)

Application

In general.

(2)

Preapproval programs.

(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 financial institution ordinarily attaches to a traditional home mortgage application.

(c)

Branch office

(1) Any office of a bank, savings association, or credit union that is considered a branch by the

Federal or State supervisory agency applicable to that institution, excluding automated teller machines and other free-standing electronic terminals; 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 covered loans. A for-profit mortgage-lending institution (other than a bank, savings association, or credit union) is also deemed to have a branch office in an MSA or in an MD, if, in the preceding calendar year, it received applications for, originated, or purchased five or more covered loans related to property located in that MSA or MD, respectively.

(d)

Closed-end mortgage loan

(e)

Covered loan

(f)

Dwelling

(g)

Financial institution

(1)

Depository financial institution

(i) On the preceding December 31 had assets in excess of the asset threshold established and published annually by the Bureau 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 an MSA;

(iii) In the preceding calendar year, originated at least one home purchase loan or refinancing of a home purchase loan, secured by a first lien on a one- to four-unit dwelling;

(iv) Meets one or more of the following two criteria:

(A) The institution is federally insured or regulated; or

(B) Any loan referred to in paragraph (g)(1)(iii) of this section was insured, guaranteed, or supplemented by a Federal agency, or was intended by the institution for sale to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and

(v) Meets at least one of the following criteria:

(A) In each of the two preceding calendar years, originated at least 25 closed-end mortgage loans that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) or (c)(13); or

(B) In each of the two preceding calendar years, originated at least 200 open-end lines of credit that are not excluded from this part pursuant to § 1003.3(c)(1) through (10); and

(2)

Nondepository financial institution

(i) On the preceding December 31, had a home or branch office in an MSA; and

(ii) Meets at least one of the following criteria:

(A) In each of the two preceding calendar years, originated at least 25 closed-end mortgage loans that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) or (c)(13); or

(B) In each of the two preceding calendar years, originated at least 200 open-end lines of credit that are not excluded from this part pursuant to § 1003.3(c)(1) through (10).

(h) [Reserved]

(i)

Home improvement loan

(j)

Home purchase loan

(k)

Loan/Application Register

(l)

Manufactured home

(m)

Metropolitan Statistical Area

MSA)

Metropolitan Division

MD).

Metropolitan Statistical Area

MSA

(2)

Metropolitan Division

MD)

(n)

Multifamily dwelling

(o)

Open-end line of credit

(1) Is secured by a lien on a dwelling; and

(2) Is an open-end credit plan as defined in Regulation Z, 12 CFR 1026.2(a)(20), but without regard to whether the credit is consumer credit, as defined in § 1026.2(a)(12), is extended by a creditor, as defined in § 1026.2(a)(17), or is extended to a consumer, as defined in § 1026.2(a)(11).

(p)

Refinancing

(q)

Reverse mortgage

[80 FR 66308, Oct. 28, 2015, as amended at 82 FR 43132, Sept. 13, 2017; 84 FR 57980, Oct. 29, 2019; 85 FR 28404, 28406, May 12, 2020; 87 FR 77981, Dec. 21, 2022]

§ 1003.3

Exempt institutions and excluded and partially exempt transactions.

(a)

Exemption based on state law.

(2) Any state, state-chartered or state-licensed financial institution, or association of such institutions, may apply to the Bureau for an exemption under paragraph (a) of this section.

(3) An institution that is exempt under paragraph (a) of this section shall use the disclosure form required by its state law and shall submit the data required by that law to its state supervisory agency for purposes of aggregation.

(b)

Loss of exemption.

(c)

Excluded transactions.

(1) A closed-end mortgage loan or open-end line of credit originated or purchased by a financial institution acting in a fiduciary capacity;

(2) A closed-end mortgage loan or open-end line of credit secured by a lien on unimproved land;

(3) Temporary financing;

(4) The purchase of an interest in a pool of closed-end mortgage loans or open-end lines of credit;

(5) The purchase solely of the right to service closed-end mortgage loans or open-end lines of credit;

(6) The purchase of closed-end mortgage loans or open-end lines of credit as part of a merger or acquisition, or as part of the acquisition of all of the assets and liabilities of a branch office as defined in § 1003.2(c);

(7) A closed-end mortgage loan or open-end line of credit, or an application for a closed-end mortgage loan or open-end line of credit, for which the total dollar amount is less than \$500;

(8) The purchase of a partial interest in a closed-end mortgage loan or open-end line of credit;

(9) A closed-end mortgage loan or open-end line of credit used primarily for agricultural purposes;

(10) A closed-end mortgage loan or open-end line of credit that is or will be made primarily for a

business or commercial purpose, unless the closed-end mortgage loan or open-end line of credit is a home improvement loan under § 1003.2(i), a home purchase loan under § 1003.2(j), or a refinancing under § 1003.2(p);

(11) A closed-end mortgage loan, if the financial institution originated fewer than 25 closed-end mortgage loans in either of the two preceding calendar years; a financial institution may collect, record, report, and disclose information, as described in §§ 1003.4 and 1003.5, for such an excluded closed-end mortgage loan as though it were a covered loan, provided that the financial institution complies with such requirements for all applications for closed-end mortgage loans that it receives, closed-end mortgage loans

(12) An open-end line of credit, if the financial institution originated fewer than 200 open-end lines of credit in either of the two preceding calendar years; a financial institution may collect, record, report, and disclose information, as described in §§ 1003.4 and 1003.5, for such an excluded open-end line of credit as though it were a covered loan, provided that the financial institution complies with such requirements for all applications for open-end lines of credit that it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases that otherwise would have been covered loans during the calendar year during which final action is taken on the excluded open-end line of credit; or

(13) A transaction that provided or, in the case of an application, proposed to provide new funds to the applicant or borrower in advance of being consolidated in a New York State consolidation, extension, and modification agreement classified as a supplemental mortgage under New York Tax Law section 255; the transaction is excluded only if final action on the consolidation was taken in the same calendar year as final action on the new funds transaction.

(d)

Partially exempt transactions.

(i)

Insured credit union

(ii)

Insured depository institution

(iii)

Optional data

(iv)

Partially exempt transaction

(2) Except as provided in paragraph (d)(6) of this section, an insured depository institution or insured credit union that, in each of the two preceding calendar years, originated fewer than 500 closed-end mortgage loans that are not excluded from this part pursuant to paragraphs (c)(1) through (10) or paragraph (c)(13) of this section is not required to collect, record, or report optional data as defined in paragraph (d)(1)(iii) of this section for applications for closed-end mortgage loans that it receives, closed-end mortgage loans that it originates, and closed-end mortgage loans that it purchases.

(3) Except as provided in paragraph (d)(6) of this section, an insured depository institution or insured credit union that, in each of the two preceding calendar years, originated fewer than 500 open-end lines of credit that are not excluded from this part pursuant to paragraphs (c)(1) through (10) of this section is not required to collect, record, or report optional data as defined in paragraph (d)(1)(iii) of this section for applications for open-end lines of credit that it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases.

(4) A financial institution eligible for a partial exemption under paragraph (d)(2) or (3) of this section may collect, record, and report optional data as defined in paragraph (d)(1)(iii) of this section for a partially exempt transaction as though the institution were required to do so, provided that:

(i) If the institution reports the street address, city name, or Zip Code for the property securing a covered loan, or in the case of an application, proposed to secure a covered loan pursuant to § 1003.4(a)(9)(i), it reports all data that would be required by § 1003.4(a)(9)(i) if the transaction were not partially exempt;

(ii) If the institution reports any data for the transaction pursuant to § 1003.4(a)(15), (16), (17), (27),

(33), or (35), it reports all data that would be required by § 1003.4(a)(15), (16), (17), (27), (33), or (35), respectively, if the transaction were not partially exempt.

(5) If, pursuant to paragraph (d)(2) or (3) of this section, a financial institution does not report a universal loan identifier (ULI) pursuant to

(i) May be letters, numerals, or a combination of letters and numerals;

(ii) Must be unique within the annual loan/application register in which the covered loan or application is included; and

(iii) Must not include any information that could be used to directly identify the applicant or borrower.

(6) Paragraphs (d)(2) and (3) of this section do not apply to an insured depository institution that, as of the preceding December 31, had received a rating of needs to improve record of meeting community credit needs during each of its two most recent examinations or a rating of substantial noncompliance in meeting community credit needs on its most recent examination under section 807(b)(2) of the Community Reinvestment Act of 1977 (12 U.S.C. 2906(b)(2)).

[76 FR 78468, Dec. 19, 2011, as amended at 80 FR 66309, Oct. 28, 2015; 82 FR 43132, Sept. 13, 2017; 84 FR 57980, Oct. 29, 2019; 85 FR 28404, 28406, May 12, 2020; 87 FR 77981, Dec. 21, 2022]

§ 1003.4

Compilation of reportable data.

(a)

Data format and itemization.

(1)(i) A universal loan identifier (ULI) or, for a partially exempt transaction under § 1003.3(d), either a ULI or a non-universal loan identifier (NULI) as described in § 1003.3(d)(5) for the covered loan or application that can be used to identify and retrieve the covered loan or application file. Except for a purchased covered loan or application described in paragraphs (a)(1)(i)(D) and (E) of this section or a partially exempt transaction for which a NULI is assigned and reported under § 1003.3(d), the financial institution shall assign and report a ULI that:

(A) Begins with the financial institution's Legal Entity Identifier (LEI) that is issued by:

(

1

(

2

(B) Follows the LEI with up to 23 additional characters to identify the covered loan or application, which:

(

1

(

2

(

3

(C) Ends with a two-character check digit, as prescribed in appendix C to this part.

(D) For a purchased covered loan that any financial institution has previously assigned or reported with a ULI under this part, the financial institution that purchases the covered loan must use the ULI that was assigned or previously reported for the covered loan.

(E) For an application that was previously reported with a ULI under this part and that results in an origination during the same calendar year that is reported in a subsequent reporting period pursuant to § 1003.5(a)(1)(ii), the financial institution may report the same ULI for the origination that was previously reported for the application.

(ii) Except for purchased covered loans, the date the application was received or the date shown on the application form.

(2) Whether the covered loan is, or in the case of an application would have been, insured by the Federal Housing

(3) Whether the covered loan is, or the application is for, a home purchase loan, a home

improvement loan, a refinancing, a cash-out refinancing, or for a purpose other than home purchase, home improvement, refinancing, or cash-out refinancing.

(4) Whether the application or covered loan involved a request for a preapproval of a home purchase loan under a preapproval program.

(5) Whether the construction method for the dwelling related to the property identified in paragraph (a)(9) of this section is site-built or a manufactured home.

(6) Whether the property identified in paragraph (a)(9) of this section is or will be used by the applicant or borrower as a principal residence, as a second residence, or as an investment property.

(7) The amount of the covered loan or the amount applied for, as applicable.

(i) For a closed-end mortgage loan, other than a purchased loan, an assumption, or a reverse mortgage, the amount to be repaid as disclosed on the legal obligation. For a purchased closed-end mortgage loan or an assumption of a closed-end mortgage loan, the unpaid principal balance at the time of purchase or assumption.

(ii) For an open-end line of credit, other than a reverse mortgage open-end line of credit, the amount of credit available to the borrower under the terms of the plan.

(iii) For a reverse mortgage, the initial principal limit, as determined pursuant to section 255 of the National Housing Act (12 U.S.C. 1715z-20) and implementing regulations and mortgagee letters issued by the U.S. Department of Housing and Urban Development.

(8) The following information about the financial institution's action:

(i) The action taken by the financial institution, recorded as one of the following:

(A) Whether a covered loan was originated or purchased;

(B) Whether an application for a covered loan that did not result in the origination of a covered loan was approved but not accepted, denied, withdrawn by the applicant, or closed for incompleteness; and

(C) Whether a preapproval request that did not result in the origination of a home purchase loan was denied or approved but not accepted.

(ii) The date of the action taken by the financial institution.

(9) The following information about the location of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan:

(i) The property address; and

(ii) If the property is located in an MSA or MD in which the financial institution has a home or branch office, or if the institution is subject to paragraph (e) of this section, the location of the property by:

(A) State;

(B) County; and

(C) Census tract if the property is located in a county with a population of more than 30,000 according to the most recent decennial census conducted by the U.S. Census Bureau.

(10) The following information about the applicant or borrower:

(i) Ethnicity, race, and sex, and whether this information was collected on the basis of visual observation or surname;

(ii) Age; and

(iii) Except for covered loans or applications for which the credit decision did not consider or would not have considered income, the gross annual income relied on in making the credit decision or, if a credit decision was not made, the gross annual income relied on in processing the application.

(11) The type of entity purchasing a covered loan that the financial institution originates or purchases and then sells within the same calendar year.

(12)(i) For covered loans and applications that are approved but not accepted, and that are subject to Regulation Z, 12 CFR part 1026, other than assumptions, purchased covered loans, and reverse mortgages, the difference between the covered loan's annual percentage rate and the average prime offer rate for a comparable transaction as of the date the interest rate is set.

(ii) Average prime offer rate means an annual percentage rate that is derived from average interest rates and other loan pricing terms currently offered to consumers by a set of creditors for mortgage loans that have low-risk pricing characteristics. The Bureau publishes tables of average prime offer

rates by transaction type at least weekly and also publishes the methodology it uses to derive these rates.

(13) For covered loans subject to the Home Ownership and Equity Protection Act of 1994, as implemented in Regulation Z, 12 CFR 1026.32, whether the covered loan is a high-cost mortgage under Regulation Z, 12 CFR 1026.32(a).

(14) The lien status (first or subordinate lien) of the property identified under paragraph (a)(9) of this section.

(15)(i) Except for purchased covered loans, the credit score or scores relied on in making the credit decision and the name and version of the scoring model used to generate each credit score.

(ii) For purposes of this paragraph (a)(15), credit score has the meaning set forth in 15 U.S.C. 1681g(f)(2)(A).

(16) The principal reason or reasons the financial institution denied the application, if applicable.

(17) For covered loans subject to Regulation Z, 12 CFR 1026.43(c), the following information:

(i) If a disclosure is provided for the covered loan pursuant to Regulation Z, 12 CFR 1026.19(f), the amount of total loan costs, as disclosed pursuant to Regulation Z, 12 CFR 1026.38(f)(4); or

(ii) If the covered loan is not subject to the disclosure requirements in Regulation Z, 12 CFR 1026.19(f), and is not a purchased covered loan, the total points and fees charged in connection with the covered loan, expressed in dollars and calculated pursuant to Regulation Z, 12 CFR 1026.32(b)(1).

(18) For covered loans subject to the disclosure requirements in Regulation Z, 12 CFR 1026.19(f), the total of all itemized amounts that are designated borrower-paid at or before closing, as disclosed pursuant to Regulation Z, 12 CFR 1026.38(f)(1).

(19) For covered loans subject to the disclosure requirements in Regulation Z, 12 CFR 1026.19(f), the points paid to the creditor to reduce the interest rate, expressed in dollars, as described in Regulation Z, 12 CFR 1026.37(f)(1)(i), and disclosed pursuant to Regulation Z, 12 CFR 1026.38(f)(1).

(20) For covered loans subject to the disclosure requirements in Regulation Z, 12 CFR 1026.19(f), the amount of lender credits, as disclosed pursuant to Regulation Z, 12 CFR 1026.38(h)(3).

(21) The interest rate applicable to the approved application, or to the covered loan at closing or account opening.

(22) For covered loans or applications subject to Regulation Z, 12 CFR part 1026, other than reverse mortgages or purchased covered loans, the term in months of any prepayment penalty, as defined in Regulation Z, 12 CFR 1026.32(b)(6)(i) or (ii), as applicable.

(23) Except for purchased covered loans, the ratio of the applicant's or borrower's total monthly debt to the total monthly income relied on in making the credit decision.

(24) Except for purchased covered loans, the ratio of the total amount of debt secured by the property to the value of the property relied on in making the credit decision.

(25) The scheduled number of months after which the legal obligation will mature or terminate or would have matured or terminated.

(26) The number of months, or proposed number of months in the case of an application, until the first date the interest rate may change after closing or account opening.

(27) Whether the contractual terms include or would have included any of the following:

(i) A balloon payment as defined in Regulation Z, 12 CFR 1026.18(s)(5)(i);

(ii) Interest-only payments as defined in Regulation Z, 12 CFR 1026.18(s)(7)(iv);

(iii) A contractual term that would cause the covered loan to be a negative amortization loan as defined in Regulation Z, 12 CFR 1026.18(s)(7)(v); or

(iv) Any other contractual term that would allow for payments other than fully amortizing payments, as defined in Regulation Z, 12 CFR 1026.43(b)(2), during the loan term, other than the contractual terms described in this paragraph (a)(27)(i), (ii), and (iii).

(28) The value of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan relied on in making the credit decision.

(29) If the dwelling related to the property identified in paragraph (a)(9) of this section is a

manufactured home and not a multifamily dwelling, whether the covered loan is, or in the case of an application would have been, secured by a manufactured home and land, or by a manufactured home and not land.

(30) If the dwelling related to the property identified in paragraph (a)(9) of this section is a manufactured home and not a multifamily dwelling, whether the applicant or borrower:

(i) Owns the land on which it is or will be located or, in the case of an application, did or would have owned the land on which it would have been located, through a direct or indirect ownership interest; or

(ii) Leases or, in the case of an application, leases or would have leased the land through a paid or unpaid leasehold.

(31) The number of individual dwelling units related to the property securing the covered loan or, in the case of an application, proposed to secure the covered loan.

(32) If the property securing the covered loan or, in the case of an application, proposed to secure the covered loan includes a multifamily dwelling, the number of individual dwelling units related to the property that are income-restricted pursuant to Federal, State, or local affordable housing programs.

(33) Except for purchased covered loans, the following information about the application channel of the covered loan or application:

(i) Whether the applicant or borrower submitted the application for the covered loan directly to the financial institution; and

(ii) Whether the obligation arising from the covered loan was, or in the case of an application, would have been initially payable to the financial institution.

(34) For a covered loan or application, the unique identifier assigned by the Nationwide Mortgage Licensing System and Registry for the mortgage loan originator, as defined in Regulation G, 12 CFR 1007.102, or Regulation H, 12 CFR 1008.23, as applicable.

(35)(i) Except for purchased covered loans, the name of the automated underwriting system used by

the financial institution to evaluate the application and the result generated by that automated underwriting system.

(ii) For purposes of this paragraph (a)(35), an automated underwriting system means an electronic tool developed by a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit that provides a result regarding the credit risk of the applicant and whether the covered loan is eligible to be originated, purchased, insured, or guaranteed by that securitizer, Federal government insurer, or Federal government guarantor. A person is a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit, respectively, if it has ever securitized, provided Federal government insurance, or provided a Federal government guarantee for a closed-end mortgage loan or open-end line of credit.

(36) Whether the covered loan is, or the application is for, a reverse mortgage.

(37) Whether the covered loan is, or the application is for, an open-end line of credit.

(38) Whether the covered loan is, or the application is for a covered loan that will be, made primarily for a business or commercial purpose.

(b)

Collection of data on ethnicity, race, sex, age, and income.

(2) Ethnicity, race, sex, age, and income data may but need not be collected for covered loans purchased by a financial institution.

(c)-(d) [Reserved]

(e)

Data reporting for banks and savings associations that are required to report data on small business, small farm, and community development lending
et seq.

(f)

Quarterly recording of data.

[80 FR 66310, Oct. 28, 2015, as amended at 82 FR 43132, Sept. 13, 2017; 84 FR 57981, Oct. 29, 2019]

§ 1003.5

Disclosure and reporting.

(a)

Reporting to agency

Annual reporting.

(ii)

Quarterly reporting.

(iii) When the last day for submission of data prescribed under this paragraph (a)(1) falls on a Saturday or Sunday, a submission shall be considered timely if it is submitted on the next succeeding Monday.

(2) A financial institution that is a subsidiary of a bank or savings association shall complete a separate loan/application register. The subsidiary shall submit the loan/application register, directly or through its parent, to the appropriate Federal agency for the subsidiary's parent at the address identified by the agency.

(3) A financial institution shall provide with its submission:

(i) Its name;

(ii) The calendar year the data submission covers pursuant to paragraph (a)(1)(i) of this section or calendar quarter and year the data submission covers pursuant to paragraph (a)(1)(ii) of this section;

(iii) The name and contact information of a person who may be contacted with questions about the institution's submission;

(iv) Its appropriate Federal agency;

(v) The total number of entries contained in the submission;

(vi) Its Federal Taxpayer Identification number; and

(vii) Its Legal Entity Identifier (LEI) as described in § 1003.4(a)(1)(i)(A).

(4) For purposes of paragraph (a) of this section, appropriate Federal agency means the appropriate agency for the financial institution as determined pursuant to section 304(h)(2) of the Home Mortgage Disclosure Act (12 U.S.C. 2803(h)(2)) or, with respect to a financial institution subject to the Bureau's supervisory authority under section 1025(a) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5515(a)), the Bureau.

(5) Procedures for the submission of data pursuant to paragraph (a) of this section are available at www.consumerfinance.gov/hmda

(b)

Disclosure statement.

(2) No later than three business days after receiving notice from the FFIEC that a financial institution's disclosure statement is available, the financial institution shall make available to the public upon request at its home office, and each branch office physically located in each MSA and each MD, a written notice that clearly conveys that the institution's disclosure statement may be obtained on the Bureau's Web site at

www.consumerfinance.gov/hmda

(c)

Modified loan/application register.

www.consumerfinance.gov/hmda

(2) A financial institution shall make available the notice required by paragraph (c)(1) of this section following the calendar year for which the data are collected.

(d)

Availability of written notices.

(2) A financial institution may make available to the public, at its discretion and in addition to the written notices required by paragraphs (b)(2) or (c)(1) of this section, as applicable, its disclosure statement or its loan/application register, as modified by the Bureau to protect applicant and

borrower privacy. A financial institution may impose a reasonable fee for any cost incurred in providing or reproducing these data.

(e)

Posted notice of availability of data.

www.consumerfinance.gov/hmda

(f)

Aggregated data.

[80 FR 66312, Oct. 28, 2015, as amended at 80 FR 66313, Oct. 28, 2015; 82 FR 43145, Sept. 13, 2017]

§ 1003.6

Enforcement.

(a)

Administrative enforcement.

(b)

Bona fide errors.

(2) An incorrect entry for a census tract number is deemed a bona fide error, and is not a violation of the Act or this part, provided that the financial institution maintains procedures reasonably adapted to avoid such an error.

(c)

Quarterly recording and reporting.

(2) If a financial institution required to comply with § 1003.5(a)(1)(ii) makes a good-faith effort to report all data required to be reported pursuant to § 1003.5(a)(1)(ii) fully and accurately within 60 calendar days after the end of each calendar quarter, and some data are nevertheless inaccurate or incomplete, the inaccuracy or omission is not a violation of the Act or this part provided that the institution corrects or completes the data prior to submitting its annual loan/application register pursuant to § 1003.5(a)(1)(i).

Appendix A to Part 1003 [Reserved]

Pt. 1003, App. B

Appendix B to Part 1003 Form and Instructions for Data Collection on Ethnicity, Race, and Sex

You may list questions regarding the ethnicity, race, and sex of the applicant on your loan application form, or on a separate form that refers to the application. (See the sample data collection form below for model language.)

1. You must ask the applicant for this information (but you cannot require the applicant to provide it) whether the application is taken in person, by mail or telephone, or on the internet. For applications taken by telephone, you must state the information in the collection form orally, except for that information which pertains uniquely to applications taken in writing, for example, the italicized language in the sample data collection form.
2. Inform the applicant that Federal law requires this information to be collected in order to protect consumers and to monitor compliance with Federal statutes that prohibit discrimination against applicants on these bases. Inform the applicant that if the information is not provided where the application is taken in person, you are required to note the information on the basis of visual observation or surname.
3. If you accept an application through electronic media with a video component, you must treat the application as taken in person. If you accept an application through electronic media without a video component (for example, facsimile), you must treat the application as accepted by mail.
4. For purposes of § 1003.4(a)(10)(i), if a covered loan or application includes a guarantor, you do not report the guarantor's ethnicity, race, and sex.
5. If there are no co-applicants, you must report that there is no co-applicant. If there is more than one co-applicant, you must provide the ethnicity, race, and sex only for the first co-applicant listed on the collection form. A co-applicant may provide an absent co-applicant's ethnicity, race, and sex on behalf of the absent co-applicant. If the information is not provided for an absent co-applicant,

you must report information not provided by applicant in mail, internet, or telephone application for the absent co-applicant.

6. When you purchase a covered loan and you choose not to report the applicant's or co-applicant's ethnicity, race, and sex, you must report that the requirement is not applicable.

7. You must report that the requirement to report the applicant's or co-applicant's ethnicity, race, and sex is not applicable when the applicant or co-applicant is not a natural person (for example, a corporation, partnership, or trust). For example, for a transaction involving a trust, you must report that the requirement to report the applicant's ethnicity, race, and sex is not applicable if the trust is the applicant. On the other hand, if the applicant is a natural person, and is the beneficiary of a trust, you must report the applicant's ethnicity, race, and sex.

8. You must report the ethnicity, race, and sex of an applicant as provided by the applicant. For example, if an applicant selects the Asian box the institution reports Asian for the race of the applicant. Only an applicant may self-identify as being of a particular Hispanic or Latino subcategory (Mexican, Puerto Rican, Cuban, Other Hispanic or Latino) or of a particular Asian subcategory (Asian Indian, Chinese, Filipino, Japanese, Korean, Vietnamese, Other Asian) or of a particular Native Hawaiian or Other Pacific Islander subcategory (Native Hawaiian, Guamanian or Chamorro, Samoan, Other Pacific Islander) or of a particular American Indian or Alaska Native enrolled or principal tribe. An applicant may select an ethnicity or race subcategory even if the applicant does not select an aggregate ethnicity or aggregate race category. For example, if an applicant selects only the Mexican box, the institution reports Mexican for the ethnicity of the applicant but does not also report Hispanic or Latino.

9. You must offer the applicant the option of selecting more than one ethnicity or race. If an applicant selects more than one ethnicity or race, you must report each selected designation, subject to the limits described below.

i.

EthnicityAggregate categories and subcategories.

ii.

EthnicityOther subcategories.

iii.

RaceAggregate categories and subcategories.

iv.

RaceOther subcategories.

v.

RaceAmerican Indian or Alaska Native category.

10. If the applicant chooses not to provide the information for an application taken in person, note this fact on the collection form and then collect the applicant's ethnicity, race, and sex on the basis of visual observation or surname. You must report whether the applicant's ethnicity, race, and sex was collected on the basis of visual observation or surname. When you collect an applicant's ethnicity, race, and sex on the basis of visual observation or surname, you must select from the following aggregate categories: Ethnicity (Hispanic or Latino; not Hispanic or Latino); race (American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; White); sex (male; female).

11. If the applicant declines to answer these questions by checking the I do not wish to provide this information box on an application that is taken by mail or on the internet, or declines to provide this information by stating orally that he or she does not wish to provide this information on an application that is taken by telephone, you must report information not provided by applicant in mail, internet, or telephone application.

12. If the applicant begins an application by mail, internet, or telephone, and does not provide the requested information on the application but does not check or select the I do not wish to provide this information box on the application, and the applicant meets in person with you to complete the application, you must request the applicant's ethnicity, race, and sex. If the applicant does not provide the requested information during the in-person meeting, you must collect the information on

the basis of visual observation or surname. If the meeting occurs after the application process is complete, for example, at closing or account opening, you are not required to obtain the applicant's ethnicity, race, and sex.

13. When an applicant provides the requested information for some but not all fields, you report the information that was provided by the applicant, whether partial or complete. If an applicant provides partial or complete information on ethnicity, race, and sex and also checks the I do not wish to provide this information box on an application that is taken by mail or on the internet, or makes that selection when applying by telephone, you must report the information on ethnicity, race, and sex that was provided by the applicant.

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[80 FR 66314, Oct. 28, 2015, as amended at 82 FR 43133, Sept. 13, 2017]

Pt. 1003, App. C

Appendix C to Part 1003 Procedures for Generating a Check Digit and Validating a ULI

The check digit for the Universal Loan Identifier (ULI) pursuant to § 1003.4(a)(1)(i)(C) is calculated using the ISO/IEC 7064, MOD 97-10 as it appears on the International Standard ISO/IEC 7064:2003, which is published by the International Organization for Standardization (ISO).

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Generating a Check Digit

Step 1:

Table I Alphabetic to Numeric Conversion Table

The alphabetic characters are not case-sensitive and each letter, whether it is capitalized or in lower-case, is equal to the same value as each letter illustrates in the conversion table. For example, A and a are each equal to 10.

A = 10

B = 11

$$C = 12$$

$$D = 13$$

$$E = 14$$

$$F = 15$$

$$G = 16$$

$$H = 17$$

$$I = 18$$

$$J = 19$$

$$K = 20$$

$$L = 21$$

$$M = 22$$

$$N = 23$$

$$O = 24$$

$$P = 25$$

$$Q = 26$$

$$R = 27$$

$$S = 28$$

$$T = 29$$

$$U = 30$$

$$V = 31$$

$$W = 32$$

$$X = 33$$

$$Y = 34$$

$$Z = 35$$

Step 2:

Step 3:

n,

n =

Alternatively, to calculate without using the modulus operator, divide the numbers in step 2 above by 97. Truncate the remainder to three digits and multiply it by 97. Round the result to the nearest whole number.

Step 4:

Step 5:

Example

For example, assume the LEI for a financial institution is 10Bx939c5543TqA1144M and the financial institution assigned the following string of characters to identify the covered loan: 999143X. The combined string of characters is 10Bx939c5543TqA1144M999143X.

Step 1:

Step 2:

Step 3:

n,

n =

Alternatively, to calculate without using the modulus operator, divide the numbers in step 2 above by 97. The result is 1042617929129312294946332267952920.618556701030928. Truncate the remainder to three digits, which is .618, and multiply it by 97. The result is 59.946. Round this result to the nearest whole number, which is 60.

Step 4:

Step 5:

Validating A ULI

To determine whether the ULI contains a transcription error using the check digit calculation, the procedures are described below.

Step 1: Starting with the leftmost character in the ULI, replace each alphabetic character with

numbers in accordance with Table I above to obtain all numeric values in the string.

Step 2: Apply the mathematical function $\text{mod}=($

$n,$

$n=$

Step 3: If the result is 1, the ULI does not contain transcription errors.

Example

For example, the ULI assigned to a covered loan is 10Bx939c5543TqA1144M999143X38.

Step 1: Starting with the leftmost character in the ULI, replace each alphabetic character with numbers in accordance with Table I above to obtain all numeric values in the string. The result is 1011339391255432926101144229991433338.

Step 2: Apply the mathematical function $\text{mod}=($

$n,$

n

Step 3: The result is 1. The ULI does not contain transcription errors.

[80 FR 66316, Oct. 28, 2015, as amended at 82 FR 43135, Sept. 13, 2017]

Pt. 1003, Supp. I

Supplement I to Part 1003 Official Interpretations

Introduction

1.

Status.

Section 1003.2 Definitions

2(b) Application

1.

Consistency with Regulation B.

2.

Prequalification.

3.

Requests for preapproval.

2(c) Branch Office

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1.

Credit unions.

2.

Bank, savings association, or credit unions.

Paragraph 2(c)(2)

1. General.

2(d) Closed-end Mortgage Loan

1.

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2.

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i.

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See also

ii.

New York State consolidation, extension, and modification agreements.

2(f) Dwelling

1.

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2.

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3.

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4.

Mixed-use properties.

5.

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See

See

2(g) Financial Institution

1.

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2.

Adjustment of exemption threshold for banks, savings associations, and credit unions.

3. Merger or acquisition coverage of surviving or newly formed institution.

4. Merger or acquisition coverage for calendar year of merger or acquisition.

i. Two institutions that are not covered merge. The surviving or newly formed institution meets all of the requirements necessary to be a covered institution. No data collection is required for the calendar year of the merger (even though the merger creates an institution that meets all of the requirements necessary to be a covered institution). When a branch office of an institution that is not covered is acquired by another institution that is not covered, and the acquisition results in a covered institution, no data collection is required for the calendar year of the acquisition.

ii. A covered institution and an institution that is not covered merge. The covered institution is the surviving institution, or a new covered institution is formed. For the calendar year of the merger, data collection is required for covered loans and applications handled in the offices of the merged institution that was previously covered and is optional for covered loans and applications handled in offices of the merged institution that was previously not covered. When a covered institution acquires a branch office of an institution that is not covered, data collection is optional for covered

loans and applications handled by the acquired branch office for the calendar year of the acquisition.

iii. A covered institution and an institution that is not covered merge. The institution that is not covered is the surviving institution, or a new institution that is not covered is formed. For the calendar year of the merger, data collection is required for

iv. Two covered institutions merge. The surviving or newly formed institution is a covered institution. Data collection is required for the entire calendar year of the merger. The surviving or newly formed institution files either a consolidated submission or separate submissions for that calendar year. When a covered institution acquires a branch office of a covered institution, data collection is required for the entire calendar year of the merger. Data for the acquired branch office may be submitted by either institution.

5. Originations.

6. Branches of foreign bankstreated as banks.

7. Branches and offices of foreign banks and other entitiestreated as nondepository financial institutions.

2(i) Home Improvement Loan

1.

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See also

2.

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3.

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4.

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5.

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6.

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1.

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2.

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3.

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4.

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5.

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6.

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2(l) Manufactured Home

1.

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See

2.

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2(m) Metropolitan Statistical Area (MD) or Metropolitan Division (MD).

1.

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1.

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See

2.

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3.

Separate dwellings.

e.g.,

2(o) Open-End Line of Credit

1.

General.

2.

Extension of credit.

2(p) Refinancing

1.

General.

i. A new closed-end mortgage loan that satisfies and replaces one or more existing closed-end mortgage loans is a refinancing under § 1003.2(p).

ii. A new open-end line of credit that satisfies and replaces an existing closed-end mortgage loan is a refinancing under § 1003.2(p).

iii. Except as described in comment 2(p)-2, a new debt obligation that renews or modifies the terms of, but that does not satisfy and replace, an existing debt obligation, is not a refinancing under § 1003.2(p).

2.

New York State consolidation, extension, and modification agreements.

See also

3.

Existing debt obligation.

See

4.

Same borrower.

See

5.

Two or more debt obligations.

6.

Multiple-purpose loans.

Section 1003.3 Exempt Institutions and Excluded and Partially Exempt Transactions

3(c) Excluded Transactions

Paragraph 3(c)(1)

1.

Financial institution acting in a fiduciary capacity.

Paragraph 3(c)(2)

1.

Loan or line of credit secured by a lien on unimproved land.

Paragraph 3(c)(3)

1. Temporary financing.

i. Lender A extends credit in the form of a bridge or swing loan to finance a borrower's down payment on a home purchase. The borrower pays off the bridge or swing loan with funds from the sale of his or her existing home and obtains permanent financing for his or her new home from Lender A or from another lender. The bridge or swing loan is excluded as temporary financing under § 1003.3(c)(3).

ii. Lender A extends credit to a borrower to finance construction of a dwelling. The borrower will obtain a new extension of credit for permanent financing for the dwelling, either from Lender A or from another lender, and either through a refinancing of the initial construction loan or a separate loan. The initial construction loan is excluded as temporary financing under § 1003.3(c)(3).

iii. Assume the same scenario as in comment 3(c)(3)-1.ii, except that the initial construction loan is, or may be, renewed one or more times before the separate permanent financing is obtained. The initial construction loan, including any renewal thereof, is excluded as temporary financing under § 1003.3(c)(3).

iv. Lender A extends credit to finance construction of a dwelling. The loan automatically will convert to permanent financing extended to the same borrower with Lender A once the construction phase is complete. Under § 1003.3(c)(3), the loan is not designed to be replaced by separate permanent financing extended to the same borrower, and therefore the temporary financing exclusion does not apply.

See also

v. Lender A originates a loan with a nine-month term to enable an investor to purchase a home, renovate it, and re-sell it before the term expires. Under § 1003.3(c)(3), the loan is not designed to be replaced by separate permanent financing extended to the same borrower, and therefore the temporary financing exclusion does not apply. Such a transaction is not temporary financing under § 1003.3(c)(3) merely because its term is short.

2.

Loan or line of credit to construct a dwelling for sale.

Paragraph 3(c)(4)

1.

Purchase of an interest in a pool of loans.

Paragraph 3(c)(6)

1.

Mergers and acquisitions.

Paragraph 3(c)(8)

1.

Partial interest.

Paragraph 3(c)(9)

1.

Loan or line of credit used primarily for agricultural purposes.

e.g.,

Paragraph 3(c)(10)

1.

General.

2.

Primary purpose.

3.

Examples covered business- or commercial-purpose transactions.

i. A closed-end mortgage loan or an open-end line of credit to purchase or to improve a multifamily dwelling or a single-family investment property, or a refinancing of a closed-end mortgage loan or an open-end line of credit secured by a multifamily dwelling or a single-family investment property;

ii. A closed-end mortgage loan or an open-end line of credit to improve a doctor's office or a daycare center that is located in a dwelling other than a multifamily dwelling; and

iii. A closed-end mortgage loan or an open-end line of credit to a corporation, if the funds from the loan or line of credit will be used to purchase or to improve a dwelling, or if the transaction is a refinancing.

4.

Examples excluded business- or commercial-purpose transactions.

i. A closed-end mortgage loan or an open-end line of credit whose funds will be used primarily to

improve or expand a business, for example to renovate a family restaurant that is not located in a dwelling, or to purchase a warehouse, business equipment, or inventory;

ii. A closed-end mortgage loan or an open-end line of credit to a corporation whose funds will be used primarily for business purposes, such as to purchase inventory; and

iii. A closed-end mortgage loan or an open-end line of credit whose funds will be used primarily for business or commercial purposes other than home purchase, home improvement, or refinancing, even if the loan or line of credit is cross-collateralized by a covered loan.

Paragraph 3(c)(11)

1.

General.

2.

Optional reporting.

Paragraph 3(c)(12)

1.

General.

2.

Optional reporting.

Paragraph 3(c)(13)

1.

New funds extended before consolidation.

3(d) Partially Exempt Transactions

1.

Merger or acquisition application of partial exemption thresholds to surviving or newly formed institution.

2.

Merger or acquisition Community Reinvestment Act examination history.

3.

Merger or acquisition applicability of partial exemptions during calendar year of merger or acquisition.

i. Assume two institutions that are eligible for the partial exemption for closed-end mortgage loans merge and the surviving or newly formed institution meets all of the requirements for the partial exemption. The partial exemption for closed-end mortgage loans applies for the calendar year of the merger.

ii. Assume two institutions that are eligible for the partial exemption for closed-end mortgage loans merge and the surviving or newly formed institution does not meet the requirements for the partial exemption. Collection of optional data for closed-end mortgage loans is permitted but not required for the calendar year of the merger (even though the merger creates an institution that does not meet the requirements for the partial exemption for closed-end mortgage loans). When a branch office of an institution that is eligible for the partial exemption is acquired by another institution that is eligible for the partial exemption, and the acquisition results in an institution that is not eligible for the partial exemption, data collection for closed-end mortgage loans is permitted but not required for the calendar year of the acquisition.

iii. Assume an institution that is eligible for the partial exemption for closed-end mortgage loans merges with an institution that is ineligible for the partial exemption and the surviving or newly formed institution is ineligible for the partial exemption. For the calendar year of the merger, collection of optional data as defined in § 1003.3(d)(1)(iii) for closed-end mortgage loans is required for covered loans and applications handled in the offices of the merged institution that was previously ineligible for the partial exemption. For the calendar year of the merger, collection of optional data for closed-end mortgage loans is permitted but not required for covered loans and applications handled in the offices of the merged institution that was previously eligible for the partial exemption. When an institution that is ineligible for the partial exemption for closed-end mortgage loans acquires a branch office of an institution that is eligible for the partial exemption, collection of optional data for closed-end mortgage loans is permitted but not required for covered loans and

applications handled by the acquired branch office for the calendar year of the acquisition.

iv. Assume an institution that is eligible for the partial exemption for closed-end mortgage loans merges with an institution that is ineligible for the partial exemption and the surviving or newly formed institution is eligible for the partial exemption. For the calendar year of the merger, collection of optional data for closed-end mortgage loans is required for covered loans and applications handled in the offices of the previously ineligible institution that took place prior to the merger. After the merger date, collection of optional data for closed-end mortgage loans is permitted but not required for covered loans and applications handled in the offices of the institution that was previously ineligible for the partial exemption. When an institution remains eligible for the partial exemption for closed-end mortgage loans after acquiring a branch office of an institution that is ineligible for the partial exemption, collection of optional data for closed-end mortgage loans is required for transactions of the acquired branch office that take place prior to the acquisition. Collection of optional data for closed-end mortgage loans by the acquired branch office is permitted but not required for transactions

4.

Originations.

5.

Affiliates.

i. Is an insured credit union or insured depository institution,

ii. In each of the two preceding calendar years originated fewer than 500 closed-end mortgage loans that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) or (c)(13), and

iii. If the subsidiary is an insured depository institution, had not received as of the preceding December 31 a rating of needs to improve record of meeting community credit needs during each of its two most recent examinations or a rating of substantial noncompliance in meeting community credit needs on its most recent examination under section 807(b)(2) of the Community Reinvestment Act of 1977 (12 U.S.C. 2906(b)(2)).

Paragraph 3(d)(1)(iii)

1.

Optional data.

Paragraph 3(d)(2)

1.

General.

Paragraph 3(d)(3)

1.

General.

Paragraph 3(d)(4)

1.

General.

i.e.,

2.

Partially exempt transactions within the same loan/application register.

3.

Exempt or not applicable.

ii. An institution is considered as reporting data in a data field for purposes of § 1003.3(d)(4)(i) and (ii) when it reports not applicable for that data field for a partially exempt transaction. For example, assume an insured depository institution or insured credit union originates a covered loan that is eligible for a partial exemption and is made primarily for business or commercial purposes. The requirement to report total loan costs or total points and fees is not applicable to loans made primarily for business or commercial purposes, as comments 4(a)(17)(i)-1 and (ii)-1 explain. The institution can report not applicable for both total loan costs and total points and fees, or it can report exempt for both total loan costs and total points and fees for the loan. Pursuant to § 1003.3(d)(4)(ii), the institution is not permitted to report not applicable for total loan costs and report exempt for total

points and fees for the business or commercial purpose loan.

Paragraph 3(d)(4)(i)

1.

State.

Paragraph 3(d)(5)

1.

NULLuniqueness.

2.

NULLprivacy.

Paragraph 3(d)(6)

1.

Preceding calendar year.

Section 1003.4Compilation of Reportable Data

4(a) Data Format and Itemization

1.

General.

i. A financial institution reports these data even if the covered loans were subsequently sold by the institution.

ii. A financial institution reports data for applications that did not result in an origination but on which actions were taken for example, an application that the institution denied, that it approved but that was not accepted, that it closed for incompleteness, or that the applicant withdrew during the calendar year covered by the loan/application register. A financial institution is required to report data regarding requests under a preapproval program (as defined in § 1003.2(b)(2)) only if the preapproval request is denied, results in the origination of a home purchase loan, or was approved but not accepted.

iii. If a financial institution acquires covered loans in bulk from another institution (for example, from

the receiver for a failed institution), but no merger or acquisition of an institution, or acquisition of a branch office, is involved, the acquiring financial institution reports the covered loans as purchased loans.

iv. A financial institution reports the data for an application on the loan/application register for the calendar year during which the application was acted upon even if the institution received the application in a previous calendar year.

2.

Originations and applications involving more than one institution.

i. Only one financial institution reports each originated covered loan as an origination. If more than one institution was involved in the origination of a covered loan, the financial institution that made the credit decision approving the application before closing or account opening reports the loan as an origination. It is not relevant whether the loan closed or, in the case of an application, would have closed in the institution's name. If more than one institution approved an application prior to closing or account opening and one of those institutions purchased the loan after closing, the institution that purchased the loan after closing reports the loan as an origination. If a financial institution reports a transaction as an origination, it reports all of the information required for originations, even if the covered loan was not initially payable to the financial institution that is reporting the covered loan as an origination.

ii. In the case of an application for a covered loan that did not result in an origination, a financial institution reports the action it took on that application if it made a credit decision on the application or was reviewing the application when the application was withdrawn or closed for incompleteness. It is not relevant whether the financial institution received the application from the applicant or from another institution, such as a broker, or whether another financial institution also reviewed and reported an action taken on the same application.

3.

Examplesoriginations and applications involving more than one institution.

i. Financial Institution A received an application for a covered loan from an applicant and forwarded that application to Financial Institution B. Financial Institution B reviewed the application and approved the

ii. Financial Institution A received an application for a covered loan from an applicant and forwarded that application to Financial Institution B. Financial Institution B reviewed the application before the loan would have closed, but the application did not result in an origination because Financial Institution B denied the application. Financial Institution B was not acting as Financial Institution A's agent. Since Financial Institution B made the credit decision, Financial Institution B reports the application as a denial. Financial Institution A does not report the application. If, under the same facts, the application was withdrawn before Financial Institution B made a credit decision, Financial Institution B would report the application as withdrawn and Financial Institution A would not report the application.

iii. Financial Institution A received an application for a covered loan from an applicant and approved the application before closing the loan in its name. Financial Institution A was not acting as Financial Institution B's agent. Financial Institution B purchased the covered loan from Financial Institution A. Financial Institution B did not review the application before closing. Financial Institution A reports the loan as an origination. Financial Institution B reports the loan as a purchase.

iv. Financial Institution A received an application for a covered loan from an applicant. If approved, the loan would have closed in Financial Institution B's name. Financial Institution A denied the application without sending it to Financial Institution B for approval. Financial Institution A was not acting as Financial Institution B's agent. Since Financial Institution A made the credit decision before the loan would have closed, Financial Institution A reports the application. Financial Institution B does not report the application.

v. Financial Institution A reviewed an application and made the credit decision to approve a covered loan using the underwriting criteria provided by a third party (

e.g.,

vi. Financial Institution A reviewed and made the credit decision on an application based on the criteria of a third-party insurer or guarantor (for example, a government or private insurer or guarantor). Financial Institution A reports the action taken on the application.

vii. Financial Institution A received an application for a covered loan and forwarded it to Financial Institutions B and C. Financial Institution A made a credit decision, acting as Financial Institution D's agent, and approved the application. The applicant did not accept the loan from Financial Institution D. Financial Institution D reports the application as approved but not accepted. Financial Institution A does not report the application. Financial Institution B made a credit decision, approving the application, the applicant accepted the offer of credit from Financial Institution B, and credit was extended. Financial Institution B reports the origination. Financial Institution C made a credit decision and denied the application. Financial Institution C reports the application as denied.

4.

Agents.

5.

Purchased loans.

ii. In contrast, for purposes of § 1003.4(a), a purchase does not include a temporary transfer of a covered loan to an interim funder or warehouse creditor as part of an interim funding agreement under which the originating financial institution is obligated to repurchase the covered loan for sale to a subsequent investor. Such agreements, often referred to as repurchase agreements, are sometimes employed as functional equivalents of warehouse lines of credit. Under these agreements, the interim funder or warehouse creditor acquires legal title to the covered loan, subject to an obligation of the originating institution to repurchase at a future date, rather than taking a security interest in the covered loan as under the terms of a more conventional warehouse line of credit. To illustrate, assume Financial Institution A has an interim funding agreement with Financial Institution B to enable Financial Institution B to originate loans. Assume further that Financial Institution B originates a covered loan and that, pursuant to this agreement, Financial Institution A

takes a temporary transfer of the covered loan until Financial Institution B arranges for the sale of the covered loan to a subsequent investor and that Financial Institution B repurchases the covered loan to enable it to complete the sale to the subsequent investor (alternatively, Financial Institution A may transfer the covered loan directly to the subsequent investor at Financial Institution B's direction, pursuant to the interim funding agreement). The subsequent investor could be, for example, a financial institution or other entity that intends to hold the loan in portfolio, a GSE or other securitizer, or a financial institution or other entity that intends to package and sell multiple loans to a GSE or other securitizer. In this example, the temporary transfer of the covered loan from Financial Institution B to Financial Institution A is not a purchase, and any subsequent transfer back to Financial Institution B for delivery to the subsequent investor is not a purchase, for purposes of § 1003.4(a). Financial Institution B reports the origination of the covered loan as well as its sale to the subsequent investor. If the subsequent investor is a financial institution under § 1003.2(g), it reports a purchase of the covered loan pursuant to § 1003.4(a), regardless of whether it acquired the covered loan from Financial Institution B or directly from Financial Institution A.

Section 1003.4 Compilation of Reportable Data

Paragraph 4(a)(1)(i)

1.

ULI uniqueness.

2

2.

ULI privacy.

3

3.

ULI purchased covered loan.

4.

ULI reinstated or reconsidered application.

5.

ULIcheck digit.

6.

NULI.

Paragraph 4(a)(1)(ii)

1.

Application dateconsistency.

2.

Application dateindirect application.

3.

Application datereinstated application.

Paragraph 4(a)(2)

1.

Loan typegeneral.

Paragraph 4(a)(3)

1.

Purposestatement of applicant.

2.

Purposerefinancing and cash-out refinancing.

i. Assume a financial institution considers an application for a loan product to be a cash-out refinancing under an investor's guidelines because of the amount of cash received by the borrower at closing or account opening. Assume also that under the investor's guidelines, the applicant qualifies for the loan product and the financial institution approves the application, originates the covered loan, and sets the terms of the covered loan consistent with the loan product. In this example, the financial institution would report the covered loan as a cash-out refinancing for purposes of § 1003.4(a)(3).

ii. Assume a financial institution does not consider an application for a covered loan to be a cash-out refinancing under its own guidelines because the amount of cash received by the borrower does not exceed a certain threshold. Assume also that the institution approves the application, originates the covered loan, and sets the terms of the covered loan consistent with its own guidelines applicable to refinancings other than cash-out refinancings. In this example, the financial institution would report the covered loan as a refinancing for purposes of § 1003.4(a)(3).

iii. Assume a financial institution does not distinguish between a cash-out refinancing and a refinancing under its own guidelines, and sets the terms of all refinancings without regard to the amount of cash received by the borrower at closing or account opening, and does not offer loan products under investor guidelines. In this example, the financial institution reports all covered loans and applications for covered loans that are defined by § 1003.2(p) as refinancings for purposes of § 1003.4(a)(3).

3.

Purpose multiple-purpose loan.

See

See

4.

Purpose other.

5.

Purpose business or commercial purpose loans.

6.

Purpose purchased loans.

Paragraph 4(a)(4)

1.

Request under a preapproval program.

2.

Scope of requirement.

Paragraph 4(a)(5)

1.

Modular homes and prefabricated components.

et seq.

2.

Multifamily dwelling.

3.

Multiple properties.

Paragraph 4(a)(6)

1.

Multiple properties.

2.

Principal residence.

3.

Second residences.

4.

Investment properties.

See

5.

Purchased covered loans.

Paragraph 4(a)(7)

1.

Covered loan amountcounteroffer.

2.

Covered loan amountapplication approved but not accepted or preapproval request approved but

not accepted.

3.

Covered loan amountpreapproval request denied, application denied, closed for incompleteness or withdrawn.

4.

Covered loan amountmultiple-purpose loan.

5.

Covered loan amountclosed-end mortgage loan.

6.

Covered loan amountopen-end line of credit.

7.

Covered loan amountrefinancing.

8.

Covered loan amounthome improvement loan.

9.

Covered loan amountnon-federally insured reverse mortgage.

Paragraph 4(a)(8)(i)

1.

Action takencovered loan originated.

See

2.

Action takencovered loan purchased.

See

See

3.

Action takenapplication approved but not accepted.

See

4.

Action takenapplication denied.

See

5.

Action takenapplication withdrawn.

See

6.

Action takenfile closed for incompleteness.

See

See

7.

Action takenpreapproval request denied.

8.

Action takenpreapproval request approved but not accepted.

9.

Action takencounteroffers.

10.

Action takenrescinded transactions.

11.

Action takenpurchased covered loans.

12.

Action takenrepurchased covered loans.

13.

Action takenconditional approvals.

i.

Action taken examples.

See

ii.

Customary commitment or closing conditions.

iii.

Underwriting or creditworthiness conditions.

14.

Action taken pending applications.

Paragraph 4(a)(8)(ii)

1.

Action taken date general.

2.

Action taken date applications denied and files closed for incompleteness.

3.

Action taken date application withdrawn.

4.

Action taken date approved but not accepted.

5.

Action taken date originations.

6.

Action taken date loan purchased.

Paragraph 4(a)(9)

1.

Multiple properties with one property taken as security.

2.

Multiple properties with more than one property taken as security.

i.e.,

3.

Multifamily dwellings.

4.

Loans purchased from another institution.

5.

Manufactured home.

Paragraph 4(a)(9)(i)

1.

General.

2.

Property addressformat.

i.

Street address.

ii.

City name.

iii.

State name.

iv.

Zip Code.

3.

Property addressnot applicable.

Paragraph 4(a)(9)(ii)

1.

Optional reporting.

Paragraph 4(a)(9)(ii)(A)

1.

ApplicationsState not provided.

Paragraph 4(a)(9)(ii)(B)

1.

General.

2.

Applicationscounty not provided.

Paragraph 4(a)(9)(ii)(C)

1.

General.

2.

Applicationscensus tract not provided.

Paragraph 4(a)(10)(i)

1.

Applicant datageneral.

2.

Transition rule for applicant data collected prior to January 1, 2018.

Paragraph 4(a)(10)(ii)

1.

Applicant datacompletion by financial institution.

2.

Applicant dataco-applicant.

3.

Applicant datapurchased loan.

4.

Applicant datanon-natural person.

5.

Applicant dataguarantor.

Paragraph 4(a)(10)(iii)

1.

Income dataincome relied on.

2.

Income dataco-applicant.

3.

Income dataloan to employee.

4.

Income dataassets.

5.

Income datacredit decision not made.

6.

Income datacredit decision not requiring consideration of income.

7.

Income datanon-natural person.

e.g.,

8.

Income datamultifamily properties.

9.

Income datapurchased loans.

10.

Income datarounding.

Paragraph 4(a)(11)

1.

Type of purchaserloan-participation interests sold to more than one entity.

2.

Type of purchaserswapped covered loans.

3.

Type of purchaseraffiliate institution.

et seq.

4.

Type of purchaserprivate securitizations.

5.

Type of purchasermortgage company.

6.

Purchases by subsidiaries.

7.

Type of purchaserbank holding company or thrift holding company.

8.

Repurchased covered loans.

9.

Type of purchaserquarterly recording.

10.

Type of purchasernot applicable.

Paragraph 4(a)(12)

1.

Average prime offer rate.

2.

Bureau tables.

<http://www.ffiec.gov/hmda>

<https://www.consumerfinance.gov>

see

3.

Rate spread calculationannual percentage rate.

4.

Rate spread calculationcomparable transaction.

i.e.,

i.

Fixed-rate transactions.

i.e.,

ii.

Variable-rate transactions.

i.e.,

iii.

Term not in whole years.

iv.

Amortization period longer than loan term.

5.

Rate-set date.

i.e.,

i.

Rate-lock agreement.

ii.

Change in loan program.

i.e.,

iii.

Brokered loans.

e.g.,

6.

Compare the annual percentage rate to the average prime offer rate.

7.

Rate spreadscope of requirement.

See

8.

Application or preapproval request approved but not accepted.

9.

Corrected disclosures.

See

i. In the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1)(i), if the financial institution provides a corrected disclosure pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), that reflects a corrected annual percentage rate, the financial institution reports the difference between the corrected annual percentage rate and the most recently available average prime offer rate that was in effect for a comparable transaction as of the rate-set date only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which final action is taken.

ii. In the case of a financial institution's quarterly submission made pursuant to § 1003.5(a)(1)(ii), if the financial institution provides a corrected disclosure pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), that reflects a corrected annual percentage rate, the financial institution reports the difference between the corrected annual percentage rate and the most recently available average prime offer rate that was in effect for a comparable transaction as of the rate-set date only if the corrected disclosure was provided to the borrower prior to the end of the quarter in which final action is taken. The financial institution does not report the difference between the corrected annual

percentage rate and the most recently available average prime offer rate that was in effect for a comparable transaction as of the rate-set date if the corrected disclosure was provided to the borrower after the end of the quarter in which final action is taken, even if the corrected disclosure was provided to the borrower prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the difference between the corrected annual percentage rate and the most recently available average prime offer rate that was in effect for a comparable transaction as of the rate-set date on its annual loan/application register, provided that the corrected disclosure was provided to the borrower prior to the end of the calendar year in which final action is taken.

Paragraph 4(a)(13)

1.

HOEPA status not applicable.

Paragraph 4(a)(14)

1.

Determining lien status for applications and covered loans originated and purchased.

i. Financial institutions are required to report lien status for covered loans they originate and purchase and applications that do not result in originations (preapproval requests that are approved but not accepted, preapproval requests that are denied, applications that are approved but not accepted, denied, withdrawn, or closed for incompleteness). For covered loans purchased by a financial institution, lien status is determined by reference to the best information readily available to the financial institution at the time of purchase. For covered loans that a financial institution originates and applications that do not result in originations, lien status is determined by reference to the best information readily available to the financial institution at the time final action is taken and to the financial institution's own procedures. Thus, financial institutions may rely on the title search they routinely perform as part of their underwriting procedures for example, for home purchase loans. Regulation C does not require financial institutions to perform title searches solely to comply with

HMDA reporting requirements. Financial institutions may rely on other information that is readily available to them at the time final action is taken and that they reasonably believe is accurate, such as the applicant's statement on the application or the applicant's credit report. For example, where the applicant indicates on the application that there is a mortgage on the property or where the applicant's credit report shows that the applicant has a mortgage and that mortgage will not be paid off as part of the transaction the financial institution may assume that the loan it originates is secured by a subordinate lien. If the same application did not result in an origination for example, because the application was denied or withdrawn the financial institution would report the application as an application for a subordinate-lien loan.

ii. Financial institutions may also consider their established procedures when determining lien status for applications that do not result in originations. For example, assume an applicant applies to a financial institution to refinance a \$100,000 first mortgage; the applicant also has an open-end line of credit for \$20,000. If the financial institution's practice in such a case is to ensure that it will have first-lien position through

2.

Multiple properties.

Paragraph 4(a)(15)

1.

Credit score relied on.

2.

Credit score multiple credit scores.

3.

Credit score multiple applicants or borrowers.

4.

Transactions for which no credit decision was made.

5.

Transactions for which no credit score was relied on.

6.

Purchased covered loan.

7.

Non-natural person.

Paragraph 4(a)(16)

1.

Reason for denialgeneral.

2.

Reason for denialpreapproval request denied.

3.

Reason for denialadverse action model form or similar form.

4.

Reason for denialscope of requirement.

See

Paragraph 4(a)(17)(i)

1.

Total loan costsscope of requirement.

See

2.

Purchased loansapplications received prior to the integrated disclosure effective date.

3.

Corrected disclosures.

i. In the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1)(i), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the

corrected amount of total loan costs only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurs.

ii. In the case of a financial institution's quarterly submission made pursuant to § 1003.5(a)(1)(ii), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of total loan costs only if the corrected disclosure was provided to the borrower prior to the end of the quarter in which closing occurs. The financial institution does not report the corrected amount of total loan costs in its quarterly submission if the corrected disclosure was provided to the borrower after the end of the quarter in which closing occurs, even if the corrected disclosure was provided to the borrower prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the corrected amount of total loan costs on its annual loan/application register, provided that the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurs.

Paragraph 4(a)(17)(ii)

1.

Total points and feesscope of requirement.

See

2.

Total points and fees cure mechanism.

Paragraph 4(a)(18)

1.

Origination chargesscope of requirement.

See

2.

Purchased loansapplications received prior to the integrated disclosure effective date.

3.

Corrected disclosures.

i. In the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1)(i), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of borrower-paid origination charges only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurs.

ii. In the case of a financial institution's quarterly submission made pursuant to § 1003.5(a)(1)(ii), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of borrower-paid origination charges only if the corrected disclosure was provided to the borrower prior to the end of the quarter in which closing occurs. The financial institution does not report the corrected amount of borrower-paid origination charges in its quarterly submission if the corrected disclosure was provided to the borrower after the end of the quarter in which closing occurs, even if the corrected disclosure was provided to the borrower prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the corrected amount of borrower-paid origination charges on its annual loan/application register, provided that the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurs.

Paragraph 4(a)(19)

1.

Discount pointsscope of requirement.

See

2.

Purchased loansapplications received prior to the integrated disclosure effective date.

3.

Corrected disclosures.

i. In the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1)(i), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of discount points only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurred.

ii. In the case of a financial institution's quarterly submission made pursuant to § 1003.5(a)(1)(ii), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of discount points only if the corrected disclosure was provided to the borrower prior to the end of the quarter in which closing occurred. The financial institution does not report the corrected amount of discount points in its quarterly submission if the corrected disclosure was provided to the borrower after the end of the quarter in which closing occurred, even if the corrected disclosure was provided to the borrower prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the corrected amount of discount points on its annual loan/application register, provided that the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurred.

Paragraph 4(a)(20)

1.

Lender credit scope of requirement.

See

2.

Purchased loan applications received prior to the integrated disclosure effective date.

3.

Corrected disclosures.

i. In the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1)(i), if the financial institution provides a corrected disclosure to the borrower to reflect

a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of lender credits only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurred.

ii. In the case of a financial institution's quarterly submission made pursuant to § 1003.5(a)(1)(ii), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of lender credits only if the corrected disclosure was provided to the borrower prior to the end of the quarter in which closing occurred. The financial institution does not report the corrected amount of lender credits in its quarterly submission if the corrected disclosure was provided to the borrower after the end of the quarter in which closing occurred, even if the corrected disclosure was provided to the borrower prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the corrected amount of lender credits on its annual loan/application register, provided that the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurred.

Paragraph 4(a)(21)

1.

Interest ratedisclosures.

2.

Applications.

3.

Adjustable rateinterest rate unknown.

Paragraph 4(a)(22)

1.

Prepayment penalty termscope of requirement.

See

2.

Transactions for which no prepayment penalty exists.

Paragraph 4(a)(23)

1.

General.

2.

Transactions for which a debt-to-income ratio was one of multiple factors.

3.

Transactions for which no credit decision was made.

4.

Transactions for which no debt-to-income ratio was relied on.

5.

Non-natural person.

6.

Multifamily dwellings.

7.

Purchased covered loans.

Paragraph 4(a)(24)

1.

General.

2.

Transactions for which a combined loan-to-value ratio was one of multiple factors.

3.

Transactions for which no credit decision was made.

4.

Transactions for which no combined loan-to-value ratio was relied on.

5.

Purchased covered loan.

6.

Property.

Paragraph 4(a)(25)

1.

Amortization and maturity.

2.

Non-monthly repayment periods.

3.

Purchased loans.

4.

Open-end line of credit.

5.

Loan termscope of requirement.

See

Paragraph 4(a)(26)

1.

Types of introductory rates.

2.

Preferred rates.

3.

Loan or application with a fixed rate.

4.

Purchased loan.

5.

Non-monthly introductory periods.

Paragraph 4(a)(27)

1.

General.

Paragraph 4(a)(28)

1.

General.

2.

Multiple property values.

3.

Transactions for which no credit decision was made.

4.

Transactions for which no property value was relied on.

Paragraph 4(a)(29)

1.

Classification under State law.

2.

Manufactured home community.

3.

Multiple properties.

4.

Scope of requirement.

See

Paragraph 4(a)(30)

1.

Indirect land ownership.

2.

Leasehold interest.

3.

Multiple properties.

4.

Manufactured home community.

5.

Direct ownership.

6.

Scope of requirement.

See

Paragraph 4(a)(31)

1.

Multiple properties.

2.

Manufactured home community.

3.

Condominium and cooperative projects.

i. Assume that a loan is secured by the entirety of a cooperative property. The financial institution would report the number of individual dwelling units in the cooperative property.

ii. Assume that a covered loan is secured by 30 individual dwelling units in a condominium property that contains 100 individual dwelling units and that the loan is not exempt from Regulation C under § 1003.3(c)(3). The financial institution reports 30 individual dwelling units.

4.

Best information available.

Paragraph 4(a)(32)

1.

Affordable housing income restrictions.

2.

Federal affordable housing sources.

- i. Affordable housing programs pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f);
- ii. Public housing (42 U.S.C. 1437a(b)(6));
- iii. The HOME Investment Partnerships program (24 CFR part 92);
- iv. The Community Development Block Grant program (24 CFR part 570);
- v. Multifamily tax subsidy project funding through tax-exempt bonds or tax credits (26 U.S.C. 42; 26 U.S.C. 142(d));
- vi. Project-based vouchers (24 CFR part 983);
- vii. Federal Home Loan Bank affordable housing program funding (12 CFR part 1291); and
- viii. Rural Housing Service multifamily housing loans and grants (7 CFR part 3560).

3.

State and local government affordable housing sources.

4.

Multiple properties.

5.

Best information available.

6.

Scope of requirement.

See

Paragraph 4(a)(33)

1.

Agents.

Paragraph 4(a)(33)(i)

1.

General.

i. The application was submitted directly to the financial institution if the mortgage loan originator identified pursuant to § 1003.4(a)(34) was an employee of the reporting financial institution when the originator performed the origination activities for the covered loan or application that is being reported.

ii. The application was also submitted directly to the financial institution reporting the covered loan or application if the reporting financial institution directed the applicant to a third-party agent (e.g.,

iii. If an applicant contacted and completed an application with a broker or correspondent that forwarded the application to a financial institution for approval, an application was not submitted to the financial institution.

Paragraph 4(a)(33)(ii)

1.

General.

2.

Applications.

Paragraph 4(a)(34)

1.

NMLSR ID.

et seq.,

2.

Mortgage loan originator without NMLSR ID.

3.

Multiple mortgage loan originators.

4.

Purchased loans.

Paragraph 4(a)(35)

1.

Automated underwriting system datageneral.

i. A financial institution that uses an AUS, as defined in § 1003.4(a)(35)(ii), to evaluate an

ii. A financial institution that uses an AUS, as defined in § 1003.4(a)(35)(ii), to evaluate an application, must report the name of the AUS it used to evaluate the application and the result generated by that system, regardless of whether the financial institution intends to hold the covered loan in its portfolio or sell the covered loan. For example, if a financial institution uses an AUS developed by a securitizer to evaluate an application and intends to sell the covered loan to that securitizer but ultimately does not sell the covered loan and instead holds the covered loan in its portfolio, the financial institution complies with § 1003.4(a)(35) by reporting the name of the securitizer's AUS that the institution used to evaluate the application and the result generated by that system. Similarly, if a financial institution uses an AUS developed by a securitizer to evaluate an application to determine whether to originate the covered loan but does not intend to sell the covered loan to that securitizer and instead holds the covered loan in its portfolio, the financial institution complies with § 1003.4(a)(35) by reporting the name of the securitizer's AUS that the institution used to evaluate the application and the result generated by that system.

iii. A financial institution that uses an AUS, as defined in § 1003.4(a)(35)(ii), that is developed by a securitizer to evaluate an application, must report the name of the AUS it used to evaluate the application and the result generated by that system, regardless of whether the securitizer intends to hold the covered loan it purchased from the financial institution in its portfolio or securitize the covered loan. For example, if a financial institution uses an AUS developed by a securitizer to evaluate an application and the financial institution sells the covered loan to that securitizer but the securitizer holds the covered loan it purchased in its portfolio, the financial institution complies with § 1003.4(a)(35) by reporting the name of the securitizer's AUS that the institution used to evaluate the

application and the result generated by that system.

iv. A financial institution, which is also a securitizer, that uses its own AUS, as defined in § 1003.4(a)(35)(ii), to evaluate an application, must report the name of the AUS it used to evaluate the application and the result generated by that system, regardless of whether the financial institution intends to hold the covered loan it originates in its portfolio, purchase the covered loan, or securitize the covered loan. For example, if a financial institution, which is also a securitizer, has developed its own AUS and uses that AUS to evaluate an application that it intends to originate and hold in its portfolio and not purchase or securitize the covered loan, the financial institution complies with § 1003.4(a)(35) by reporting the name of its AUS that it used to evaluate the application and the result generated by that system.

2.

Definition of automated underwriting system.

3.

Reporting automated underwriting system data multiple results.

i. If a financial institution obtains two or more AUS results and the AUS generating one of those results corresponds to the loan type reported pursuant to § 1003.4(a)(2), the financial institution complies with § 1003.4(a)(35) by reporting that AUS name and result. For example, if a financial institution evaluates an application using the Federal Housing Administration's (FHA) Technology Open to Approved Lenders (TOTAL) Scorecard and subsequently evaluates the application with an AUS used to determine eligibility for a non-FHA loan, but ultimately originates an FHA loan, the financial institution complies with § 1003.4(a)(35) by reporting TOTAL Scorecard and the result generated by that system. If a financial institution obtains two or more AUS results and more than one of those AUS results is generated by a system that corresponds to the loan type reported pursuant to § 1003.4(a)(2), the financial institution identifies which AUS result should be reported by following the principle set forth below in comment 4(a)(35)-3.ii.

ii. If a financial institution obtains two or more AUS results and the AUS generating one of those

results corresponds to the purchaser, insurer, or guarantor, if any, the financial institution complies with § 1003.4(a)(35) by reporting that AUS name and result. For example, if a financial institution evaluates an application with the AUS of Securitizer A and subsequently evaluates the application with the AUS of Securitizer B, but the financial institution ultimately originates a covered loan that it sells within the same calendar year to Securitizer A, the financial institution complies with § 1003.4(a)(35) by reporting the name of Securitizer A's AUS and the result generated by that system. If a financial institution obtains two or more AUS results and more than one of those AUS results is generated by a system that corresponds to the purchaser, insurer, or guarantor, if any, the financial institution identifies which AUS result should be reported by following the principle set forth below in comment 4(a)(35)-3.iii.

iii. If a financial institution obtains two or more AUS results and none of the systems generating those results correspond to the purchaser, insurer, or guarantor, if any, or the financial institution is following this principle because more than one AUS result is generated by a system that corresponds to either the loan type or the purchaser, insurer, or guarantor, the financial institution complies with § 1003.4(a)(35) by reporting the AUS result generated closest in time to the credit decision and the name of the AUS that generated that result. For example, if a financial institution evaluates an application with the AUS of Securitizer A, subsequently again evaluates the application with Securitizer A's AUS, the financial institution complies with § 1003.4(a)(35) by reporting the name of Securitizer A's AUS and the second AUS result. Similarly, if a financial institution obtains a result from an AUS that requires the financial institution to underwrite the loan manually, but the financial institution subsequently processes the application through a different AUS that also generates a result, the financial institution complies with § 1003.4(a)(35) by reporting the name of the second AUS that it used to evaluate the application and the AUS result generated by that system.

iv. If a financial institution obtains two or more AUS results at the same time and the principles in comment 4(a)(35)-3.i through .iii do not apply, the financial institution complies with § 1003.4(a)(35)

by reporting the name of all of the AUSs used by the financial institution to evaluate the application and the results generated by each of those systems. For example, if a financial institution

4.

Transactions for which an automated underwriting system was not used to evaluate the application.

5.

Purchased covered loan.

6.

Non-natural person.

7.

Determination of securitizer, Federal government insurer, or Federal government guarantor.

i. In the course of renewing an annual sales agreement the developer of the electronic tool represents to the financial institution that it has never been a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit.

On this basis, the financial institution does not know or reasonably believe that the system it is using to evaluate an application is an electronic tool that has been developed by a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit and complies with § 1003.4(a)(35) by reporting that the requirement is not applicable.

ii. Based on their previous transactions a financial institution is aware that the developer of the electronic tool it is using to evaluate an application has securitized a closed-end mortgage loan or open-end line of credit in the past. On this basis, the financial institution knows or reasonably believes that the developer of the electronic tool is a securitizer and complies with § 1003.4(a)(35) by reporting the name of that system and the result generated by that system.

Paragraph 4(a)(37)

1.

Open-end line of credit.

Paragraph 4(a)(38)

1.

Primary purpose.

4(f) Quarterly Recording of Data

1.

General.

2.

Agency requirements.

3.

Form of quarterly records.

Section 1003.5 Disclosure and Reporting

5(a) Reporting to Agency

1.

Quarterly reporting coverage.

ii. In the calendar year of a merger or acquisition, the surviving or newly formed financial institution is required to comply with § 1003.5(a)(1)(ii), effective the date of the merger or acquisition, if a combined total of at least 60,000 covered loans and applications, combined, excluding purchased covered loans, is reported for the preceding calendar year by or for the surviving or newly formed financial institution and each financial institution or branch office merged or acquired. For example, Financial Institution A and Financial Institution B merge to form Financial Institution C in 2020. Financial Institution A reports 40,000 covered loans and applications, combined, excluding purchased covered loans, for 2019. Financial Institution B reports 21,000 covered loans and applications, combined, excluding purchased covered loans, for 2019. Financial Institution C is required to comply with § 1003.5(a)(1)(ii) effective the date of the merger. Similarly, for example, Financial Institution A acquires a branch office of Financial Institution B in 2020. Financial Institution A reports 58,000 covered loans and applications, combined, excluding purchased covered loans, for 2019. Financial Institution B reports 3,000 covered loans and applications, combined, excluding

purchased covered loans, for 2019 for the branch office acquired by Financial Institution A. Financial Institution A is required to comply with § 1003.5(a)(1)(ii) in 2020 effective the date of the branch acquisition.

iii. In the calendar year following a merger or acquisition, the surviving or newly formed financial institution is required to comply with § 1003.5(a)(1)(ii) if a combined total of at least 60,000 covered loans and applications, combined, excluding purchased covered loans, is reported for the preceding calendar year by or for the surviving or newly formed financial institution and each financial institution or branch office merged or acquired. For example, Financial Institution A and Financial Institution B merge to form Financial Institution C in 2019. Financial Institution C reports 21,000 covered loans and applications, combined, excluding purchased covered loans, each for Financial Institution A, B, and C for 2019, for a combined total of 63,000 covered loans and applications reported, excluding purchased covered loans. Financial Institution C is required to comply with § 1003.5(a)(1)(ii) in 2020. Similarly, for example, Financial Institution A acquires a branch office of Financial Institution B in

2.

Change in appropriate Federal agency.

3.

Subsidiaries.

4.

Retention.

5.

Federal Taxpayer Identification Number.

5(b) Disclosure Statement

1.

Business day.

2.

Format of notice.

3.

Noticesuggested text.

Home Mortgage Disclosure Act Notice

The HMDA data about our residential mortgage lending are available online for review. The data show geographic distribution of loans and applications; ethnicity, race, sex, age, and income of applicants and borrowers; and information about loan approvals and denials. These data are available online at the Consumer Financial Protection Bureau's Web site

www.consumerfinance.gov/hmda

HMDA data for many other financial institutions are also available at this Web site.

4.

Combined notice.

5(c) Modified loan/application Register

1.

Format of notice.

2.

Noticesuggested text.

Home Mortgage Disclosure Act Notice

The HMDA data about our residential mortgage lending are available online for review. The data show geographic distribution of loans and applications; ethnicity, race, sex, age, and income of applicants and borrowers; and information about loan approvals and denials. These data are available online at the Consumer Financial Protection Bureau's Web site

www.consumerfinance.gov/hmda

HMDA data for many other financial institutions are also available at this Web site.

3.

Combined notice.

5(e) Posted Notice of Availability of Data

1.

Posted noticesuggested text.

Home Mortgage Disclosure Act Notice

The HMDA data about our residential mortgage lending are available online for review. The data show geographic distribution of loans and applications; ethnicity, race, sex, age, and income of applicants and borrowers; and information about loan approvals and denials. HMDA data for many other financial institutions are also available online. For more information, visit the Consumer Financial Protection Bureau's Web site

www.consumerfinance.gov/hmda

Section 1003.6Enforcement

6(b) Bona Fide Errors

1.

Information from third parties.

2.

Information from the Bureau.

[80 FR 66317, 66339, Oct. 28, 2015, as amended at 82 FR 43136, 43145, Sept. 13, 2017; 82 FR 61146, Dec. 27, 2017; 84 FR 514, Jan. 31, 2019; 84 FR 57981, Oct. 29, 2019; 84 FR 69994, Dec. 20, 2019; 85 FR 28404, 28406, May 12, 2020; 85 FR 83410, Dec. 22, 2020; 86 FR 72819, Dec. 23, 2021; 87 FR 77981, Dec. 21, 2022; 87 FR 80434, Dec. 30, 2022; 88 FR 88222, Dec. 21, 2023]

Pt. 1004

PART 1004ALTERNATIVE MORTGAGE TRANSACTION PARITY (REGULATION D)

Sec.

1004.1

Authority, purpose, and scope.

1004.2

Definitions.

1004.3

Preemption of State law.

1004.4

Requirements for alternative mortgage transactions.

Appendix A to Part 1004 Official Commentary on Regulation D

Authority:

12 U.S.C. 3802, 3803; 15 U.S.C. 1604, 1639b; Pub. L. No. 111-203, 124 Stat. 1376.

Source:

76 FR 44242, July 22, 2011, unless otherwise noted.

§ 1004.1

Authority, purpose, and scope.

(a)

Authority.

et seq.,

et seq.

(b)

Purpose.

(c)

Scope.

§ 1004.2

Definitions.

For purposes of this part:

Alternative mortgage transaction

(1) That is secured by an interest in a residential structure that contains one to four units, whether or not that structure is attached to real property, including an individual condominium unit, cooperative

unit, mobile home, or trailer, if it is used as a residence;

(2) That is made primarily for personal, family, or household purposes; and

(3) In which the interest rate or finance charge may be adjusted or renegotiated.

Creditor

Housing creditor

(1) A depository institution, as defined in section 501(a)(2) of the Depository Institutions Deregulation and Monetary Control Act of 1980;

(2) A lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act;

(3) Any person who regularly makes loans, credit sales, or advances on an account secured by an interest in a residential structure that contains one to four units, whether or not the structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence; and

(4) Any transferee of a party listed in paragraph (c)(1), (2), or (3) of this section.

State

State law

§ 1004.3

Preemption of State law.

Pursuant to 12 U.S.C. 3803, a State-chartered or -licensed housing creditor may make, purchase, and enforce alternative mortgage transactions in accordance with § 1004.4(a) through (c) of this part (as applicable), notwithstanding any provision of State law that restricts the ability of the housing creditor to adjust or renegotiate an interest rate or finance charge with respect to the transaction or to change the amount of interest or finance charges included in a regular periodic payment as a result of such an adjustment or renegotiation.

§ 1004.4

Requirements for alternative mortgage transactions.

(a)

Mortgages with adjustable rates or finance charges and home equity lines of credit.

(1) If the transaction is subject to 12 CFR 226.5b, the creditor must comply with 12 CFR 226.5b(f)(1).

(2) For all other transactions, the creditor must use either:

(i) An index to which changes in the interest rate are tied that is readily available to and verifiable by the borrower and beyond the control of the creditor; or

(ii) A formula or schedule identifying the amount that the interest rate or finance charge may increase and the times at which, or circumstances under which, a change may be made.

(b)

Renegotiable rates for renewable balloon-payment mortgages.

(1) Any action or inaction by the consumer materially and adversely affects the creditor's security for the transaction or any right of the creditor in such security;

(2) There is a material failure by the consumer to meet the repayment terms of the transaction;

(3) There is fraud or a willful or knowing material misrepresentation by the consumer in connection with the transaction; or

(4) Federal law dealing with credit extended by a depository institution to its executive officers specifically requires that as a condition of the extension the credit shall become due and payable on demand, provided that the creditor includes such a provision in the initial agreement.

(c)

Requirements for high-cost and higher-priced mortgage loans.

(2) If an alternative mortgage transaction is subject to 12 CFR 226.35, the creditor must comply with 12 CFR 226.35.

(d)

Other applicable law.

(e)

Reductions in interest rate or finance charge.

Pt. 1004, App. A

Appendix A to Part 1004 Official Commentary on Regulation D

§ 1004.1 Authority, Purpose, and Scope

1(c) Scope.

1.

Application received before July 22, 2011.

2.

Subsequent modifications and other actions.

- i. The subsequent consummation, completion, purchase, or enforcement of the transaction by a housing creditor.
- ii. The subsequent modification, renewal, or extension of the transaction. However, if such a transaction is satisfied and replaced by another transaction, the second transaction must independently meet the requirements for preemption in effect at the time the application for the second transaction was received.

§ 1004.2 Definitions

2(a) Alternative Mortgage Transaction

1.

Alternative mortgage transaction.

2.

Examples of alternative mortgage transactions.

- i. Transactions in which the interest rate changes in accordance with fluctuations in an index.
- ii. Transactions in which the interest rate or finance charge may be increased or decreased after a specified period of time or under specified circumstances.
- iii. Balloon transactions in which payments are based on an amortization schedule and a large final payment is due after a shorter term, where the creditor makes a commitment to renew the

transaction at specified intervals throughout the amortization period, but the interest rate may be renegotiated at renewal. For example, a fixed-rate mortgage loan with a 30-year amortization period but a balloon payment due five years after consummation is an alternative

iv. Transactions in which the creditor and the consumer agree to share some or all of the appreciation in the value of the property (shared equity/shared appreciation).

However, this part preempts State law only to the extent provided in § 1004.3 and only to the extent that the requirements of § 1004.4(a) through (c) (as applicable) are met.

3.

Examples of transactions that are not alternative mortgage transactions.

i. Transactions with a fixed interest rate where one or more of the regular periodic payments may be applied solely to accrued interest and not to loan principal (an interest-only feature).

ii. Balloon transactions with a fixed interest rate where payments are based on an amortization schedule and a large final payment is due after a shorter term, where the creditor does not make a commitment to renew the transaction at specified intervals throughout the amortization period.

iii. Transactions with a fixed interest rate where one or more of the regular periodic payments may result in an increase in the principal balance (a negative amortization feature).

2(b)Creditor

1.

Creditor.

See

§ 1004.3Preemption of State Law

1.

Scope of State laws.

2.

Examples of State laws that are preempted.

i. Restrictions on the adjustment or renegotiation of an interest rate or finance charge, including

restrictions on the circumstances under which a rate or charge may be adjusted, the method by which a rate or charge may be adjusted, and the amount of the adjustment to the rate or charge. For example, if a provision of State law prohibits creditors from increasing an adjustable rate more than two percentage points or from increasing an adjustable rate more than once during a year, that provision is preempted by § 1004.3 with respect to alternative mortgage transactions that comply with § 1004.4(a) through (c), as applicable. Similarly, if a provision of State law prohibits housing creditors from renewing balloon transactions that meet the definition of an alternative mortgage transaction in § 1004.2(a) on different terms, that provision is preempted by § 1004.3 only to the extent that it restricts a state housing creditor's ability to adjust or renegotiate the interest rate or finance charge at renewal. See also comment 1004.3-3.i.

ii. Restrictions on the ability of a housing creditor to change the amount of interest or finance charges included in regular periodic payments as a result of the adjustment or renegotiation of an interest rate or finance charge. For example, if a provision of State law prohibits housing creditors from increasing payments or limits the amount of such increases with respect to both alternative mortgage transactions and other mortgage or consumer credit transactions, that provision is preempted by § 1004.3 to the extent that it restricts a housing creditor's ability to adjust payments as a result of the adjustment or renegotiation of an interest rate on an alternative mortgage transaction. Other restrictions on changes to payments are not preempted, including restrictions on transactions in which one or more of the regular periodic payments may result in an increase in the principal balance (a negative amortization feature) or may be applied solely to accrued interest and not to loan principal (an interest-only feature).

iii. Restrictions on the creditor and the consumer sharing some or all of the appreciation in the value of the property (shared equity/shared appreciation).

iv. Underwriting requirements that address the adjustment or renegotiation of interest rates or finance charges. For example, if a provision of State law requires housing creditors to underwrite based on the maximum contractual rate, that provision is preempted by § 1004.3 with respect to

alternative mortgage transactions, regardless of whether the provision applies solely to alternative mortgage transactions or to both alternative mortgage transactions and other mortgage or consumer credit transactions.

3.

Examples of State laws that are not preempted.

- i. Restrictions on prepayment penalties or late charges (including an increase in an interest rate or finance charge as a result of a late payment).
- ii. Restrictions on transactions in which one or more of the regular periodic payments may result in an increase in the principal balance (a negative amortization feature) or may be applied solely to accrued interest and not to loan principal (an interest-only feature).
- iii. Requirements that disclosures be provided.

§ 1004.4 Requirements for Alternative Mortgage Transactions

4(a) Mortgages With Adjustable or Renegotiable Rates or Finance Charges and Home Equity Lines of Credit

1.

Index values.

2.

Index beyond creditor's control.

Wall Street Journal,

3.

Publicly available.

4(c) Requirements for High-Cost and Higher-Priced Mortgage Loans

1.

Prepayment penalties.

See

See

4(d)Other Applicable Law

1.

Other applicable law.

Pt. 1005

PART 1005ELECTRONIC FUND TRANSFERS (REGULATION E)

Subpart AGeneral

Sec.

1005.1

Authority and purpose.

1005.2

Definitions.

1005.3

Coverage.

1005.4

General disclosure requirements; jointly offered services.

1005.5

Issuance of access devices.

1005.6

Liability of consumer for unauthorized transfers.

1005.7

Initial disclosures.

1005.8

Change in terms notice; error resolution notice.

1005.9

Receipts at electronic terminals; periodic statements.

1005.10

Preauthorized transfers.

1005.11

Procedures for resolving errors.

1005.12

Relation to other laws.

1005.13

Administrative enforcement; record retention.

1005.14

Electronic fund transfer service provider not holding consumer's account.

1005.15

Electronic fund transfer of government benefits.

1005.16

Disclosures at automated teller machines.

1005.17

Requirements for overdraft services.

1005.18

Requirements for financial institutions offering prepaid accounts.

1005.19

Internet posting of prepaid account agreements.

1005.20

Requirements for gift cards and gift certificates.

Subpart B Requirements for Remittance Transfers

1005.30

Remittance transfer definitions.

1005.31

Disclosures.

1005.32

Estimates.

1005.33

Procedures for resolving errors.

1005.34

Procedures for cancellation and refund of remittance transfers.

1005.35

Acts of agents.

1005.36

Transfers scheduled before the date of transfer.

Appendix A to Part 1005 Model Disclosure Clauses and Forms

Appendix B to Part 1005 [Reserved]

Appendix C to Part 1005 Issuance of Official Interpretations

Supplement I to Part 1005 Official Interpretations

Authority:

12 U.S.C. 5512, 5581; 15 U.S.C. 1693b. Subpart B is also issued under 12 U.S.C. 5601 and 15 U.S.C. 1693o-1.

Source:

76 FR 81023, Dec. 27, 2011, unless otherwise noted.

Subpart A General

§ 1005.1

Authority and purpose.

(a)

Authority.

et seq.

et seq.

(b)

Purpose.

[76 FR 81023, Dec. 27, 2011, as amended at 77 FR 6285, Feb. 7, 2012]

§ 1005.2

Definitions.

Except as otherwise provided in subpart B, for purposes of this part, the following definitions apply:

(a)(1) Access device means 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.

(b)(1) Account means a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.

(2) The term does not include an account held by a financial institution under a bona fide trust agreement.

(3) The term includes a prepaid account.

(i) Prepaid account means:

(A) A payroll card account, which is an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation (such as commissions) are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person; or

- (B) A government benefit account, as defined in § 1005.15(a)(2); or
- (C) An account that is marketed or labeled as prepaid and that is redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at automated teller machines; or
- (D) An account:

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(ii) For purposes of paragraphs (b)(3)(i)(C) and (D) of this section, the term prepaid account does not include:

- (A) An account that is loaded only with funds from a health savings account, flexible spending arrangement, medical savings account, health reimbursement arrangement, dependent care assistance program, or transit or parking reimbursement arrangement;
- (B) An account that is directly or indirectly established through a third party and loaded only with qualified disaster relief payments;
- (C) The person-to-person functionality of an account established by or through the United States government whose primary function is to conduct closed-loop transactions on U.S. military installations or vessels, or similar government facilities;

(D)(
1

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4

(E) An account established for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency, as set forth in § 1005.15(a)(2).

(c) Act means the Electronic Fund Transfer Act (Title IX of the Consumer Credit Protection Act, 15 U.S.C. 1693

et seq.

(d) Business day means any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions.

(e) Consumer means a natural person.

(f) Credit means 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 therefor.

(g) Electronic fund transfer is defined in § 1005.3.

(h) Electronic terminal means 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 (ATMs), and cash dispensing machines.

(i) Financial institution means 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, other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376.

(j) Person means a natural person or an organization, including a corporation, government agency, estate, trust, partnership, proprietorship, cooperative, or association.

(k) Preauthorized electronic fund transfer means an electronic fund transfer authorized in advance to

recur at substantially regular intervals.

(l) State means any state, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or any political subdivision of the thereof in this paragraph (l).

(m) Unauthorized electronic fund transfer means 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.

[76 FR 81023, Dec. 27, 2011, as amended at 77 FR 6285, Feb. 7, 2012; 81 FR 84325, Nov. 22, 2016; 83 FR 6417, Feb. 13, 2018]

§ 1005.3

Coverage.

(a)

General.

(b)

Electronic fund transfer

Definition.

(i) Point-of-sale transfers;

(ii) Automated teller machine transfers;

(iii) Direct deposits or withdrawals of funds;

(iv) Transfers initiated by telephone; and

(v) Transfers resulting from debit card transactions, whether or not initiated through an electronic

terminal.

(2)

Electronic fund transfer using information from a check.

(ii) The person initiating an electronic fund transfer using the consumer's check as a source of information for the transfer must provide a notice that the transaction will or may be processed as an electronic fund transfer, and obtain a consumer's authorization for each transfer. A consumer authorizes a one-time electronic fund transfer (in providing a check to a merchant or other payee for the MICR encoding, that is, the routing number of the financial institution, the consumer's account number and the serial number) when the consumer receives notice and goes forward with the underlying transaction. For point-of-sale transfers, the notice must be posted in a prominent and conspicuous location, and a copy thereof, or a substantially similar notice, must be provided to the consumer at the time of the transaction.

(iii) A person may provide notices that are substantially similar to those set forth in appendix A-6 to comply with the requirements of this paragraph (b)(2).

(3)

Collection of returned item fees via electronic fund transfer

General.

(ii)

Point-of-sale transactions.

(c)

Exclusions from coverage.

(1)

Checks.

(2)

Check guarantee or authorization.

(3)

Wire or other similar transfers.

(4)

Securities and commodities transfers.

(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.

(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 § 1005.10(e) regarding compulsory use and sections 916 and 917 of the Act regarding civil and criminal liability.

(6)

Telephone-initiated transfers.

(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.

[76 FR 81023, Dec. 27, 2011, as amended at 77 FR 6285, Feb. 7, 2012]

§ 1005.4

General disclosure requirements; jointly offered services.

(a)(1)

Form of disclosures.

et seq.

(2)

Foreign language disclosures.

(b)

Additional information; disclosures required by other laws.

et seq.

et seq.

(c)

Multiple accounts and account holders

Multiple accounts.

(2)

Multiple account holders.

(d)

Services offered jointly.

§ 1005.5

Issuance of access devices.

(a)

Solicited issuance.

(1) In response to an oral or written request for the device; or

(2) As a renewal of, or in substitution for, an accepted access device whether issued by the institution or a successor.

(b)

Unsolicited issuance.

- (1) Not validated, meaning that the institution has not yet performed all the procedures that would enable a consumer to initiate an electronic fund transfer using the access device;
- (2) 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;
- (3) Accompanied by the disclosures required by § 1005.7, of the consumer's rights and liabilities that will apply if the access device is validated; and
- (4) Validated only in response to the consumer's oral or written request for validation, after the institution has verified the consumer's identity by a reasonable means.

§ 1005.6

Liability of consumer for unauthorized transfers.

(a)

Conditions for liability.

(b)

Limitations on amount of liability.

(1)

Timely notice given.

(2)

Timely notice not given.

(i) \$50 or the amount of unauthorized transfers that occur within the two business days, whichever is less; and

(ii) The amount of unauthorized transfers that occur after the close of two business days and before notice to the institution, provided the institution establishes that these transfers would not have occurred had the consumer notified the institution within that two-day period.

(3)

Periodic statement; timely notice not given.

(4)

Extension of time limits.

(5)

Notice to financial institution.

(ii) The consumer may notify the institution in person, by telephone, or in writing.

(iii) Written notice is considered given at the time the consumer mails the notice or delivers it for transmission to the institution by any other usual means. Notice may be considered constructively given when the institution becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer to or from the consumer's account has been or may be made.

(6)

Liability under state law or agreement.

§ 1005.7

Initial disclosures.

(a)

Timing of disclosures.

(b)

Content of disclosures.

(1)

Liability of consumer.

(2)

Telephone number and address.

(3)

Business days.

(4)

Types of transfers; limitations.

(5)

Fees.

(6)

Documentation.

(7)

Stop payment.

(8)

Liability of institution.

(9)

Confidentiality.

(10)

Error resolution.

(11)

ATM fees.

(c)

Addition of electronic fund transfer services.

[76 FR 81023, Dec. 27, 2011, as amended at 81 FR 70320, Oct. 12, 2016]

§ 1005.8

Change in terms notice; error resolution notice.

(a)

Change in terms notice

Prior notice required.

(i) Increased fees for the consumer;

(ii) Increased liability for the consumer;

(iii) Fewer types of available electronic fund transfers; or

(iv) Stricter limitations on the frequency or dollar amount of transfers.

(2)

Prior notice exception.

(b)

Error resolution notice.

§ 1005.9

Receipts at electronic terminals; periodic statements.

(a)

Receipts at electronic terminalsGeneral.

(1)

Amount.

(2)

Date.

(3)

Type.

(4)

Identification.

(5)

Terminal location.

(i) The street address; or

(ii) A generally accepted name for the specific location; or

(iii) The name of the owner or operator of the terminal if other than the account-holding institution.

(6)

Third party transfer.

(b)

Periodic statements.

(1)

Transaction information.

- (i) The amount of the transfer;
- (ii) The date the transfer was credited or debited to the consumer's account;
- (iii) The type of transfer and type of account to or from which funds were transferred;
- (iv) For a transfer initiated by the consumer at an electronic terminal (except for a deposit of cash or a check, draft, or similar paper instrument), the terminal location described in paragraph (a)(5) of this section; and
- (v) The name of any third party to or from whom funds were transferred.

(2)

Account number.

(3)

Fees.

(4)

Account balances.

(5)

Address and telephone number for inquiries.

(6)

Telephone number for preauthorized transfers.

(c)

Exceptions to the periodic statement requirement for certain accounts

Preauthorized transfers to accounts.

(i)

Passbook accounts.

(ii)

Other accounts.

(2)

Intra-institutional transfers.

(3)

Relationship between paragraphs (c)(1) and (2) of this section.

(d)

Documentation for foreign-initiated transfers.

(1) The transfer is not initiated within a state; and

(2) The financial institution treats an inquiry for clarification or documentation as a notice of error in accordance with § 1005.11.

(e)

Exception for receipts in small-value transfers.

§ 1005.10

Preauthorized transfers.

(a)

Preauthorized transfers to consumer's account

Notice by financial institution.

(i)

Positive notice.

(ii)

Negative notice.

(iii)

Readily-available telephone line.

(2)

Notice by payor.

(3)

Crediting.

(b)

Written authorization for preauthorized transfers from consumer's account.

(c)

Consumer's right to stop payment

Notice.

(2)

Written confirmation.

(d)

Notice of transfers varying in amount

Notice.

(2)

Range.

(e)

Compulsory use

Credit.

(2)

Employment or government benefit.

[76 FR 81023, Dec. 27, 2011, as amended at 81 FR 84326, Nov. 22, 2016]

§ 1005.11

Procedures for resolving errors.

(a)

Definition of error

Types of transfers or inquiries covered.

(i) An unauthorized electronic fund transfer;

(ii) An incorrect electronic fund transfer to or from the consumer's account;

(iii) The omission of an electronic fund transfer from a periodic statement;

(iv) A computational or bookkeeping error made by the financial institution relating to an electronic fund transfer;

- (v) The consumer's receipt of an incorrect amount of money from an electronic terminal;
- (vi) An electronic fund transfer not identified in accordance with § 1005.9 or § 1005.10(a); or
- (vii) The consumer's request for documentation required by § 1005.9 or § 1005.10(a) or for additional information or clarification concerning an electronic fund transfer, including a request the consumer makes to determine whether an error exists under paragraphs (a)(1)(i) through (vi) of this section.

(2)

Types of inquiries not covered.

- (i) A routine inquiry about the consumer's account balance;
- (ii) A request for information for tax or other recordkeeping purposes; or
- (iii) A request for duplicate copies of documentation.

(b)

Notice of error from consumer

Timing; contents.

- (i) Is received by the institution no later than 60 days after the institution sends the periodic statement or provides the passbook documentation, required by § 1005.9, on which the alleged error is first reflected;
- (ii) Enables the institution to identify the consumer's name and account number; and
- (iii) Indicates why the consumer believes an error exists and includes to the extent possible the type, date, and amount of the error, except for requests described in paragraph (a)(1)(vii) of this section.

(2)

Written confirmation.

(3)

Request for documentation or clarifications.

(c)

Time limits and extent of investigation

Ten-day period.

(2)

Forty-five day period.

(i) Provisionally credits the consumer's account in the amount of the alleged error (including interest where applicable) within 10 business days of receiving the error notice. If the financial institution has a reasonable basis for believing that an unauthorized electronic fund transfer has occurred and

(A) The institution requires but does not receive written confirmation within 10 business days of an oral notice of error; or

(B) The alleged error involves an account that is subject to Regulation T of the Board of Governors of the Federal Reserve System (Securities Credit by Brokers and Dealers, 12 CFR part 220).

(ii) Informs the consumer, within two business days after the provisional crediting, of the amount and date of the provisional crediting and gives the consumer full use of the funds during the investigation;

(iii) Corrects the error, if any, within one business day after determining that an error occurred; and

(iv) Reports the results to the consumer within three business days after completing its investigation (including, if applicable, notice that a provisional credit has been made final).

(3)

Extension of time periods.

(i) The applicable time is 20 business days in place of 10 business days under paragraphs (c)(1) and (2) of this section if the notice of error involves an electronic fund transfer to or from the account within 30 days after the first deposit to the account was made.

(ii) The applicable time is 90 days in place of 45 days under paragraph (c)(2) of this section, for completing an investigation, if a notice of error involves an electronic fund transfer that:

(A) Was not initiated within a state;

(B) Resulted from a point-of-sale debit card transaction; or

(C) Occurred within 30 days after the first deposit to the account was made.

(4)

Investigation.

(i) The alleged error concerns a transfer to or from a third party; and

(ii) There is no agreement between the institution and the third party for the type of electronic fund transfer involved.

(d)

Procedures if financial institution determines no error or different error occurred.

(1)

Written explanation.

(2)

Debiting provisional credit.

(i) Notify the consumer of the date and amount of the debiting;

(ii) Notify the consumer that the institution will honor checks, drafts, or similar instruments payable to third parties and preauthorized transfers from the consumer's account (without charge to the consumer as a result of an overdraft) for five business days after the notification. The institution shall honor items as specified in the notice, but need honor only items that it would have paid if the provisionally credited funds had not been debited.

(e)

Reassertion of error.

[76 FR 81023, Dec. 27, 2011, as amended at 81 FR 84326, Nov. 22, 2016; 83 FR 6417, Feb. 13, 2018]

§ 1005.12

Relation to other laws.

(a)

Relation to Truth in Lending.

(i) The addition to an accepted credit card, as defined in Regulation Z (12 CFR 1026.12, comment

12-2), of the capability to initiate electronic fund transfers;

(ii) The issuance of an access device (other than an access device for a prepaid account) that permits credit extensions (under a preexisting agreement between a consumer and a financial institution) only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in § 1005.17(a) of this part;

(iii) The addition of an overdraft service, as defined in § 1005.17(a), to an accepted access device; and

(iv) A consumer's liability for an unauthorized electronic fund transfer and the investigation of errors involving:

(A) Except with respect to a prepaid account, an extension of credit that is incident to an electronic fund transfer that occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in § 1005.17(a);

(B) With respect to transactions that involve a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in Regulation Z, 12 CFR 1026.61, an extension of credit that is incident to an electronic fund transfer that occurs when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction;

(C) Transactions that involves credit extended through a negative balance to the asset feature of a prepaid account that meets the conditions set forth in Regulation Z, 12 CFR 1026.61(a)(4); and

(D) With respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z, 12 CFR 1026.61, transactions that access the prepaid account, as applicable.

(2) The Truth in Lending Act and Regulation Z (12 CFR part 1026), which prohibit the unsolicited

issuance of credit cards, govern:

- (i) The addition of a credit feature or plan to an accepted access device, including an access device for a prepaid account, that would make the access device into a credit card under Regulation Z (12 CFR part 1026);
- (ii) Except as provided in paragraph (a)(1)(ii) of this section, the issuance of a credit card that is also an access device; and
- (iii) With respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z, 12 CFR 1026.61, a consumer's liability for unauthorized use and the investigation of errors involving transactions that access the non-covered separate credit feature, as applicable.

(b)

Preemption of inconsistent state laws

Inconsistent requirements.

(2)

Standards for determination.

- (i) Requires or permits a practice or act prohibited by the Federal law;
- (ii) Provides for consumer liability for unauthorized electronic fund transfers that exceeds the limits imposed by the Federal law;
- (iii) Allows longer time periods than the Federal law for investigating and correcting alleged errors, or does not require the financial institution to credit the consumer's account during an error investigation in accordance with § 1005.11(c)(2)(i) of this part; or
- (iv) Requires initial disclosures, periodic statements, or receipts that are different in content from those required by the Federal law except to the extent that the disclosures relate to consumer rights granted by the state law and not by the Federal law.

(c)

State exemptions

General rule.

(i) Under state law the class of electronic fund transfers is subject to requirements substantially similar to those imposed by the Federal law; and

(ii) There is adequate provision for state enforcement.

(2)

Exception.

(i) No exemption shall extend to the civil liability provisions of section 916 of the Act; and

(ii) When the Bureau grants an exemption, the state law requirements shall constitute the requirements of the Federal law for purposes of section 916 of the Act, except for state law requirements not imposed by the Federal law.

[76 FR 81023, Dec. 27, 2011, as amended at 81 FR 84326, Nov. 22, 2016]

§ 1005.13

Administrative enforcement; record retention.

(a)

Enforcement by Federal agencies.

(b)

Record retention.

(2) Any person subject to the Act and this part having actual notice that it is the subject of an investigation or an enforcement proceeding by its enforcement agency, or having been served with notice of an action filed under sections 910, 916, or 917(a) of the Act, shall retain the records that pertain to the investigation, action, or proceeding until final disposition of the matter unless an earlier time is allowed by court or agency order.

§ 1005.14

Electronic fund transfer service provider not holding consumer's account.

(a)

Provider of electronic fund transfer service.

(1) Issues a debit card (or other access device) that the consumer can use to access the consumer's account held by a financial institution; and

(2) Has no agreement with the account-holding institution regarding such access.

(b)

Compliance by service provider.

(1)

Disclosures and documentation.

(i) The debit card (or other access device) issued to the consumer bears the service provider's name and an address or telephone number for making inquiries or giving notice of error;

(ii) The consumer receives a notice concerning use of the debit card that is substantially similar to the notice contained in appendix A of this part;

(iii) The consumer receives, on or with the receipts required by § 1005.9(a), the address and telephone number to be used for an inquiry, to give notice of an error, or to report the loss or theft of the debit card;

(iv) The service provider transmits to the account-holding institution the information specified in § 1005.9(b)(1), in the format prescribed by the automated clearinghouse (ACH) system used to clear the fund transfers;

(v) The service provider extends the time period for notice of loss or theft of a debit card, set forth in § 1005.6(b)(1) and (2), from two business days to four business days after the consumer learns of the loss or theft; and extends the time periods for reporting unauthorized transfers or errors, set forth

(2)

Error resolution.

(ii) The service provider shall disclose to the consumer the date on which it initiates a transfer to effect a provisional credit in accordance with § 1005.11(c)(2)(ii).

(iii) If the service provider determines an error occurred, it shall transfer funds to or from the consumer's account, in the appropriate amount and within the applicable time period, in accordance

with § 1005.11(c)(2)(i).

(iv) If funds were provisionally credited and the service provider determines no error occurred, it may reverse the credit. The service provider shall notify the account-holding institution of the period during which the account-holding institution must honor debits to the account in accordance with § 1005.11(d)(2)(ii). If an overdraft results, the service provider shall promptly reimburse the account-holding institution in the amount of the overdraft.

(c)

Compliance by account-holding institution.

(1)

Documentation.

(2)

Error resolution.

§ 1005.15

Electronic fund transfer of government benefits.

(a)

Government agency subject to regulation.

(2) For purposes of this section, the term account or government benefit account means an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals, but does not include an account for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.

(b)

Issuance of access devices.

(c)

Pre-acquisition disclosure requirements.

(2)

Additional content for government benefit accounts

Statement regarding consumer's payment options.

(ii)

Statement regarding state-required information or other fee discounts and waivers.

(3)

Form of disclosures.

(d)

Access to account information

Periodic statement alternative.

(i) The consumer's account balance, through a readily available telephone line and at a terminal (such as by providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer);

(ii) An electronic history of the consumer's account transactions, such as through a Web site, that covers at least 12 months preceding the date the consumer electronically accesses the account; and

(iii) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 24 months preceding the date the agency receives the consumer's request.

(2)

Additional access to account information requirements.

(e)

Modified disclosure, limitations on liability, and error resolution requirements.

(1)

Initial disclosures.

(i)

Access to account information.

(ii)

Error resolution.

(2)

Annual error resolution notice.

(3)

Modified limitations on liability requirements.

(A) The date the consumer electronically accesses the consumer's account under paragraph (d)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the unauthorized transfer; or

(B) The date the agency sends a written history of the consumer's account transactions requested by the consumer under paragraph (d)(1)(iii) of this section in which the unauthorized transfer is first reflected.

(ii) An agency may comply with paragraph (e)(3)(i) of this section by limiting the consumer's liability for an unauthorized transfer as provided under § 1005.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.

(4)

Modified error resolution requirements.

(A) Sixty days after the date the consumer electronically accesses the consumer's account under paragraph (d)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the alleged error; or

(B) Sixty days after the date the agency sends a written history of the consumer's account transactions requested by the consumer under paragraph (d)(1)(iii) of this section in which the alleged error is first reflected.

(ii) In lieu of following the procedures in paragraph (e)(4)(i) of this section, an agency complies with the requirements for resolving errors in § 1005.11 if it investigates any oral or written notice of an error from the consumer that is received by the agency within 120 days after the transfer allegedly in

error was credited or debited to the consumer's account.

(f)

Disclosure of fees and other information.

(g)

Government benefit accounts accessible by hybrid prepaid-credit cards.

[81 FR 84326, Nov. 22, 2016]

§ 1005.16

Disclosures at automated teller machines.

(a)

Definition.

(b)

General.

(c)

Notice requirement.

(d)

Imposition of fee.

(1) The consumer is provided the notice required under paragraph (c) of this section, and

(2) The consumer elects to continue the transaction or inquiry after receiving such notice.

[76 FR 81023, Dec. 27, 2011, as amended at 78 FR 18224, Mar. 26, 2013]

§ 1005.17

Requirements for overdraft services.

(a)

Definition.

(1) A line of credit subject to Regulation Z (12 CFR part 1026), including transfers from a credit card account, home equity line of credit, or overdraft line of credit;

(2) A service that transfers funds from another account held individually or jointly by a consumer,

such as a savings account;

(3) A line of credit or other transaction exempt from Regulation Z (12 CFR part 1026) pursuant to 12 CFR 1026.3(d); or

(4) A covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61; or credit extended through a negative balance on the asset feature of the prepaid account that meets the conditions of 12 CFR 1026.61(a)(4).

(b)

Opt-in requirement

General.

(i) Provides the consumer with a notice in writing, or if the consumer agrees, electronically, segregated from all other information, describing the institution's overdraft service;

(ii) Provides a reasonable opportunity for the consumer to affirmatively consent, or opt in, to the service for ATM and one-time debit card transactions;

(iii) Obtains the consumer's affirmative consent, or opt-in, to the institution's payment of ATM or one-time debit card transactions; and

(iv) Provides the consumer with confirmation of the consumer's consent in writing, or if the consumer agrees, electronically, which includes a statement informing the consumer of the right to revoke such consent.

(2)

Conditioning payment of other overdrafts on consumer's affirmative consent.

(i) Condition the payment of any overdrafts for checks, ACH transactions, and other types of transactions on the consumer affirmatively consenting to the institution's payment of ATM and one-time debit card transactions pursuant to the institution's overdraft service; or

(ii) Decline to pay checks, ACH transactions, and other types of transactions that overdraw the consumer's account because the consumer has not affirmatively consented to the institution's overdraft service for ATM and one-time debit card transactions.

(3)

Same account terms, conditions, and features.

(c)

Timing

Existing account holders.

(2)

New account holders.

(d)

Content and format.

(1)

Overdraft service.

(2)

Fees imposed.

(3)

Limits on fees charged.

(4)

Disclosure of opt-in right.

(5)

Alternative plans for covering overdrafts.

(6)

Permitted modifications and additional content.

(e)

Joint relationships.

(f)

Continuing right to opt in or to revoke the opt-in.

(g)

Duration and revocation of opt-in.

[76 FR 81023, Dec. 27, 2011, as amended at 81 FR 84328, Nov. 22, 2016]

§ 1005.18

Requirements for financial institutions offering prepaid accounts.

(a)

Coverage.

(b)

Pre-acquisition disclosure requirements

Timing of disclosures

General.

(ii)

Disclosures for prepaid accounts acquired in retail locations.

(A) The prepaid account access device is contained inside the packaging material.

(B) The disclosure required by paragraph (b)(2) of this section is provided on or are visible through an outward-facing, external surface of a prepaid account access device's packaging material.

(C) The disclosure required by paragraph (b)(2) of this section includes the information set forth in paragraph (b)(2)(xiii) of this section that allows a consumer to access the information required to be disclosed by paragraph (b)(4) of this section by telephone and via a website.

(D) The long form disclosure required by paragraph (b)(4) of this section is provided after the consumer acquires the prepaid account. If a financial institution does not provide the long form disclosure inside the prepaid account packaging material, and it is not otherwise already mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information, it may provide the long form disclosure pursuant to this paragraph in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.

(iii)

Disclosures for prepaid accounts acquired orally by telephone.

(A) The financial institution communicates to the consumer orally, before the consumer acquires the prepaid account, that the information required to be disclosed by paragraph (b)(4) of this section is available both by telephone and on a Web site.

(B) The financial institution makes the information required to be disclosed by paragraph (b)(4) of this section available both by telephone and on a Web site.

(C) The long form disclosure required by paragraph (b)(4) of this section is provided after the consumer acquires the prepaid account.

(2)

Short form disclosure content.

(i)

Periodic fee.

(ii)

Per purchase fee.

(iii)

ATM withdrawal fees.

(iv)

Cash reload fee.

(v)

ATM balance inquiry fees.

(vi)

Customer service fees.

2

(vii)

Inactivity fee.

(viii)

Statements regarding additional fee types

Statement regarding number of additional fee types charged.

(

1

(

2

(B)

Statement directing consumers to disclosure of additional fee types.

(ix)

Disclosure of additional fee types

Determination of which additional fee types to disclose.

(

1

(

2

(

3

(B)

Disclosure of fewer than two additional fee types.

(C)

Fee variations in additional fee types.

2

1

2

1

(D)

Timing of initial assessment of additional fee types disclosure

1

Existing prepaid account programs as of April 1, 2019.

(

2

Existing prepaid account programs as of April 1, 2019 with unavailable data.

(

3

New prepaid account programs created on or after April 1, 2019.

(E)

Timing of periodic reassessment and update of additional fee types disclosure

1

General.

2

3

(

2

Periodic reassessment.

4

(

3

Fee schedule change.

4

4

(

4

Update printing exception.

2

3

(x)

Statement regarding overdraft credit features.

(xi)

Statement regarding registration and FDIC or NCUA insurance.

(A)

Account is insurance eligible and does not have pre-acquisition consumer identification/verification.

(B)

Account is not insurance eligible and does not have pre-acquisition consumer identification/verification.

(C)

Account is insurance eligible and has pre-acquisition consumer identification/verification.

(D)

Account is not insurance eligible and has pre-acquisition consumer identification/verification.

(E)

No consumer identification/verification.

(xii)

Statement regarding CFPB Web site.

cfpb.gov/prepaid

cfpb.gov/prepaid

(xiii)

Statement regarding information on all fees and services.

(xiv)

Additional content for payroll card accounts

Statement regarding wage or salary payment options.

(B)

Statement regarding state-required information or other fee discounts and waivers.

(3)

Short form disclosure of variable fees and third-party fees and prohibition on disclosure of finance charges

General disclosure of variable fees.

(ii)

Disclosure of variable periodic fee.

(iii)

Single disclosure for like fees.

(iv)

Third-party fees in general.

(v)

Third-party cash reload fees.

(vi)

Prohibition on disclosure of finance charges.

(4)

Long form disclosure content.

(i)

Title for long form disclosure.

(ii)

Fees.

(iii)

Statement regarding registration and FDIC or NCUA insurance.

(iv)

Statement regarding overdraft credit features.

(v)

Statement regarding financial institution contact information.

(vi)

Statement regarding CFPB Web site and telephone number.

cfpb.gov/prepaid

cfpb.gov/complaint

cfpb.gov/prepaid

cfpb.gov/complaint

(vii)

Regulation Z disclosures for overdraft credit features.

(5)

Disclosure requirements outside the short form disclosure.

(6)

Form of pre-acquisition disclosures

General

Written disclosures.

(B)

Electronic disclosures.

et seq.

(C)

Oral disclosures.

(ii)

Retainable form.

(iii)

Tabular format

General.

(B)

Multiple service plans

1

Short form disclosure for default service plan.

(

2

Short form disclosure for multiple service plans.

1

(

3

Long form disclosure.

(7)

Specific formatting requirements for pre-acquisition disclosures

Grouping

Short form disclosure.

(B)

Long form disclosure.

(C)

Multiple service plan disclosure.

2

(ii)

Prominence and size

General.

(B)

Short form disclosure

1

Fees and other information.

(

2

Variable fees.

(

3

Payroll card account additional content.

(C)

Long form disclosure.

(D)

Multiple service plan short form disclosure.

2

(iii)

Segregation.

(8)

Terminology of pre-acquisition disclosures.

(9)

Prepaid accounts acquired in foreign languages

General.

(A) The financial institution principally uses a foreign language on the prepaid account packaging material;

(B) The financial institution principally uses a foreign language to advertise, solicit, or market a prepaid account and provides a means in the advertisement, solicitation, or marketing material that the consumer uses to acquire the prepaid account by telephone or electronically; or

(C) The financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language. However, foreign language pre-acquisition disclosures are not required for payroll card accounts and government benefit accounts where the foreign language is offered by telephone via a real-time language interpretation service provided by a third party or by the employer or government agency on an informal or ad hoc basis as an accommodation to prospective payroll card account or government benefit account holders.

(ii)

Long form disclosures in English upon request.

(c)

Access to prepaid account information

Periodic statement alternative.

(i) The consumer's account balance, through a readily available telephone line;

(ii) An electronic history of the consumer's account transactions, such as through a Web site, that covers at least 12 months preceding the date the consumer electronically accesses the account; and

(iii) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers

(2)

Periodic statement alternative for unverified prepaid accounts.

(3)

Information included on electronic or written histories.

(4)

Inclusion of all fees charged.

(5)

Summary totals of fees.

(d)

Modified disclosure requirements.

(1)

Initial disclosures.

(i)

Access to account information.

(ii)

Error resolution.

(2)

Annual error resolution notice.

(e)

Modified limitations on liability and error resolution requirements

Modified limitations on liability requirements.

(i) For purposes of § 1005.6(b)(3), the 60-day period for reporting any unauthorized transfer shall begin on the earlier of:

(A) The date the consumer electronically accesses the consumer's account

(B) The date the financial institution sends a written history of the consumer's account transactions requested by the consumer under paragraph (c)(1)(iii) of this section in which the unauthorized transfer is first reflected.

(ii) A financial institution may comply with paragraph (e)(1)(i) of this section by limiting the consumer's liability for an unauthorized transfer as provided under § 1005.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.

(2)

Modified error resolution requirements.

(i) The financial institution shall comply with the requirements of § 1005.11 in response to an oral or

written notice of an error from the consumer that is received by the earlier of:

(A) Sixty days after the date the consumer electronically accesses the consumer's account under paragraph (c)(1)(ii) of this section, provided that the electronic account transaction history made available to the consumer reflects the alleged error; or

(B) Sixty days after the date the financial institution sends a written history of the consumer's account transactions requested by the consumer under paragraph (c)(1)(iii) of this section in which the alleged error is first reflected.

(ii) In lieu of following the procedures in paragraph (e)(2)(i) of this section, a financial institution complies with the requirements for resolving errors in § 1005.11 if it investigates any oral or written notice of an error from the consumer that is received by the institution within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.

(3)

Limitations on liability and error resolution for unverified accounts.

(ii) For purposes of paragraph (e)(3)(i) of this section, a financial institution has not successfully completed its consumer identification and verification process where:

(A) The financial institution has not concluded its consumer identification and verification process with respect to a particular prepaid account, provided that it has disclosed to the consumer the risks of not registering and verifying the account using a notice that is substantially similar to the model notice contained in paragraph (c) of appendix A-7 of this part.

(B) The financial institution has concluded its consumer identification and verification process with respect to a particular prepaid account, but could not verify the identity of the consumer, provided that it has disclosed to the consumer the risks of not registering and verifying the account using a notice that is substantially similar to the model notice contained in paragraph (c) of appendix A-7 of this part; or

(C) The financial institution does not have a consumer identification and verification process for the prepaid account program, provided that it has made the alternative disclosure described in

paragraph (d)(1)(ii) of this section and complies with the process it has disclosed.

(iii)

Resolution of errors following successful verification.

(f)

Disclosure of fees and other information

Initial disclosure of fees and other information.

(2)

Change-in-terms notice.

(3)

Disclosures on prepaid account access devices.

(g)

Prepaid accounts accessible by hybrid prepaid-credit cards

In general.

(2)

Exception for higher fees or charges.

(h)

Effective date and special transition rules for disclosure provisions

Effective date generally.

(2)

Early disclosures

Exception for disclosures on existing prepaid account access devices and prepaid account packaging materials.

(ii)

Disclosures for prepaid accounts acquired on or after April 1, 2019.

(A)

Notices of certain changes.

(B)

Initial disclosures.

(iii)

Disclosures for prepaid accounts acquired before April 1, 2019.

(iv)

Method of providing notice to consumers.

et seq.

(3)

Account information not available on April 1, 2019

Electronic and written account transaction history.

(ii)

Summary totals of fees.

[81 FR 84328, Nov. 22, 2016, as amended at 82 FR 18980, Apr. 25, 2017; 83 FR 6417, Feb. 13, 2018]

§ 1005.19

Internet posting of prepaid account agreements.

(a)

Definitions

Agreement.

(2)

Amends.

(3)

Fee information.

(4)

Issuer.

(5)

Offers.

(6)

Offers to the general public.

(7)

Open account.

(8)

Prepaid account.

(b)

Submission of agreements to the Bureau

Submissions on a rolling basis.

(i) Identifying information about the issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number), the effective date of the prepaid account agreement, the name of the program manager, if any, and the list of names of other relevant parties, if applicable (such as the employer for a payroll card program or the agency for a government benefit program);

(ii) Any prepaid account agreement offered by the issuer that has not been previously submitted to the Bureau;

(iii) Any prepaid account agreement previously submitted to the Bureau that has been amended, as described in paragraph (b)(2)(i) of this section; and

(iv) Notification regarding any prepaid account agreement previously submitted to the Bureau that the issuer is withdrawing, as described in paragraphs (b)(3), (b)(4)(ii), and (b)(5)(ii) of this section.

(2)

Amended agreements

Submission of amended agreements generally.

(ii)

Submission of updated list of names of other relevant parties.

(A) Such time as the issuer is otherwise submitting an amended agreement or changes to other identifying information about the issuer and its submitted agreements pursuant to paragraph (b)(1)(i) of this section; or

(B) May 1 of each year, for any updates to the list of names of other relevant parties for that agreement that occurred between the issuer's last submission of relevant party information and April 1 of that year.

(3)

Withdrawal of agreements no longer offered.

(4)

De minimis exception.

(ii) If an issuer that did not previously qualify for the de minimis exception newly qualifies for the de minimis exception, the issuer must continue to make submissions to the Bureau on a rolling basis until the issuer notifies the Bureau that the issuer is withdrawing all agreements it previously submitted to the Bureau.

(5)

Product testing exception.

(A) Is offered as part of a product test offered to only a limited group of consumers for a limited period of time;

(B) Is used for fewer than 3,000 open prepaid accounts; and

(C) Is not offered other than in connection with such a product test.

(ii) If an agreement that did not previously qualify for the product testing exception newly qualifies for the exception, the issuer must continue to make submissions to the Bureau on a rolling basis with respect to that agreement until the issuer notifies the Bureau that the issuer is withdrawing the agreement.

(6)

Form and content of agreements submitted to the Bureau

Form and content generally.

(B) Agreements must not include any personally identifiable information relating to any consumer, such as name, address, telephone number, or account number.

(C) The following are not deemed to be part of the agreement for purposes of this section, and therefore are not required to be included in submissions to the Bureau:

(

1

(

2

(

3

(

4

(D) Agreements must be presented in a clear and legible font.

(ii)

Fee information.

(iii)

Integrated agreement.

(c)

Posting of agreements offered to the general public.

(2) Agreements posted pursuant to this paragraph (c) must conform to the form and content requirements for agreements submitted to the Bureau set forth in paragraph (b)(6) of this section.

(3) The issuer must post and update the agreements posted on its Web site pursuant to this paragraph (c) as frequently as the issuer is required to submit new or amended agreements to the Bureau pursuant to paragraph (b)(2)(i) of this section.

(4) Agreements posted pursuant to this paragraph (c) may be posted in any electronic format that is

readily usable by the general public. Agreements must be placed in a location that is prominent and readily accessible to the public and must be accessible without submission of personally identifiable information.

(d)

Agreements for all open accounts

Availability of an individual consumer's prepaid account agreement.

(i) Post and maintain the consumer's agreement on its Web site; or

(ii) Promptly provide a copy of the consumer's agreement to the consumer upon the consumer's request. If the issuer makes an agreement available upon request, the issuer must provide the consumer with the ability to request a copy of the agreement by telephone. The issuer must send to the consumer a copy of the consumer's prepaid account agreement no later than five business days after the issuer receives the consumer's request.

(2)

Form and content of agreements.

(ii) If the issuer posts an agreement on its Web site under paragraph (d)(1)(i) of this section, the agreement may be posted in any electronic format that is readily usable by the general public and must be placed in a location that is prominent and readily accessible to the consumer.

(iii) Agreements posted or otherwise provided pursuant to this paragraph (d) may contain personally identifiable information relating to the consumer, such as name, address, telephone number, or account number, provided that the issuer takes appropriate measures to make the agreement accessible only to the consumer or other authorized persons.

(iv) Agreements posted or otherwise provided pursuant to this paragraph (d) must set forth the specific provisions and fee information applicable to the particular consumer.

(v) Agreements posted pursuant to paragraph (d)(1)(i) of this section must be updated as frequently as the issuer is required to submit amended agreements to the Bureau pursuant to paragraph (b)(2)(i) of this section. Agreements provided upon consumer request pursuant to paragraph

(d)(1)(ii) of this section must be accurate as of the date the agreement is sent to the consumer.

(vi) Agreements provided upon consumer request pursuant to paragraph (d)(1)(ii) of this section must be provided by the issuer in paper form, unless the consumer agrees to receive the agreement electronically.

(e)

E-Sign Act requirements.

et seq.

(f)

Initial submission date.

[81 FR 84336, Nov. 22, 2016, as amended at 83 FR 6419, Feb. 13, 2018]

§ 1005.20

Requirements for gift cards and gift certificates.

(a)

Definitions.

(1) Gift certificate means a card, code, or other device that is:

- (i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount that may not be increased or reloaded in exchange for payment; and
- (ii) Redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services.

(2) Store gift card means a card, code, or other device that is:

- (i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and
- (ii) Redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services.

(3) General-use prepaid card means a card, code, or other device that is:

(i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and

(ii) Redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines.

(4) Loyalty, award, or promotional gift card means a card, code, or other device that:

(i) Is issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in connection with a loyalty, award, or promotional program;

(ii) Is redeemable upon presentation at one or more merchants for goods or services, or usable at automated teller machines; and

(iii) Sets forth the following disclosures, as applicable:

(A) A statement indicating that the card, code, or other device is issued for loyalty, award, or promotional purposes, which must be included on the front of the card, code, or other device;

(B) The expiration date for the underlying funds, which must be included on the front of the card, code, or other device;

(C) The amount of any fees that may be imposed in connection with the card, code, or other device, and the conditions under which they may be imposed, which must be provided on or with the card, code, or other device; and

(D) A toll-free telephone number and, if one is maintained, a Web site, that a consumer may use to obtain fee information, which must be included on the card, code, or other device.

(5)

Dormancy or inactivity fee.

(6)

Service fee.

(7)

Activity.

(b)

Exclusions.

(1) Useable solely for telephone services;

(2) Reloadable and not marketed or labeled as a gift card or gift certificate. For purposes of this paragraph (b)(2), the term reloadable includes a temporary non-reloadable card issued solely in connection with a reloadable card, code, or other device;

(3) A loyalty, award, or promotional gift card;

(4) Not marketed to the general public;

(5) Issued in paper form only; or

(6) Redeemable solely for admission to events or venues at a particular location or group of affiliated locations, or to obtain goods or services in conjunction with admission to such events or venues, either at the event or venue or at specific locations affiliated with and in geographic proximity to the event or venue.

(c)

Form of disclosures

Clear and conspicuous.

(2)

Format.

(3)

Disclosures prior to purchase.

(4)

Disclosures on the certificate or card.

(d)

Prohibition on imposition of fees or charges.

(1) There has been no activity with respect to the certificate or card, in the one-year period ending on the date on which the fee is imposed;

(2) The following are stated, as applicable, clearly and conspicuously on the gift certificate, store gift card, or general-use prepaid card:

(i) The amount of any dormancy, inactivity, or service fee that may be charged;

(ii) How often such fee may be assessed; and

(iii) That such fee may be assessed for inactivity; and

(3) Not more than one dormancy, inactivity, or service fee is imposed in any given calendar month.

(e)

Prohibition on sale of gift certificates or cards with expiration dates.

(1) The person has established policies and procedures to provide consumers with a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date;

(2) The expiration date for the underlying funds is at least the later of:

(i) Five years after the date the gift certificate was initially issued, or the date on which funds were last loaded to a store gift card or general-use prepaid card; or

(ii) The certificate or card expiration date, if any;

(3) The following disclosures are provided on the certificate or card, as applicable:

(i) The expiration date for the underlying funds or, if the underlying funds do not expire, that fact;

(ii) A toll-free telephone number and, if one is maintained, a Web site that a consumer may use to obtain a replacement certificate or card after the certificate or card expires if the underlying funds may be available; and

(iii) Except where a non-reloadable certificate or card bears an expiration date that is at least seven years from the date of manufacture, a statement, disclosed with equal prominence and in close proximity to the certificate or card expiration date, that:

(A) The certificate or card expires, but the underlying funds either do not expire or expire later than the certificate or card, and;

(B) The consumer may contact the issuer for a replacement card; and

(4) No fee or charge is imposed on the cardholder for replacing the gift certificate, store gift card, or general-use prepaid card or for providing the certificate or card holder with the remaining balance in some other manner prior to the funds expiration date, unless such certificate or card has been lost or stolen.

(f)

Additional disclosure requirements for gift certificates or cards.

(1)

Fee disclosures.

(i) The type of fee;

(ii) The amount of the fee (or an explanation of how the fee will be determined); and

(iii) The conditions under which the fee may be imposed.

(2)

Telephone number for fee information.

(g)

Compliance dates

Effective date for gift certificates, store gift cards, and general-use prepaid cards.

(2)

Effective date for loyalty, award, or promotional gift cards.

(h)

Temporary exemption

Delayed mandatory compliance date.

(i) Complies with all other provisions of this section;

(ii) Does not impose an expiration date with respect to the funds underlying such certificate or card;

(iii) At the consumer's request, replaces such certificate or card if it has funds remaining at no cost to the consumer; and

(iv) Satisfies the requirements of paragraph (h)(2) of this section.

(2)

Additional disclosures.

- (i) The underlying funds of such certificate or card do not expire;
- (ii) Consumers holding such certificate or card have a right to a free replacement certificate or card, which must be accompanied by the packaging and materials typically associated with such certificate or card; and
- (iii) Any dormancy, inactivity, or service fee for such certificate or card that might otherwise be charged will not be charged if such fees do not comply with section 916 of the Act.

(3)

Expiration of additional disclosure requirements.

- (i) Are not required to be provided on or after January 31, 2011, with respect to in-store signage and general advertising.
- (ii) Are not required to be provided on or after January 31, 2013, with respect to messages during customer service calls and Web sites.

Subpart B Requirements for Remittance Transfers

Source:

77 FR 6285, Feb. 7, 2012, unless otherwise noted.

§ 1005.30

Remittance transfer definitions.

Except as otherwise provided, for purposes of this subpart, the following definitions apply:

- (a) Agent means an agent, authorized delegate, or person affiliated with a remittance transfer provider, as defined under State or other applicable law, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider.
- (b) Business day means any day on which the offices of a remittance transfer provider are open to the public for carrying on substantially all business functions.
- (c) Designated recipient means any person specified by the sender as the authorized recipient of a

remittance transfer to be received at a location in a foreign country.

(d) Preauthorized remittance transfer means a remittance transfer authorized in advance to recur at substantially regular intervals.

(e)

Remittance transfer

General definition.

(2)

Exclusions from coverage.

(i)

Small value transactions.

(ii)

Securities and commodities transfers.

(f)

Remittance transfer provider

General definition.

(2)

Normal course of business

Safe harbor.

(A) Provided 500 or fewer remittance transfers in the previous calendar year; and

(B) Provides 500 or fewer remittance transfers in the current calendar year.

(ii)

Transition periodcoming into compliance.

(iii)

Transition periodqualifying for the safe harbor.

(g) Sender means a consumer in a State who primarily for personal, family, or household purposes requests a remittance transfer provider to send a remittance transfer to a designated recipient.

(h)

Third-party fees.

(2) Non-covered third-party fees. The term non-covered third-party fees means any fees imposed by the designated recipient's institution for receiving a remittance transfer into an account except if the institution acts as an agent of the remittance transfer provider.

[77 FR 6285, Feb. 7, 2012, as amended at 77 FR 50282, Aug. 20, 2012; 78 FR 30703, May 22, 2013; 85 FR 34904, June 5, 2020]

§ 1005.31

Disclosures.

(a)

General form of disclosures

Clear and conspicuous.

(2)

Written and electronic disclosures.

(3)

Disclosures for oral telephone transactions.

(i) The transaction is conducted orally and entirely by telephone;

(ii) The remittance transfer provider complies with the requirements of paragraph (g)(2) of this section;

(iii) The provider discloses orally a statement about the rights of the sender regarding cancellation required by paragraph (b)(2)(iv) of this section pursuant to the timing requirements in paragraph (e)(1) of this section; and

(iv) The provider discloses orally, as each is applicable, the information required by paragraph (b)(2)(vii) of this section and the information required by § 1005.36(d)(1)(i)(A), with respect to transfers subject to § 1005.36(d)(2)(ii), pursuant to the timing requirements in paragraph (e)(1) of this section.

(4)

Oral disclosures for certain error resolution notices.

(i) The remittance transfer provider determines that an error occurred as described by the sender;
and

(ii) The remittance transfer provider complies with the requirements of paragraph (g)(2) of this section.

(5)

Disclosures for mobile application or text message transactions.

(i) The transaction is conducted entirely by telephone via mobile application or text message;

(ii) The remittance transfer provider complies with the requirements of paragraph (g)(2) of this section;

(iii) The provider discloses orally or via mobile application or text message a statement about the rights of the sender regarding cancellation required by paragraph (b)(2)(iv) of this section pursuant to the timing requirements in paragraph (e)(1) of this section; and

(iv) The provider discloses orally or via mobile application or text message, as each is applicable, the information required by paragraph (b)(2)(vii) of this section and the information required by § 1005.36(d)(1)(i)(A), with respect to transfers subject to § 1005.36(d)(2)(ii), pursuant to the timing requirements in paragraph (e)(1) of this section.

(b)

Disclosure requirements

Pre-payment disclosure.

(i) The amount that will be transferred to the designated recipient, in the currency in which the remittance transfer is funded, using the term Transfer Amount or a substantially similar term;

(ii) Any fees imposed and any taxes collected on the remittance transfer by the provider, in the currency in which the remittance transfer is funded, using the terms Transfer Fees for fees and Transfer Taxes for taxes, or substantially similar terms;

(iii) The total amount of the transaction, which is the sum of paragraphs (b)(1)(i) and (ii) of this section, in the currency in which the remittance transfer is funded, using the term Total or a substantially similar term;

(iv) The exchange rate used by the provider for the remittance transfer, rounded consistently for each currency to no fewer than two decimal places and no more than four decimal places, using the term Exchange Rate or a substantially similar term;

(v) The amount in paragraph (b)(1)(i) of this section, in the currency in which the funds will be received by the designated recipient, but only if covered third-party fees are imposed under paragraph (b)(1)(vi) of this section, using the term Transfer Amount or a substantially similar term.

The exchange rate used to calculate this amount is the exchange rate in paragraph (b)(1)(iv) of this section, including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate;

(vi) Any covered third-party fees, in the currency in which the funds will be received by the designated recipient, using the term Other Fees, or a substantially similar term. The exchange rate used to calculate any covered third-party fees is the exchange rate in paragraph (b)(1)(iv) of this section, including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate;

(vii) The amount that will be received by the designated recipient, in the currency in which the funds will be received, using the term Total to Recipient or a substantially similar term except that this amount shall not include non-covered third party fees or taxes collected on the remittance transfer by a person other than the provider regardless of whether such fees or taxes are disclosed pursuant to paragraph (b)(1)(viii) of this section. The exchange rate used to calculate this amount is the exchange rate in paragraph (b)(1)(iv) of this section, including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate.

(viii) A statement indicating that non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider may apply to the remittance transfer and result in the

designated recipient receiving less than the amount disclosed pursuant to paragraph (b)(1)(vii) of this section. A provider may only include this statement to the extent that such fees or taxes do or may apply to the transfer, using the language set forth in Model Forms A-30(a) through (c) of Appendix A to this part, as appropriate, or substantially similar language. In this statement, a provider also may, but is not required, to disclose any applicable non-covered third-party fees or taxes collected by a person other than the provider. Any such figure must be disclosed in the currency in which the funds will be received, using the language set forth in Model Forms A-30(b) through (d) of Appendix A to this part, as appropriate, or substantially similar language. The exchange rate used to calculate any disclosed non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider is the exchange rate in paragraph (b)(1)(iv) of this section, including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate;

(2)

Receipt.

(i) The disclosures described in paragraphs (b)(1)(i) through (viii) of this section;

(ii) The date in the foreign country on which funds will be available to the designated recipient, using the term Date Available or a substantially similar term. A provider may provide a statement that funds may be available to the designated recipient earlier than the date disclosed, using the term may be available sooner or a substantially similar term;

(iii) The name and, if provided by the sender, the telephone number and/or address of the designated recipient, using the term Recipient or a substantially similar term;

(iv) A statement about the rights of the sender regarding the resolution of errors and cancellation, using language set forth in Model Form A-37 of Appendix A to this part or substantially similar language. For any remittance transfer scheduled by the sender at least three business days before the date of the transfer, the statement about the rights of the sender regarding cancellation must instead reflect the requirements of § 1005.36(c);

- (v) The name, telephone number(s), and Web site of the remittance transfer provider;
- (vi) A statement that the sender can contact the State agency that licenses or charters the remittance transfer provider with respect to the remittance transfer and the Consumer Financial Protection Bureau for questions or complaints about the remittance transfer provider, using language set forth in Model Form A-37 of Appendix A to this part or substantially similar language. The disclosure must provide the name, telephone number(s), and Web site of the State agency that licenses or charters the remittance transfer provider with respect to the remittance transfer and the name, toll-free telephone number(s), and Web site of the Consumer Financial Protection Bureau; and
- (vii) For any remittance transfer scheduled by the sender at least three business days before the date of the transfer, or the first transfer in a series of preauthorized remittance transfers, the date the remittance transfer provider will make or made the remittance transfer, using the term Transfer Date, or a substantially similar term.

(3)

Combined disclosure

In general.

(ii)

Transfers scheduled before the date of transfer.

(4)

Long form error resolution and cancellation notice.

(c)

Specific format requirements

Grouping.

(2)

Proximity.

(3)

Prominence and size.

(4)

Segregation.

(d)

Estimates.

(e)

Timing.

(2) Except as provided in § 1005.36(a), a receipt required by paragraph (b)(2) of this section generally must be provided to the sender when payment is made for the remittance transfer. If a transaction is conducted entirely by telephone, a receipt required by paragraph (b)(2) of this section may be mailed or delivered to the sender no later than one business day after the date on which payment is made for the remittance transfer. If a transaction is conducted entirely by telephone and involves the transfer of funds from the sender's account held by the provider, the receipt required by paragraph (b)(2) of this section may be provided on or with the next regularly scheduled periodic statement for that account or within 30 days after payment is made for the remittance transfer if a periodic statement is not provided. The statement about the rights of the sender regarding cancellation required by paragraph (b)(2)(iv) of this section may, but need not, be disclosed pursuant to the timing requirements of this paragraph if a provider discloses this information pursuant to paragraphs (a)(3)(iii) or (a)(5)(iii) of this section.

(f)

Accurate when payment is made.

(g)

Foreign language disclosures

General.

(i) Each of the foreign languages principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services, either orally, in writing, or electronically, at the office in

which a sender conducts a transaction or asserts an error; or

(ii) The foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction (or for written or electronic disclosures made pursuant to § 1005.33, in the foreign language primarily used by the sender with the remittance transfer provider to assert the error), provided that such foreign language is principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services, either orally, in writing, or electronically, at the office in which a sender conducts a transaction or asserts an error, respectively.

(2)

Oral, mobile application, or text message disclosures.

[77 FR 6285, Feb. 7, 2012, as amended at 77 FR 50282, Aug. 20, 2012; 77 FR 30703, May 22, 2013]

§ 1005.32

Estimates.

(a)

Temporary exception for insured institutions

General.

(i) A remittance transfer provider cannot determine the exact amounts for reasons beyond its control;

(ii) A remittance transfer provider is an insured institution; and

(iii) The remittance transfer is sent from the sender's account with the institution; provided however, for the purposes of this paragraph, a sender's account does not include a prepaid account, unless the prepaid account is a payroll card account or a government benefit account.

(2)

Sunset date.

(3)

Insured institution.

(b)

Permanent exceptions

Permanent exception for transfers to certain countries

General.

(A) The laws of the recipient country do not permit such a determination, or

(B) The method by which transactions are made in the recipient country does not permit such determination.

(ii)

Safe harbor.

(2)

Permanent exception for transfers scheduled before the date of transfer.

(ii) Covered third-party fees described in § 1005.31(b)(1)(vi) may be estimated under paragraph (b)(2)(i) of this section only if the exchange rate is also estimated under paragraph (b)(2)(i) of this section and the estimated exchange rate affects the amount of such fees.

(iii) Fees and taxes described in § 1005.31(b)(1)(ii) may be estimated under paragraph (b)(2)(i) of this section only if the amount that will be transferred in the currency in which it is funded is also estimated under paragraph (b)(2)(i) of this section, and the estimated amount affects the amount of such fees and taxes.

(3)

Permanent exception for optional disclosure of non-covered third-party fees and taxes collected by a person other than the provider.

(4)

Permanent exception for estimation of the exchange rate by an insured institution.

(A) The remittance transfer provider is an insured institution as defined in paragraph (a)(3) of this section;

(B) At the time the insured institution must provide, as applicable, the disclosure required by §

1005.31(b)(1) through (3) or § 1005.36(a)(1) or (2), the insured institution cannot determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) for that remittance transfer;

(C) The insured institution made 1,000 or fewer remittance transfers in the prior calendar year to the particular country for which the designated recipients of those transfers received funds in the country's local currency; and

(D) The remittance transfer is sent from the sender's account with the insured institution; provided however, for the purposes of this paragraph, a sender's account does not include a prepaid account, unless the prepaid account is a payroll card account or a government benefit account.

(ii) The disclosures in § 1005.31(b)(1)(v) through (vii) may be estimated under paragraph (b)(4)(i) of this section only if the exchange rate is permitted to be estimated under paragraph (b)(4)(i) of this section and the estimated exchange rate affects the amount of such disclosures.

(5)

Permanent exception for estimation of covered third-party fees by an insured institution.

(A) The remittance transfer provider is an insured institution as defined in paragraph (a)(3) of this section;

(B) At the time the insured institution must provide, as applicable, the disclosure required by § 1005.31(b)(1) through (3) or § 1005.36(a)(1) or (2), the insured institution cannot determine the exact covered third-party fees required to be disclosed under § 1005.31(b)(1)(vi) for that remittance transfer;

(C) The insured institution made 500 or fewer remittance transfers in the prior calendar year to that designated recipient's institution, or a United States Federal statute or regulation prohibits the insured institution from being able to determine the exact covered third-party fees required to be disclosed under § 1005.31(b)(1)(vi) for that remittance transfer; and

(D) The remittance transfer is sent from the sender's account with the insured institution; provided however, for the purposes of this paragraph, a sender's account does not include a prepaid account, unless the prepaid account is a payroll card account or a government benefit account.

(ii) The disclosure in § 1005.31(b)(1)(vii) may be estimated under paragraph (b)(5)(i) of this section only if covered third-party fees are permitted to be estimated under paragraph (b)(5)(i) of this section and the estimated covered third-party fees affect the amount of such disclosure.

(c)

Bases for estimates generally.

(1)

Exchange rate.

(i) For remittance transfers sent via international ACH that qualify for the exception in paragraph (b)(1)(ii) of this section, the most recent exchange rate set by the recipient country's central bank or other governmental authority and reported by a Federal Reserve Bank;

(ii) The most recent publicly available wholesale exchange rate and, if applicable, any spread that the remittance transfer provider or its correspondent typically applies to such a wholesale rate for remittance transfers for that currency; or

(iii) The most recent exchange rate offered or used by the person making funds available directly to the designated recipient or by the person setting the exchange rate.

(2)

Transfer amount in the currency in which the funds will be received by the designated recipient.

(3)

Covered third-party fees

Imposed as percentage of amount transferred.

(ii)

Imposed by the intermediary or final institution.

(A) The remittance transfer provider's most recent remittance transfer

(B) A representative transmittal route identified by the remittance transfer provider.

(4)

Amount of currency that will be received by the designated recipient.

(d)

Bases for estimates for transfers scheduled before the date of transfer.

[77 FR 6285, Feb. 7, 2012, as amended at 77 FR 50283, Aug. 20, 2012; 78 FR 30704, May 22, 2013; 79 FR 55991, Sept. 18, 2014; 81 FR 84338, Nov. 22, 2016; 85 FR 34904, June 5, 2020]

§ 1005.33

Procedures for resolving errors.

(a)

Definition of error

Types of transfers or inquiries covered.

error

(i) An incorrect amount paid by a sender in connection with a remittance transfer unless the disclosure stated an estimate of the amount paid by a sender in accordance with § 1005.32(b)(2) and the difference results from application of the actual exchange rate, fees, and taxes, rather than any estimated amount;

(ii) A computational or bookkeeping error made by the remittance transfer provider relating to a remittance transfer;

(iii) The failure to make available to a designated recipient the amount of currency disclosed pursuant to § 1005.31(b)(1)(vii) and stated in the disclosure provided to the sender under § 1005.31(b)(2) or (3) for the remittance transfer, unless:

(A) The disclosure stated an estimate of the amount to be received in accordance with § 1005.32(a) or (b)(1), (2), (4), or (5) and the difference results from application of the actual exchange rate, fees, and taxes, rather than any estimated amounts; or

(B) The failure resulted from extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated; or

(C) The difference results from the application of non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider and the provider provided the disclosure

required by § 1005.31(b)(1)(viii).

(iv) The failure to make funds available to a designated recipient by the date of availability stated in the disclosure provided to the sender under § 1005.31(b)(2) or (3) for the remittance transfer, unless the failure to make the funds available resulted from:

(A) Extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated;

(B) Delays related to a necessary investigation or other special action by the remittance transfer provider or a third party as required by the provider's fraud screening procedures or in accordance with the Bank Secrecy Act, 31 U.S.C. 5311

et seq.,

(C) The remittance transfer being made with fraudulent intent by the sender or any person acting in concert with the sender; or

(D) The sender having provided the remittance transfer provider an incorrect account number or recipient institution identifier for the designated recipient's account or institution, provided that the remittance transfer provider meets the conditions set forth in paragraph (h) of this section;

(v) The sender's request for documentation required by § 1005.31 or for additional information or clarification concerning a remittance transfer, including a request a sender makes to determine whether an error exists under paragraphs (a)(1)(i) through (iv) of this section.

(2)

Types of transfers or inquiries not covered.

error

(i) An inquiry about the status of a remittance transfer, except where the funds from the transfer were not made available to a designated recipient by the disclosed date of availability as described in paragraph (a)(1)(iv) of this section;

(ii) A request for information for tax or other recordkeeping purposes;

(iii) A change requested by the designated recipient; or

(iv) A change in the amount or type of currency received by the designated recipient from the amount or type of currency stated in the disclosure provided to the sender under § 1005.31(b)(2) or (3) if the remittance transfer provider relied on information provided by the sender as permitted under § 1005.31 in making such disclosure.

(b)

Notice of error from sender

Timing; contents.

(i) Is received by the remittance transfer provider no later than 180 days after the disclosed date of availability of the remittance transfer;

(ii) Enables the provider to identify:

(A) The sender's name and telephone number or address;

(B) The recipient's name, and if known, the telephone number or address of the recipient; and

(C) The remittance transfer to which the notice of error applies; and

(iii) Indicates why the sender believes an error exists and includes to the extent possible the type, date, and amount of the error, except for requests for documentation, additional information, or clarification described in paragraph (a)(1)(v) of this section.

(2)

Request for documentation or clarification.

(c)

Time limits and extent of investigation

Time limits for investigation and report to consumer of error.

(2)

Remedies.

(i) In the case of any error under paragraphs (a)(1)(i) through (iii) of this section, as applicable, either:

(A) Refunding to the sender the amount of funds provided by the sender in connection with a

remittance transfer which was not properly transmitted, or the amount appropriate to resolve the error; or

(B) Making available to the designated recipient, without additional cost to the sender or to the designated recipient, the amount appropriate to resolve the error;

(ii) Except as provided in paragraph (c)(2)(iii) of this section, in the case of

(A) As applicable, either:

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1

(

2

(B) Refunding to the sender any fees imposed and, to the extent not prohibited by law, taxes collected on the remittance transfer;

(iii) In the case of an error under paragraph (a)(1)(iv) of this section that occurred because the sender provided incorrect or insufficient information in connection with the remittance transfer, the remittance transfer provider shall provide the remedies required by paragraphs (c)(2)(ii)(A)(

1

(iv) In the case of a request under paragraph (a)(1)(v) of this section, providing the requested documentation, information, or clarification.

(d)

Procedures if remittance transfer provider determines no error or different error occurred.

(1)

Explanation of results of investigation.

(2)

Copies of documentation.

(e)

Reassertion of error.

(f)

Relation to other laws

Relation to Regulation E § 1005.11 for incorrect EFTs from a sender's account.

(2)

Relation to Truth in Lending Act and Regulation Z.

(3)

Unauthorized remittance transfers.

(g)

Error resolution standards and recordkeeping requirements

Compliance program.

(2)

Retention of error-related documentation.

(h)

Incorrect account number or recipient institution identifier provided by the sender.

(1) The remittance transfer provider can demonstrate that the sender provided an incorrect account number or recipient institution identifier to the provider in connection with the remittance transfer;

(2) For any instance in which the sender provided the incorrect recipient institution identifier, prior to or when sending the transfer, the provider used reasonably available means to verify that the recipient institution identifier provided by the sender corresponded to the recipient institution name provided by the sender;

(3) The provider provided notice to the sender before the sender made payment for the remittance transfer that, in the event the sender provided an incorrect account number or recipient institution identifier, the sender could lose the transfer amount. For purposes of providing this disclosure, § 1005.31(a)(2) applies to this notice unless the notice is given at the same time as other disclosures required by this subpart for which information is permitted to be disclosed orally or via mobile application or text message, in which case this disclosure may be given in the same medium as

those other disclosures;

(4) The incorrect account number or recipient institution identifier resulted in the deposit of the remittance transfer into a customer's account that is not the designated recipient's account; and

(5) The provider promptly used reasonable efforts to recover the amount that was to be received by the designated recipient.

[77 FR 6285, Feb. 7, 2012, as amended at 77 FR 50284, Aug. 20, 2012; 78 FR 30704, May 22, 2013; 78 FR 49366, Aug. 14, 2013; 79 FR 55991, Sept. 18, 2014; 85 FR 34904, June 5, 2020]

§ 1005.34

Procedures for cancellation and refund of remittance transfers.

(a)

Sender right of cancellation and refund.

(1) The request to cancel enables the provider to identify the sender's name and address or telephone number and the particular transfer to be cancelled; and

(2) The transferred funds have not been picked up by the designated recipient or deposited into an account of the designated recipient.

(b)

Time limits and refund requirements.

§ 1005.35

Acts of agents.

A remittance transfer provider is liable for any violation of this subpart by an agent when such agent acts for the provider.

§ 1005.36

Transfers scheduled before the date of transfer.

(a)

Timing.

(i) Provide either the pre-payment disclosure described in § 1005.31(b)(1) and the receipt described

in § 1005.31(b)(2) or the combined disclosure described in § 1005.31(b)(3), in accordance with the timing requirements set forth in § 1005.31(e); and

(ii) If any of the disclosures provided pursuant to paragraph (a)(1)(i) of this section contain estimates as permitted by § 1005.32(b)(2), mail or deliver to the sender an additional receipt meeting the requirements described in § 1005.31(b)(2) no later than one business day after the date of the transfer. If the transfer involves the transfer of funds from the sender's account held by the provider, the receipt required by this paragraph may be provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided.

(2) For each subsequent preauthorized remittance transfer:

(i) If any of the information on the most recent receipt provided pursuant to paragraph (a)(1)(i) of this section, or by this paragraph (a)(2)(i), other than the temporal disclosures required by § 1005.31(b)(2)(ii) and (b)(2)(vii), is no longer accurate with respect to a subsequent preauthorized remittance transfer for reasons other than as permitted by § 1005.32, then the remittance transfer provider must provide an updated receipt meeting the requirements described in § 1005.31(b)(2) to the sender. The provider must mail or deliver this receipt to the sender within a reasonable time prior to the scheduled date of the next subsequent preauthorized remittance transfer. Such receipt must clearly and conspicuously indicate that it contains updated disclosures.

(ii) Unless a receipt was provided in accordance with paragraph (a)(2)(i) of this section that contained no estimates pursuant to § 1005.32, the remittance transfer provider must mail or deliver to the sender a receipt meeting the requirements described in § 1005.31(b)(2) no later than one business day after the date of the transfer. If the remittance transfer involves the transfer of funds from the sender's account held by the provider, the receipt required by this paragraph may be provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided.

(iii) A remittance transfer provider must provide the disclosures required by paragraph (d) of this section in accordance with the timing requirements of that section.

(b)

Accuracy.

(2) For each subsequent preauthorized remittance transfer, the most recent receipt provided pursuant to paragraph (a)(1)(i) or (a)(2)(i) of this section must be accurate as of when such transfer is made, except:

(i) The temporal elements required by § 1005.31(b)(2)(ii) and (b)(2)(vii) must be accurate only if the transfer is the first transfer to occur after the disclosure was provided; and

(ii) To the extent estimates are permitted by § 1005.32.

(3) Disclosures provided pursuant to paragraph (a)(1)(ii) or (a)(2)(ii) of this section must be accurate as of when the remittance transfer to which it pertains is made, except to the extent estimates are permitted by § 1005.32(a) or (b)(1), (4), or (5).

(c)

Cancellation.

(1) Enables the provider to identify the sender's name and address or telephone number and the particular transfer to be cancelled; and

(2) Is received by the provider at least three business days before the scheduled date of the remittance transfer.

(d)

Additional requirements for subsequent preauthorized remittance transfers

Disclosure requirement.

(A) The date the provider will make the subsequent transfer, using the term Future Transfer Date, or a substantially similar term;

(B) A statement about the rights of the sender regarding cancellation as described in § 1005.31(b)(2)(iv); and

(C) The name, telephone number(s), and Web site of the remittance transfer provider.

(ii) If the future date or dates of transfer are described as occurring in regular periodic intervals,

e.g.,

(2)

Notice requirements.

(ii) For any subsequent preauthorized remittance transfer for which the date of transfer is four or fewer business days after the date payment is made for that transfer, the information required by paragraph (d)(1) of this section must be provided on or with the receipt described in § 1005.31(b)(2), or disclosed as permitted by § 1005.31(a)(3) or (a)(5), for the initial transfer in that series in accordance with paragraph (a)(1)(i) of this section.

(3)

Specific format requirement.

(4)

Accuracy.

[76 FR 81023, Dec. 27, 2011, as amended at 77 FR 50284, Aug. 20, 2012; 85 FR 34904, June 5, 2020]

Pt. 1005, App. A

Appendix A to Part 1005 Model Disclosure Clauses and Forms

A-1 Model Clauses for Unsolicited Issuance (§ 1005.5(b)(2))

A-2 Model Clauses for Initial Disclosures (§ 1005.7(b))

A-3 Model Forms for Error Resolution Notice (§§ 1005.7(b)(10) and 1005.8(b))

A-4 Model Form for Service-Providing Institutions (§ 1005.14(b)(1)(ii))

A-5 Model Clauses for Government Agencies (§ 1005.15(e)(1) and (2))

A-6 Model Clauses for Authorizing One-Time Electronic Fund Transfers Using Information From a Check (§ 1005.3(b)(2))

A-7 Model Clauses for Financial Institutions Offering Prepaid Accounts (§ 1005.18(d) and (e)(3))

A-8 Model Clause for Electronic Collection of Returned Item Fees (§ 1005.3(b)(3))

A-9 Model Consent Form for Overdraft Services (§ 1005.17)

A-10(a)Model Form for Short Form Disclosures for Government Benefit Accounts (§§ 1005.15(c) and 1005.18(b)(2), (3), (6), and (7))

A-10(b)Model Form for Short Form Disclosures for Payroll Card Accounts (§ 1005.18(b)(2), (3), (6), and (7))

A-10(c)Model Form for Short Form Disclosures for Prepaid Accounts, Example 1 (§ 1005.18(b)(2), (3), (6), and (7))

A-10(d)Model Form for Short Form Disclosures for Prepaid Accounts, Example 2 (§ 1005.18(b)(2), (3), (6), and (7))

A-10(e)Model Form for Short Form Disclosures for Prepaid Accounts with Multiple Service Plans (§ 1005.18(b)(2), (3), (6), and (7))

A-10(f)Sample Form for Long Form Disclosures for Prepaid Accounts (§ 1005.18(b)(4), (6), and (7))

A-11 through A-30 [Reserved]

A-30(a)Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency including a disclaimer where non-covered third-party fees and foreign taxes may apply (§ 1005.31(b)(1))

A-30(b) Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency including a disclaimer with estimate for non-covered third-party fees (§ 1005.31(b)(1) and § 1005.32(b)(3))

A-30(c)Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency including a disclaimer with estimate for foreign taxes (§ 1005.31(b)(1) and § 1005.32(b)(3))

A-30(d)Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency, including a disclaimer with estimates for non-covered third-party fees and foreign taxes (§ 1005.31(b)(1) and § 1005.32(b)(3))

A-31Model Form for Receipts for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(2))

A-32Model Form for Combined Disclosures for Remittance Transfers Exchanged into Local

Currency (§ 1005.31(b)(3))

A-34 Model Form for Receipts for Dollar-to-Dollar Remittance Transfers (§ 1005.31(b)(2))

A-35 Model Form for Combined Disclosures for Dollar-to-Dollar Remittance Transfers (§ 1005.31(b)(3))

A-36 Model Form for Error Resolution and Cancellation Disclosures (Long) (§ 1005.31(b)(4))

A-37 Model Form for Error Resolution and Cancellation Disclosures (Short) (§ 1005.31(b)(2)(iv) and (b)(2)(vi))

A-39 Model Form for Receipts for Remittance Transfers Exchanged into Local Currency Spanish (§ 1005.31(b)(2))

A-40 Model Form for Combined Disclosures for Remittance Transfers Exchanged into Local Currency Spanish (§ 1005.31(b)(3))

A-41 Model Form for Error Resolution and Cancellation Disclosures (Long) Spanish (§ 1005.31(b)(4))

A-1 Model Clauses for Unsolicited Issuance (§ 1005.5(

b

(a)

Accounts using cards.

[Financial institution may add validation instructions here.]

(b)

Accounts using codes.

[Financial institution may add validation instructions here.]

A-2 Model Clauses for Initial Disclosures (§ 1005.7(

b

(a)

Consumer Liability (§ 1005.7(b)(1)).

(Tell us AT ONCE if you believe your [card] [code] has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission using information from your check.

Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days after you learn of the loss or theft of your [card] [code], you can lose no more than \$50 if someone used your [card][code] without your permission.)

If you do NOT tell us within 2 business days after you learn of the loss or theft of your [card] [code], and we can prove we could have stopped someone from using your [card] [code] without your permission if you had told us, you could lose as much as \$500.

Also, if your statement shows transfers that you did not make, including those made by card, code or other means, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not

(b)

Contact in event of unauthorized transfer (§ 1005.7(b)(2)).

You should also call the number or write to the address listed above if you believe a transfer has been made using the information from your check without your permission.

(c)

Business days (§ 1005.7(b)(3)).

(d)

Transfer types and limitations (§ 1005.7(b)(4))

Account access.

(i) Withdraw cash from your [checking] [or] [savings] account.

(ii) Make deposits to your [checking] [or] [savings] account.

(iii) Transfer funds between your checking and savings accounts whenever you request.

(iv) Pay for purchases at places that have agreed to accept the [card] [code].

(v) Pay bills directly [by telephone] from your [checking] [or] [savings] account in the amounts and on the days you request.

Some of these services may not be available at all terminals.

(2)

Electronic check conversion.

(i) Pay for purchases.

(ii) Pay bills.

(3)

Limitations on frequency of transfers.

e.g.,

e.g.,

(ii) You can use your telephone bill-payment service to pay [insert number] bills each [insert time period] [telephone call].

(iii) You can use our point-of-sale transfer service for [insert number] transactions each [insert time period].

(iv) For security reasons, there are limits on the number of transfers you can make using our [terminals] [telephone bill-payment service] [point-of-sale transfer service].

(4)

Limitations on dollar amounts of transfers

(ii) You may buy up to [insert dollar amount] worth of goods or services each [insert time period] time you use the [card] [code] in our point-of-sale transfer service.

(e)

Fees (§ 1005.7(b)(5))

Per transfer charge.

(2)

Fixed charge.

(3)

Average or minimum balance charge.

(f)

Confidentiality (§ 1005.7(b)(9)).

(i) Where it is necessary for completing transfers, or

(ii) In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant, or

(iii) In order to comply with government agency or court orders, or

(iv) If you give us your written permission.

(g)

Documentation (§ 1005.7(b)(6))

Terminal transfers.

(2)

Preauthorized credits.

(3)

Periodic statements.

(4)

Passbook account where the only possible electronic fund transfers are preauthorized credits.

(h)

Preauthorized payments (§ 1005.7(b) (6), (7) and (8); § 1005.10(d))

Right to stop payment and procedure for doing so.

Call us at [insert telephone number], or write us at [insert address], in time for us to receive your request 3 business days or more

(2)

Notice of varying amounts.

(3)

Liability for failure to stop payment of preauthorized transfer.

(i)

Financial institution's liability (§ 1005.7(b)(8)).

- (1) If, through no fault of ours, you do not have enough money in your account to make the transfer.
- (2) If the transfer would go over the credit limit on your overdraft line.
- (3) If the automated teller machine where you are making the transfer does not have enough cash.
- (4) If the [terminal] [system] was not working properly and you knew about the breakdown when you started the transfer.
- (5) If circumstances beyond our control (such as fire or flood) prevent the transfer, despite reasonable precautions that we have taken.
- (6) There may be other exceptions stated in our agreement with you.

(j)

ATM fees (§ 1005.7(b)(11)).

A-3Model Forms for Error Resolution Notice (§§ 1005.7(

b

b

(a)

Initial and annual error resolution notice (§§ 1005.7(b)(10) and 1005.8(b)).

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [insert telephone number] Write us at [insert address] [or email us at [insert email address]] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

- (1) Tell us your name and account number (if any).
- (2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- (3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

(b)

Error resolution notice on periodic statements (§ 1005.8(b)).

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [insert telephone number] or Write us at [insert address] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

A-4Model Form for Service-Providing Institutions (§ 1005.14(

b

ii

ALL QUESTIONS ABOUT TRANSACTIONS MADE WITH YOUR (NAME OF CARD) CARD MUST BE DIRECTED TO US (NAME OF SERVICE PROVIDER), AND NOT TO THE BANK OR OTHER FINANCIAL INSTITUTION WHERE YOU HAVE YOUR ACCOUNT. We are responsible for the [name of service] service and for resolving any errors in transactions made with your [name of card] card.

We will not send you a periodic statement listing transactions that you make using your [name of card] card. The transactions will appear only on the statement issued by your bank or other financial institution. SAVE THE RECEIPTS YOU ARE GIVEN WHEN YOU USE YOUR [NAME OF CARD] CARD, AND CHECK THEM AGAINST THE ACCOUNT STATEMENT YOU RECEIVE FROM YOUR BANK OR OTHER FINANCIAL INSTITUTION. If you have any questions about one of these transactions, call or write us at [telephone number and address] [the telephone number and address indicated below].

IF YOUR [NAME OF CARD] CARD IS LOST OR STOLEN, NOTIFY US AT ONCE by calling or writing to us at [telephone number and address].

A-5Model Clauses for Government Agencies (§ 1005.15(e)(1) and (2))

(a) Disclosure by government agencies of information about obtaining account information for government benefit accounts (§ 1005.15(e)(1)(i)).

You may obtain information about the amount of benefits you have remaining by calling [telephone number]. That information is also available [on the receipt you get when you make a transfer with your card at (an ATM) (a POS terminal)] [when you make a balance inquiry at an ATM] [when you make a balance inquiry at specified locations]. This information, along with a 12-month history of account transactions, is also available online at [Internet address].

You also have the right to obtain at least 24 months of written history of account transactions by

calling [telephone number], or by writing to us at [address]. You will not be charged a fee for this information unless you request it more than once per month. [Optional: Or you may request a written history of account transactions by contacting your caseworker.]

(b) Disclosure of error resolution procedures for government agencies that do not provide periodic statements (§ 1005.15(e)(1)(ii) and (e)(2)).

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [telephone number] Write us at [address] [or email us at [email address]] as soon as you can, if you think an error has occurred in your [agency's name for program] account. We must allow you to report an error until 60 days after the earlier of the date you electronically access your account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared. You may request a written history of your transactions at any time by calling us at [telephone number] or writing us at [address] [optional: or by contacting your caseworker]. You will need to tell us:

Your name and [case] [file] number.

Why you believe there is an error, and the dollar amount involved.

Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20

business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

If you need more information about our error resolution procedures, call us at [telephone number][the telephone number shown above].

A-6Model Clauses for Authorizing One-Time Electronic Fund Transfers Using Information From a Check (§ 1005.3(

b

(a) Notice About Electronic Check Conversion.

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

(b) Alternative Notice About Electronic Check Conversion (Optional).

When you provide a check as payment, you authorize us to use information from your check to make a one-time electronic fund

[

Specify other circumstances (at payee's option).

(c) Notice For Providing Additional Information About Electronic Check Conversion.

When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day [you make] [we receive] your payment[, and you will not receive your check back from your financial institution].

A-7Model Clauses for Financial Institutions Offering Prepaid Accounts (§ 1005.18(d) and (e)(3))

(a)

Disclosure by financial institutions of information about obtaining account information for prepaid accounts (§ 1005.18(d)(1)(i)).

You may obtain information about the amount of money you have remaining in your prepaid account by calling [telephone number]. This information, along with a 12-month history of account transactions, is also available online at [internet address].

[For accounts that are or can be registered:] [If your account is registered with us,] You also have the right to obtain at least 24 months of written history of account transactions by calling [telephone number], or by writing us at [address]. You will not be charged a fee for this information unless you request it more than once per month.

(b)

Disclosure of error-resolution procedures for financial institutions that do not provide periodic statements (§ 1005.18(d)(1)(ii) and (d)(2)).

In Case of Errors or Questions About Your Prepaid Account Telephone us at [telephone number] or Write us at [address] [or email us at [email address]] as soon as you can, if you think an error has occurred in your prepaid account. We must allow you to report an error until 60 days after the earlier of the date you electronically access your account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared. You may request a written history of your transactions at any time by calling us at [telephone number] or writing us at [address]. You will need to tell us:

Your name and [prepaid account] number.

Why you believe there is an error, and the dollar amount involved.

Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, [and your account is registered with us,] we will credit your account within 10 business days for the amount you think is in error, so that you will have

the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account. [Keep reading to learn more about how to register your card.]

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

If you need more information about our error-resolution procedures, call us at [telephone number] [the telephone number shown above] [or visit [internet address]].

(c)

Warning regarding unverified prepaid accounts (§ 1005.18(e)(3)).

It is important to register your prepaid account as soon as possible. Until you register your account and we verify your identity, we are not required to research or resolve any errors regarding your account. To register your account, go to [internet address] or call us at [telephone number]. We will ask you for identifying information about yourself (including your full name, address, date of birth, and [Social Security Number] [government-issued identification number]), so that we can verify your identity.

A-8Model Clause for Electronic Collection of Returned Item Fees (§ 1005.3(

b

If your payment is returned unpaid, you authorize [us/name of person collecting the fee electronically] to make a one-time electronic fund transfer from your account to collect a fee of [\$_____]. [If your payment is returned unpaid, you authorize [us/name of person collecting the fee electronically] to make a one-time electronic fund transfer from your account to collect a fee. The fee will be determined [by]/[as follows]:

ER27DE11.000

ER22NO16.005

ER22NO16.006

ER22NO16.007

ER22NO16.008

ER22NO16.009

ER22NO16.010

A-11 through A-29 [Reserved]

A-30(a)Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(1))

ER22MY13.242

A-30(b)Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(1))

ER22MY13.243

A-30(c)Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(1))

ER22MY13.244

A-30(d)Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(1))

ER22MY13.245

A-31Model Form for Receipts for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(2))

ER18SE14.015

A-32Model Form for Combined Disclosures for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(3))

ER22MY13.247

ER22MY13.248

A-33Model Form for Pre-Payment Disclosures for Dollar-to-Dollar Remittance Transfers (§ 1005.31(b)(1))

ER22MY13.249

A-34Model Form for Receipts for Dollar-to-Dollar Remittance Transfers (§ 1005.31(b)(2))

ER22MY13.250

A-35Model Form for Combined Disclosures for Dollar-to-Dollar Remittance Transfers (§ 1005.31(b)(3))

ER22MY13.251

A-36Model Form for Error Resolution and Cancellation Disclosures (Long) (§ 1005.31(b)(4))

ER22MY13.252

A-37Model Form for Error Resolution and Cancellation Disclosures (Short)

(§ 1005.31(b)(2)(iv) and (b)(2)(vi))

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at [insert telephone number] or [insert website]. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about [insert name of remittance transfer provider], contact:

State Regulatory Agency, 800-111-2222,

www.stateregulatoryagency.gov

Consumer Financial Protection Bureau, 855-411-2372, 855-729-2372 (TTY/TDD),

www.consumerfinance.gov

A-38Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local CurrencySpanish (§ 1005.31(b)(1))

ER22MY13.254

A-39Model Form for Receipts for Remittance Transfers Exchanged into Local CurrencySpanish (§ 1005.31(b)(2))

ER22MY13.255

ER22MY13.256

A-40Model Form for Combined Disclosures for Remittance Transfers Exchanged into Local CurrencySpanish (§ 1005.31(b)(3))

ER18SE14.016

A-41Model Form for Error Resolution and Cancellation Disclosures (Long)Spanish (§ 1005.31(b)(4))

ER22MY13.258

[76 FR 81023, Dec. 27, 2011, as amended at 77 FR 6290, Feb. 7, 2012; 77 FR 40459, July 10, 2012; 78 FR 30705, May 22, 2013; 79 FR 55991, Sept. 18, 2014; 81 FR 70320, Oct. 12, 2016; 81 FR 84338, Nov. 22, 2016; 83 FR 6419, Feb. 13, 2018]

Appendix B to Part 1005 [Reserved]

Pt. 1005, App. C

Appendix C to Part 1005Issuance of Official Interpretations

Official Interpretations

Interpretations of this part issued by duly authorized officials of the Bureau provide the protection afforded under section 916(d) of the Act. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to this part, which will be amended periodically.

Requests for Issuance of Official Interpretations

A request for an official interpretation shall be in writing and addressed to the Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. The request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

Scope of Interpretations

No interpretations will be issued approving financial institutions' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

[88 FR 16538, Mar. 20, 2023]

Pt. 1005, Supp. I

Supplement I to Part 1005 Official Interpretations

Section 1005.2 Definitions

2(a) Access Device

1.

Examples.

2.

Checks used to capture information.

See

2(b) Account

1.

Consumer asset account.

i. Club accounts, such as vacation clubs. In many cases, however, these accounts are exempt from the regulation under § 1005.3(c)(5) because all electronic transfers to or from the account have been preauthorized by the consumer and involve another account of the consumer at the same institution.

ii. A retail repurchase agreement (repo), which is a loan made to a financial institution by a consumer that is collateralized by government or government-insured securities.

2. Examples of accounts not covered by Regulation E (12 CFR part 1005) include:

i. Profit-sharing and pension accounts established under a trust agreement, which are exempt under § 1005.2(b)(2).

ii. Escrow accounts, such as those established to ensure payment of items such as real estate

taxes, insurance premiums, or completion of repairs or improvements.

iii. Accounts for accumulating funds to purchase U.S. savings bonds.

Paragraph 2(b)(2)

1.

Bona fide trust agreements.

2.

Custodial agreements.

Paragraph 2(b)(3)

Paragraph 2(b)(3)(i)

1.

Debit card includes prepaid card.

2.

Certain employment-related cards not covered as payroll card accounts.

3.

Marketed or labeled as
prepaid.

4.

Issued on a prepaid basis.

5.

Capable of being loaded with funds.

6.

Product acting as a pass-through vehicle for funds.

7.

Not required to be reloadable.

8.

Primary function.

i. An account's primary function is to enable a consumer to conduct transactions with multiple, unaffiliated merchants for goods or services, at automated teller machines, or to conduct person-to-person transfers, even if the account also enables a third party to disburse funds to a consumer. For example, a prepaid account that conveys tax refunds or insurance proceeds to a consumer meets the primary function test if the account can be used,

e.g.,

ii. Whether an account satisfies § 1005.2(b)(3)(i)(D) is determined by reference to the account, not the access device associated with the account. An account satisfies § 1005.2(b)(3)(i)(D) even if the account's access device can be used for other purposes, for example, as a form of identification. Such accounts may include, for example, a prepaid account used to disburse student loan proceeds via a card device that can be used at unaffiliated merchants or to withdraw cash from an automated teller machine, even if that access device also acts as a student identification card.

iii. Where multiple accounts are associated with the same access device, the primary function of each account is determined separately. One or more accounts can satisfy § 1005.2(b)(3)(i)(D) even if other accounts associated with the same access device do not. For example, a student identification card may act as an access device associated with

iv. An account satisfies § 1005.2(b)(3)(i)(D) if its primary function is to provide general transaction capability, even if an individual consumer does not in fact use it to conduct multiple transactions. For example, the fact that a consumer may choose to withdraw the entire account balance at an automated teller machine or transfer it to another account held by the consumer does not change the fact that the account's primary function is to provide general transaction capability.

v. An account whose primary function is other than to conduct transactions with multiple, unaffiliated merchants for goods or services, or at automated teller machines, or to conduct person-to-person transfers, does not satisfy § 1005.2(b)(3)(i)(D). Such accounts may include, for example, a product whose only function is to make a one-time transfer of funds into a separate prepaid account.

Redeemable upon presentation at multiple, unaffiliated merchants.

10.

Person-to-person transfers.

Paragraph 2(b)(3)(ii)

1.

Excluded health care and employee benefit related prepaid products.

2.

Excluded disaster relief funds.

3.

Marketed and labeled as a gift card or gift certificate.

4.

Loyalty, award, or promotional gift cards.

3

3

3

2(d) Business Day

1.

Duration.

2.

Substantially all business functions.

etc.

3.

Short hours.

4.

Telephone line.

2(h) Electronic Terminal

1.

Point-of-sale (POS) payments initiated by telephone.

i. A consumer uses a debit card at a public telephone to pay for the call.

ii. A consumer initiates a transfer by a means analogous in function to a telephone, such as by home banking equipment or a facsimile machine.

2.

POS terminals.

See

3.

Teller-operated terminals.

2(k) Preauthorized Electronic Fund Transfer

1.

Advance authorization.

2(m) Unauthorized Electronic Fund Transfer

1.

Transfer by institution's employee.

2.

Authority.

3.

Access device obtained through robbery or fraud.

4.

Forced initiation.

5.

Reversal of direct deposits.

i. A credit made to the wrong consumer's account;

ii. A duplicate credit made to a consumer's account; or

iii. A credit in the wrong amount (for example, when the amount credited to the consumer's account differs from the amount in the transmittal instructions).

Section 1005.3 Coverage

3(a) General

1.

Accounts covered.

i. The consumer and the financial institution (including an account for which an access device has been issued to the consumer, for example);

ii. The consumer and a third party (for preauthorized debits or credits, for example), when the account-holding institution has received notice of the agreement and the fund transfers have begun.

2.

Automated clearing house (ACH) membership.

3.

Foreign applicability.

3(b) Electronic Fund Transfer

3(b)(1) Definition

1.

Fund transfers covered.

i. A deposit made at an ATM or other electronic terminal (including a deposit in cash or by check) provided a specific agreement exists between the financial institution and the consumer for EFTs to or from the account to which the deposit is made.

ii. A transfer sent via ACH. For example, social security benefits under the U.S. Treasury's direct-deposit program are covered, even if the listing of payees and payment amounts reaches the account-holding institution by means of a computer printout from a correspondent bank.

iii. A preauthorized transfer credited or debited to an account in accordance with instructions contained on magnetic tape, even if the financial institution holding the account sends or receives a

composite check.

iv. A transfer from the consumer's account resulting from a debit-card transaction at a merchant location, even if no electronic terminal is involved at the time of the transaction, if the consumer's asset account is subsequently debited for the amount of the transfer.

v. A transfer via ACH where a consumer has provided a check to enable the merchant or other payee to capture the routing, account, and serial numbers to initiate the transfer, whether the check is blank, partially completed, or fully completed and signed; whether the check is presented at POS or is mailed to a merchant or other payee or lockbox and later converted to an EFT; or whether the check is retained by the consumer, the merchant or other payee, or the payee's financial institution.

vi. A payment made by a bill payer under a bill-payment service available to a consumer via computer or other electronic means, unless the terms of the bill-payment service explicitly state that all payments, or all payments to a particular payee or payees, will be solely by check, draft, or similar paper instrument drawn on the consumer's account, and the payee or payees that will be paid in this manner are identified to the consumer.

2.

Fund transfers not covered.

i. A payment that does not debit or credit a consumer asset account, such as a payroll allotment to a creditor to repay a credit extension (which is deducted from salary).

ii. A payment made in currency by a consumer to another person at an electronic terminal.

iii. A preauthorized check drawn by the financial institution on the consumer's account (such as an interest or other recurring payment to the consumer or another party), even if the check is computer-generated.

iv. Transactions arising from the electronic collection, presentment, or return of checks through the check collection system, such as through transmission of electronic check images.

3(b)(2) Electronic Fund Transfer Using Information From a Check

1.

Notice at POS not furnished due to inadvertent error.

2.

Authorization to process a transaction as an EFT or as a check.

See

3.

Notice for each transfer.

4.

Multiple payments/multiple consumers.

5.

Additional disclosures about ECK transactions at POS.

3(b)(3) Collection of Returned Item Fees via Electronic Fund Transfer

1.

Fees imposed by account-holding institution.

2.

Accounts receivable transactions.

3.

Disclosure of dollar amount of fee for POS transactions.

4.

Third party providing notice.

3(c) Exclusions From Coverage

3(c)(1) Checks

1.

Re-presented checks.

2.

Check used to capture information for a one-time EFT. See

3(c)(2) Check Guarantee or Authorization

1.

Memo posting.

3(c)(3) Wire or Other Similar Transfers

1.

Fedwire and ACH.

2.

Article 4A.

3.

Similar fund transfer systems.

3(c)(4) Securities and Commodities Transfers

1.

Coverage.

2.

Example of exempt transfer.

3.

Examples of nonexempt transfers.

i. A debit card or other access device that accesses a securities or commodities account such as a money market mutual fund and that the consumer uses for purchasing goods or services or for obtaining cash.

ii. A payment of interest or dividends into the consumer's account (for example, from a brokerage firm or from a Federal Reserve Bank for government securities).

3(c)(5) Automatic Transfers by Account-Holding Institution

1.

Automatic transfers exempted.

i. Electronic debits or credits to consumer accounts for check charges, stop-payment charges, non-sufficient funds (NSF) charges, overdraft charges, provisional credits, error adjustments, and

similar items that are initiated automatically on the occurrence of certain events.

ii. Debits to consumer accounts for group insurance available only through the financial institution and payable only by means of an aggregate payment from the institution to the insurer.

iii. EFTs between a thrift institution and its paired commercial bank in the state of Rhode Island, which are deemed under state law to be intra-institutional.

iv. Automatic transfers between a consumer's accounts within the same financial institution, even if the account holders on the two accounts are not identical.

2.

Automatic transfers not exempted.

3(c)(6) Telephone-Initiated Transfers

1.

Written plan or agreement.

i. A hold-harmless agreement on a signature card that protects the institution if the consumer requests a transfer.

ii. A legend on a signature card, periodic statement, or passbook that limits the number of telephone-initiated transfers the consumer can make from a savings account because of reserve requirements under Regulation D of the Board of Governors of the Federal Reserve System (12 CFR part 204).

iii. An agreement permitting the consumer to approve by telephone the rollover of funds at the maturity of an instrument.

2.

Examples of covered transfers.

i. An employee of the financial institution completes the transfer manually (for example, by means of a debit memo or deposit slip).

ii. The consumer is required to make a separate request for each transfer.

iii. The consumer uses the plan infrequently.

iv. The consumer initiates the transfer via a facsimile machine.

v. The consumer initiates the transfer using a financial institution's audio-response or voice-response telephone system.

3(c)(7) Small Institutions

1.

Coverage.

Section 1005.4 General Disclosure Requirements; Jointly Offered Services

4(a) Form of Disclosures

1.

General.

2.

Foreign language disclosures.

Section 1005.5 Issuance of Access Devices

1.

Coverage.

5(a) Solicited Issuance

Paragraph 5(a)(1)

1.

Joint account.

2.

Permissible forms of request.

Paragraph 5(a)(2)

1.

One-for-one rule.

See

2.

Renewal or substitution by a successor institution.

5(b) Unsolicited Issuance

1.

Compliance.

2.

PINs.

3.

Functions of PIN.

4.

Verification of identity.

5.

Additional access devices in a renewal or substitution.

Section 1005.6 Liability of Consumer for Unauthorized Transfers

6(a) Conditions for Liability

1.

Means of identification.

i. Electronic or mechanical confirmation (such as a PIN).

ii. Comparison of the consumer's signature, fingerprint, or photograph.

2.

Multiple users.

6(b) Limitations on Amount of Liability

1.

Application of liability provisions.

2.

Consumer negligence.

3.

Limits on liability.

6(b)(1) Timely Notice Given

1.

\$50 limit applies.

2.

Knowledge of loss or theft of access device.

3.

Two business day rule.

6(b)(2) Timely Notice Not Given

1.

\$500 limit applies.

6(b)(3) Periodic Statement; Timely Notice Not Given

1.

Unlimited liability applies.

2.

Transfers not involving access device.

6(b)(4) Extension of Time Limits

1.

Extenuating circumstances.

6(b)(5) Notice to Financial Institution

1.

Receipt of notice.

2.

Notice by third party.

3.

Content of notice.

Section 1005.7 Initial Disclosures

7(a) Timing of Disclosures

1.

Early disclosures.

2.

Lack of advance notice of a transfer.

3.

Addition of new accounts.

4.

Addition of service in interchange systems.

5.

Disclosures covering all EFT services offered.

7(b) Content of Disclosures

7(b)(1) Liability of Consumer

1.

No liability imposed by financial institution.

2.

Preauthorized transfers.

3.

Additional information.

7(b)(2) Telephone Number and Address

1.

Disclosure of telephone numbers.

i. Reporting the loss or theft of an access device or possible unauthorized transfers;

ii. Inquiring about the receipt of a preauthorized credit;

iii. Stopping payment of a preauthorized debit;

iv. Giving notice of an error.

2.

Location of telephone number.

7(b)(4) Types of Transfers; Limitations

1.

Security limitations.

2.

Restrictions on certain deposit accounts.

3.

Preauthorized transfers.

4.

One-time EFTs initiated using information from a check.

See

7(b)(5) Fees

1.

Disclosure of EFT fees.

But see

2.

Fees also applicable to non-EFT.

3.

Interchange system fees.

See

7(b)(9) Confidentiality

1.

Information provided to third parties.

7(b)(10) Error Resolution

1.

Substantially similar.

2.

Extended time-period for certain transactions.

7(c) Addition of Electronic Fund Transfer Services

1.

Addition of electronic check conversion services.

See

Section 1005.8 Change-in-Terms Notice; Error Resolution Notice

8(a) Change-in-Terms Notice

1.

Form of notice.

2.

Changes not requiring notice.

i. Closing some of an institution's ATMs;

ii. Cancellation of an access device.

3.

Limitations on transfers.

See also

4.

Change in telephone number or address.

See also

8(b) Error Resolution Notice

1.

Change between annual and periodic notice.

2.

Exception for new accounts.

Section 1005.9 Receipts at Electronic Terminals; Periodic Statements

9(a) Receipts at Electronic Terminals

1.

Receipts furnished only on request.

2.

Third party providing receipt.

3.

Inclusion of promotional material.

4.

Transfer not completed.

5.

Receipts not furnished due to inadvertent error.

6.

Multiple transfers.

9(a)(1) Amount

1.

Disclosure of transaction fee.

See

2.

Relationship between § 1005.9(a)(1) and § 1005.16.

i. Section 1005.9(a)(1) requires that if the amount of the transfer as shown on the receipt will include the fee, then the fee must be disclosed either on a sign on or at the terminal, or on the terminal screen. Section 1005.16 requires disclosure both on a sign on or at the terminal (in a prominent and conspicuous location) and on the terminal screen. Section 1005.16 permits disclosure on a paper notice as an alternative to the on-screen disclosure.

ii. The disclosure of the fee on the receipt under § 1005.9(a)(1) cannot be used to comply with the alternative paper disclosure procedure under § 1005.16, if the receipt is provided at the completion of the transaction because, pursuant to the statute, the paper notice must be provided before the consumer is committed to paying the fee.

iii. Section 1005.9(a)(1) applies to any type of electronic terminal as defined in Regulation E (for example, to POS terminals as well as to ATMs), while § 1005.16 applies only to ATMs.

9(a)(2) Date

1.

Calendar date.

9(a)(3) Type

1.

Identifying transfer and account.

2.

Exception.

3.

Access to multiple accounts.

4.

Generic descriptions.

5.

Point-of-sale transactions.

9(a)(5) Terminal Location

1.

Options for identifying terminal.

i. The city, state or foreign country, and the information in § 1005.9(a)(5) (i), (ii), or (iii), or

ii. A number or a code identifying the terminal. If the institution chooses the second option, the code or terminal number identifying the terminal where the transfer is initiated may be given as part of a

transaction code.

2.

Omission of city name.

3.

Omission of a state.

i. All the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in that state, or

ii. All transfers occur at terminals located within 50 miles of the financial institution's main office.

4.

Omission of a city and state.

Paragraph 9(a)(5)(i)

1.

Street address.

Paragraph 9(a)(5)(ii)

1.

Generally accepted name.

Paragraph 9(a)(5)(iii)

1.

Name of owner or operator of terminal.

9(a)(6) Third Party Transfer

1.

Omission of third-party name.

2.

Receipt as proof of payment.

9(b) Periodic Statements

1.

Periodic cycles.

2.

Interim statements.

3.

Inactive accounts.

4.

Statement pickup.

5.

Periodic statements limited to EFT activity.

See

6.

Codes and accompanying documents.

- i. Include copies of terminal receipts to reflect transfers initiated by the consumer at electronic terminals;
- ii. Enclose posting memos, deposit slips, and other documents that, together with the statement, disclose all the required information;
- iii. Use codes for names of third parties or terminal locations and explain the information to which the codes relate on an accompanying document.

9(b)(1) Transaction Information

1.

Information obtained from others.

Paragraph 9(b)(1)(i)

1.

Incorrect deposit amount.

Paragraph 9(b)(1)(iii)

1.

Type of transfer.

Paragraph 9(b)(1)(iv)

1.

Nonproprietary terminal in network.

Paragraph 9(b)(1)(v)

1.

Recurring payments by government agency.

2.

Consumer as third-party payee.

3.

Terminal location/third party.

4.

Account-holding institution as third party.

5.

Consistency in third-party identity.

6.

Third-party identity on deposits at electronic terminal.

9(b)(3) Fees

1.

Disclosure of fees.

2.

Fees in interchange system.

3.

Finance charges.

9(b)(4) Account Balances

1.

Opening and closing balances.

9(b)(5) Address and Telephone Number for Inquiries

1.

Telephone number.

9(b)(6) Telephone Number for Preauthorized Transfers

1.

Telephone number. See

9(c) Exceptions to the Periodic Statement Requirements for Certain Accounts

1.

Transfers between accounts.

9(c)(1) Preauthorized Transfers to Accounts

1.

Accounts that may be accessed only by preauthorized transfers to the account.

2.

Reversal of direct deposits.

See also

9(d) Documentation for Foreign-Initiated Transfers

1.

Foreign-initiated transfers.

Section 1005.10 Preauthorized Transfers

10(a) Preauthorized Transfers to Consumer's Account

10(a)(1) Notice by Financial Institution

1.

Content.

2.

Notice of credit.

3.

Positive notice.

4.

Negative notice.

5.

Telephone notice.

6.

Phone number for passbook accounts.

7.

Telephone line availability.

10(b) Written Authorization for Preauthorized Transfers From Consumer's Account

1.

Preexisting authorizations.

2.

Authorization obtained by third party.

3.

Written authorization for preauthorized transfers.

4.

Use of a confirmation form.

5.

Similarly authenticated.

et seq.,

6.

Requirements of an authorization.

7.

Bona fide error.

10(c) Consumer's Right to Stop Payment

1.

Stop-payment order.

2.

Revocation of authorization.

But see

3.

Alternative procedure for processing a stop-payment request.

10(d) Notice of Transfers Varying in Amount

10(d)(1) Notice

1.

Preexisting authorizations.

10(d)(2) Range

1.

Range.

2.

Transfers to an account of the consumer held at another institution.

10(e) Compulsory Use

10(e)(1) Credit

1.

General rule for loan payments.

2.

Overdraft credit plans not accessible by hybrid prepaid-credit cards.

ii. Credit extended through a negative balance on the asset feature of a prepaid account that meets the conditions of Regulation Z, 12 CFR 1026.61(a)(4), is considered credit extended pursuant to an overdraft credit plan for purposes of § 1005.10(e)(1). Thus, the exception for overdraft credit plans in

§ 1005.10(e)(1) applies to this credit.

3.

Applicability to covered separate credit features accessible by hybrid prepaid-credit cards.

See

ii. Under Regulation Z, 12 CFR 1026.12(d)(1), a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer. Under Regulation Z, 12 CFR 1026.12(d)(3), with respect to covered separate credit features accessible by hybrid prepaid-credit cards as defined in 12 CFR 1026.61, a card issuer generally is not prohibited from periodically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer under a plan that is authorized in writing by the cardholder, so long as the card issuer does not make such deductions to the plan more frequently than once per calendar month. A card issuer is prohibited under Regulation Z, 12 CFR 1026.12(d), from automatically deducting all or part of the cardholder's credit card debt under a covered separate credit feature from a deposit account (such as a prepaid account) held with the card issuer on a daily or weekly basis, or whenever deposits are made to the deposit account. Section 1005.10(e)(1) further restricts the card issuer from requiring payment from a deposit account (such as a prepaid account) of credit card balances of a covered separate credit feature accessible by a hybrid prepaid-credit card by electronic means on a preauthorized, recurring basis.

4.

Incentives.

- i. Mortgages with graduated payments in which a pledged savings account is automatically debited during an initial period to supplement the monthly payments made by the borrower.
- ii. Mortgage plans calling for preauthorized biweekly payments that are debited electronically to the consumer's account and produce a lower total finance charge.

10(e)(2) Employment or Government Benefit

1.

Payroll.

2.

Government benefit.

Section 1005.11 Procedures for Resolving Errors

11(a) Definition of Error

1.

Terminal location.

2.

Verifying an account debit or credit.

3.

Loss or theft of access device.

4.

Error asserted after account closed.

5.

Request for documentation or information.

6.

Terminal receipts for transfers of \$15 or less.

11(b) Notice of Error From Consumer

11(b)(1) Timing; Contents

1.

Content of error notice.

2.

Investigation pending receipt of information.

3.

Statement held for consumer.

4.

Failure to provide statement.

5.

Discovery of error by institution.

6.

Notice at particular phone number or address.

7.

Effect of late notice.

11(b)(2) Written Confirmation

1.

Written confirmation-of-error notice.

11(c) Time Limits and Extent of Investigation

1.

Notice to consumer.

2.

Written confirmation of oral notice.

3.

Charges for error resolution.

4.

Correction without investigation.

5.

Correction notice.

6.

Correction of an error.

7.

Extent of required investigation.

Paragraph 11(c)(2)(i)

1.

Compliance with all requirements.

11(c)(3) Extension of Time Periods

1.

POS debit card transactions.

11(c)(4) Investigation

1.

Third parties.

2.

Scope of investigation.

3.

POS transfers.

4.

Agreement.

5.

No EFT agreement.

i. The ACH transaction records for the transfer;

ii. The transaction history of the particular account for a reasonable period of time immediately preceding the allegation of error;

iii. Whether the check number of the transaction in question is notably out-of-sequence;

iv. The location of either the transaction or the payee in question relative to the consumer's place of residence and habitual transaction area;

v. Information relative to the account in question within the control of the institution's third-party service providers if the financial institution reasonably believes that it may have records or other

information that could be dispositive; or

vi. Any other information appropriate to resolve the claim.

11(d) Procedures if Financial Institution Determines No Error or Different Error Occurred

1.

Error different from that alleged.

11(d)(1) Written Explanation

1.

Request for documentation.

11(d)(2) Debiting Provisional Credit

1.

Alternative procedure for debiting of credited funds.

2.

Fees for overdrafts.

11(e) Reassertion of Error

1.

Withdrawal of error; right to reassert.

Section 1005.12 Relation to Other Laws

12(a) Relation to Truth in Lending

1.

Issuance rules for access devices other than access devices for prepaid accounts.

2.

Overdraft services.

3.

Issuance of prepaid access devices that can access a covered separate credit feature subject to Regulation Z.

4.

Addition of a covered separate credit feature to an existing access device for a prepaid account.

5.

Determining applicable regulation related to liability and error resolution.

ii. Under § 1005.12(a)(1)(iv)(A), with respect to an account (other than a prepaid account) where credit is extended incident to an electronic fund transfer under an agreement to extend overdraft credit between the consumer and the financial institution, Regulation E's liability limitations and error resolution provisions apply to the transaction, in addition to Regulation Z, 12 CFR 1026.13(d) and (g) (which apply because of the extension of credit associated with the overdraft feature on the asset account).

iii. For transactions involving access devices that also function as credit cards under Regulation Z (12 CFR part 1026), whether Regulation E or Regulation Z applies depends on the nature of the transaction. For example, if the transaction solely involves an extension of credit, and does not access funds in a consumer asset account, such as a checking account or prepaid account, the liability limitations and error resolution requirements of Regulation Z apply. If the transaction accesses funds in an asset account only (with no credit extended), the provisions of Regulation E apply. If the transaction access funds in an asset account but also involves an extension of credit under the overdraft credit feature subject to Regulation Z attached to the account, Regulation E's liability limitations and error resolution provisions apply, in addition to Regulation Z, 12 CFR 1026.13(d) and (g) (which apply because of the extension of credit associated with the overdraft feature on the asset account). If a consumer's access device is also a credit card and the device is used to make unauthorized withdrawals from an asset account, but also is used to obtain unauthorized cash advances directly from a credit feature that is subject to Regulation Z that is separate from the asset account, both Regulation E and Regulation Z apply.

iv. The following examples illustrate these principles:

A. A consumer has a card that can be used either as a credit card or an access device that draws on the consumer's checking account. When used as a credit card, the card does not first access any

funds in the checking account but draws only on a separate credit feature subject to Regulation Z. If the card is stolen and used as a credit card to make purchases or to get cash advances at an ATM from the line of credit, the liability limits and error resolution provisions of Regulation Z apply; Regulation E does not apply.

B. In the same situation, if the card is stolen and is used as an access device to make purchases or to get cash withdrawals at an ATM from the checking account, the liability limits and error resolution provisions of Regulation E apply; Regulation Z does not apply.

C. In the same situation, assume the card is stolen and used both as an access device for the checking account and as a credit card; for example, the thief makes some purchases using the card to access funds in the checking account and other purchases using the card as a credit card. Here, the liability limits and error resolution provisions of Regulation E apply to the unauthorized transactions in which the card was used as an access device for the checking account, and the corresponding provisions of Regulation Z apply to the unauthorized transactions in which the card was used as a credit card.

D. Assume a somewhat different type of card, one that draws on the consumer's checking account and can also draw on an overdraft credit feature subject to Regulation Z attached to the checking account. The overdraft credit feature associated with the card is accessed only when the consumer uses the card to make a purchase (or other transaction) for which there are insufficient or unavailable funds in the checking account. In this situation, if the card is stolen and used to make purchases funded entirely by available funds in the checking account, the liability limits and the error resolution provisions of Regulation E apply. If the use of the card results in an extension of credit that is incident to an electronic fund transfer where the transaction is funded partially by funds in the consumer's asset account and partially by credit extended under the overdraft credit feature, the error resolution provisions of Regulation Z, 12 CFR 1026.13(d) and (g), apply in addition to the Regulation E provisions, but the other liability limit and error resolution provisions of Regulation Z do not. Relatedly, if the use of the card is funded entirely by credit extended under the overdraft credit

feature, the transaction is governed solely by the liability limitations and error resolution requirements of Regulation Z.

See

E. The same principles in comment 12(a)-5.iv.A, B, C, and D apply to an access device for a prepaid account that also is a hybrid prepaid-credit card with respect to a covered separate credit feature under Regulation Z, 12 CFR 1026.61.

See also

12(b) Preemption of Inconsistent State Laws

1.

Specific determinations.

2.

Preemption determinations generally.

3.

Preemption determinationMichigan.

i.

Definition of unauthorized use.

ii.

Consumer liability for unauthorized use of an account.

iii.

Error resolution.

iv.

Receipts and periodic statements.

4.

Preemption determinationTennessee.

i.

Gift certificates, store gift cards, and general-use prepaid cards.

Section 1005.13Administrative Enforcement; Record Retention

13(b) Record Retention

1.

Requirements.

Section 1005.14Electronic Fund Transfer Service Provider Not Holding Consumer's Account

14(a) Electronic Fund Transfer Service Providers Subject to Regulation

1.

Applicability.

2.

ACH agreements.

14(b) Compliance by Electronic Fund Transfer Service Provider

1.

Liability.

14(b)(1) Disclosures and Documentation

1.

Periodic statements from electronic fund transfer service provider.

14(b)(2) Error Resolution

1.

Error resolution.

14(c) Compliance by Account-Holding Institution

14(c)(1) Documentation

1.

Periodic statements from account-holding institution.

Section 1005.15Electronic Fund Transfer of Government Benefits

15(c)Pre-Acquisition Disclosure Requirements

1.

Disclosing the short and long form before acquisition.

i. A government agency informs a consumer that she can receive distribution of benefits via a government benefit account in the form of a prepaid card. The consumer receives the prepaid card and the disclosures required by § 1005.18(b) to review at the time the consumer receives benefits eligibility information from the agency. After receiving the disclosures, the consumer chooses to receive benefits via the government benefit account. These disclosures were provided to

2.

Acquisition and disclosures given during the same appointment.

3.

Form and formatting requirements for government benefit account disclosures.

4.

Disclosure requirements outside the short form disclosure.

15(d) Access to Account Information

1.

Access to account information.

15(e) Modified Disclosure, Limitations on Liability, and Error Resolution Requirements

1.

Modified limitations on liability and error resolution requirements.

15(f) Disclosure of Fees and Other Information

1.

Disclosures on prepaid account access devices.

Section 1005.17 Requirements for Overdraft Services

17(a) Definition

1.

Exempt securities- and commodities-related lines of credit.

17(b) Opt-In Requirement

1.

Scope.

Account-holding institutions.

ii.

Coding of transactions.

iii.

One-time debit card transactions.

iv.

Application of fee prohibition.

2.

No affirmative consent.

3.

Overdraft transactions not required to be authorized or paid.

4.

Reasonable opportunity to provide affirmative consent.

i.

By mail.

ii.

By telephone.

iii.

By electronic means.

iv.

In person.

5.

Implementing opt-in at account-opening.

6.

Affirmative consent required.

7.

Confirmation.

See

8.

Outstanding Negative Balance.

9.

Daily or Sustained Overdraft, Negative Balance, or Similar Fee or Charge

Daily or sustained overdraft, negative balance, or similar fees or charges.

ii.

Examples.

A. Assume that a consumer has a \$50 account balance on March 1. That day, the institution posts a one-time debit card transaction of \$60 and a check transaction of \$40. The institution charges an overdraft fee of \$20 for the check overdraft but cannot assess an overdraft fee for the debit card transaction. At the end of the day, the consumer has an account balance of negative \$70. The consumer does not make any deposits to the account, and no other transactions occur between March 2 and March 6. Because the consumer's negative balance is attributable in part to the \$40 check (and associated overdraft fee), the institution may charge a sustained overdraft fee on March 6 in connection with the check.

B. Same facts as in A., except that on March 3, the consumer deposits \$40 in the account. The institution allocates the \$40 to the debit card transaction first, consistent with its posting order policy. At the end of the day on March 3, the consumer has an account balance of negative \$30, which is attributable to the check transaction (and associated overdraft fee). The consumer does not make any further deposits to the account, and no other transactions occur between March 4 and March 6. Because the remaining negative balance is attributable to the March 1 check transaction, the institution may charge a sustained overdraft fee on March 6 in connection with the check.

C. Assume that a consumer has a \$50 account balance on March 1. That day, the institution posts a one-time debit card transaction of \$60. At the end of that day, the consumer has an account balance of negative \$10. The institution may not assess an overdraft fee for the debit card transaction. On March 3, the institution pays a check transaction of \$100 and charges an overdraft fee of \$20. At the end of that day, the consumer has an account balance of negative \$130. The consumer does not make any deposits to the account, and no other transactions occur between March 4 and March 8. Because the consumer's negative balance is attributable in part to the check, the institution may assess a \$20 sustained overdraft fee. However, because the check was paid on March 3, the institution must use March 3 as the start date for determining the date on which the sustained overdraft fee may be assessed. Thus, the institution may charge a \$20 sustained overdraft fee on March 8.

iii.

Alternative approach.

17(b)(2) Conditioning Payment of Other Overdrafts on Consumer's Affirmative Consent

1.

Application of the same criteria.

2.

No requirement to pay overdrafts on checks, ACH transactions, or other types of transactions.

1.

Variations in terms, conditions, or features.

i. Interest rates paid and fees assessed;

ii. The type of ATM or debit card provided to the consumer. For instance, an institution may not provide consumers who do not opt in a PIN-only card while providing a debit card with both PIN and signature-debit functionality to consumers who opt in;

iii. Minimum balance requirements; or

iv. Account features such as online bill payment services.

2.

Limited-feature bank accounts.

17(c) Timing

1.

Permitted fees or charges.

See also

17(d) Content and Format

1.

Overdraft service.

2.

Maximum fee.

i. Per item or per transaction fees;

ii. Daily overdraft fees;

iii. Sustained overdraft fees, where fees are assessed when the consumer has not repaid the amount of the overdraft after some period of time (for example, if an account remains overdrawn for five or more business days); or

iv. Negative balance fees.

3.

Opt-in methods.

4.

Identification of consumer's account.

See also

5.

Alternative plans for covering overdrafts.

overdraft protection plans,

17(f) Continuing Right To Opt-In or To Revoke the Opt-In

1.

Fees or charges for overdrafts incurred prior to revocation.

17(g) Duration of Opt-In

1.

Termination of overdraft service.

Section 1005.18 Requirements for Financial Institutions Offering Prepaid Accounts

18(a) Coverage

1.

Issuance of access device.

2.

Application to employers and service providers.

18(b) Pre-Acquisition Disclosure Requirements

1.

Written and electronic pre-acquisition disclosures.

et seq.

2.

Currency.

18(b)(1)(i) General

1.

Disclosing the short form and long form before acquisition.

i. For purposes of § 1005.18(b)(1)(i), a consumer acquires a prepaid account by purchasing, opening or choosing to be paid via a prepaid account, as illustrated by the following examples:

A. A consumer inquires about obtaining a prepaid account at a branch location of a bank. A consumer then receives the disclosures required by § 1005.18(b). After receiving the disclosures, a consumer then opens a prepaid account with the bank. This consumer received the short form and long form pre-acquisition in accordance with § 1005.18(b)(1)(i).

B. A consumer learns that he or she can receive wages via a payroll card account, at which time the consumer is provided with a payroll card and the disclosures required by § 1005.18(b) to review. The consumer then chooses to receive wages via a payroll card account. These disclosures were provided pre-acquisition in compliance with § 1005.18(b)(1)(i). By contrast, if a consumer receives the disclosures required by § 1005.18(b) to review at the end of the first pay period, after the consumer received the first payroll payment on the payroll card, these disclosures were provided to a consumer post-acquisition, and thus not provided in compliance with § 1005.18(b)(1)(i).

ii. Section 1005.18(b)(1)(i) permits delivery of the disclosures required by § 1005.18(b) at the time the consumer receives the prepaid account, rather than prior to acquisition, for prepaid accounts that are used for disbursing funds to consumers when the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account. For example, a utility company refunds consumers' initial deposits for its utility services via prepaid accounts delivered to consumers by mail. Neither the utility company nor the financial institution that issues the prepaid accounts offer another means for a consumer to receive that refund other than by accepting the prepaid account. In this case, the financial institution may provide the disclosures required by § 1005.18(b) together with the prepaid account (

e.g.,

2.

Disclosures provided electronically.

i. A financial institution presents the short form disclosure required by § 1005.18(b)(2), together with the information required by § 1005.18(b)(5), and the long form disclosure required by § 1005.18(b)(4) on the same web page. A consumer must view the web page before choosing to accept the prepaid account.

ii. A financial institution presents the short form disclosure required by § 1005.18(b)(2), together with the information required by § 1005.18(b)(5), on a web page. The financial institution includes, after

the short form disclosure or as part of the statement required by § 1005.18(b)(2)(xiii), a link that directs the consumer to a separate web page containing the long form disclosure required by § 1005.18(b)(4). The consumer must view the web page containing the long form disclosure before choosing to accept the prepaid account.

iii. A financial institution presents on a web page the short form disclosure required by § 1005.18(b)(2), together with the information required by § 1005.18(b)(5), followed by the initial disclosures required by § 1005.7(b), which contains the long form disclosure required by § 1005.18(b)(4), in accordance with § 1005.18(f)(1). The financial institution includes, after the short form disclosure or as part of the statement required by § 1005.18(b)(2)(xiii), a link that directs the consumer to the section of the initial disclosures containing the long form disclosure pursuant to § 1005.18(b)(4). A consumer must view this web page before choosing to accept the prepaid account.

18(b)(1)(ii) Disclosures for Prepaid Accounts Acquired in Retail Locations

1.

Retail locations.

2.

Disclosures provided inside prepaid account access device packaging material.

3.

Consumers working in retail locations.

4.

Providing the long form disclosure by telephone and website pursuant to the retail location exception.

18(b)(1)(iii) Disclosures for Prepaid Accounts Acquired Orally by Telephone

1.

Prepaid accounts acquired by telephone.

18(b)(2) Short Form Disclosure Content

1.

Disclosures that are not applicable or are free.

2.

Prohibition on disclosure of finance charges.

See also

18(b)(2)(i) Periodic Fee

1.

Periodic fee variation.

See

18(b)(2)(iii) ATM Withdrawal Fees

1.

International ATM withdrawal fees.

18(b)(2)(iv) Cash Reload Fee

1.

Total of all charges.

2.

Cash deposit fee.

18(b)(2)(v) ATM Balance Inquiry Fees

1.

International ATM balance inquiry fees.

18(b)(2)(vii) Inactivity Fee

1.

Inactivity fee conditions.

18(b)(2)(viii) Statements Regarding Additional Fee Types

18(b)(2)(viii)(A) Statement Regarding Number of Additional Fee Types Charged

1.

Fee types counted in total number of additional fee types.

i.

Fee types excluded from the number of additional fee types.

ii.

Fee types counted in the number of additional fee types.

2.

Examples of fee types and fee variations.

i.

Fee types related to reloads of funds.

A.

Electronic reload.

B.

Check reload.

ii.

Fee types related to withdrawals of funds.

A.

Electronic withdrawal.

B.

Teller withdrawal.

C.

Cash back at POS.

D.

Account closure.

iii.

Fee types related to international transactions.

A.

International ATM withdrawal.

B.

International ATM balance inquiry.

C.

International transaction (excluding ATM withdrawal and balance inquiry).

iv.

Bill payment.

v.

Person-to-person or card-to-card transfer of funds.

vi.

Paper checks.

vii.

Stop payment.

viii.

Fee types related to card services.

A.

Card replacement.

B.

Secondary card.

C.

Personalized card.

ix.

Legal.

3.

Multiple service plans.

2

4.

Consistency in additional fee type categorization.

18(b)(2)(viii)(B) Statement Directing Consumers to Disclosure of Additional Fee Types

1.

Statement clauses.

i. A financial institution that has one additional fee type and discloses that additional fee type pursuant to § 1005.18(b)(2)(ix) might provide the statements required by § 1005.18(b)(2)(viii)(A) and (B) together as: We charge 1 other type of fee. It is:.

ii. A financial institution that has five additional fee types and discloses one of those additional fee types pursuant to § 1005.18(b)(2)(ix) might provide the statements required by § 1005.18(b)(2)(viii)(A) and (B) together as: We charge 5 other types of fees. Here is 1 of them:.

iii. A financial institution that has two additional fee types and discloses both of those fee types pursuant to § 1005.18(b)(2)(ix) might provide the statement required by § 1005.18(b)(2)(viii)(A) and (B) together as: We charge 2 other types of fees. They are:.

18(b)(2)(ix) Disclosure of Additional Fee Types

18(b)(2)(ix)(A) Determination of Which Additional Fee Types To Disclose

1.

Number of fee types to disclose.

1

3

2.

Abbreviations.

3.

Revenue from consumers.

4.

Assessing revenue within and across prepaid account programs to determine disclosure of additional fee types.

i.

Prepaid account programs with different fee schedules.

ii.

Prepaid account programs with identical fee schedules.

iii.

Prepaid account programs with both different fee schedules and identical fee schedules.

iv.

Multiple service plan prepaid account programs.

2

1

2

2

5.

Exclusions.

1

3

i.

Exclusion for fee types required to be disclosed elsewhere.

1

1

1

1

ii.

De minimis exclusion.

2

See

iii.

Exclusion for credit-related fees.

3

2

18(b)(2)(ix)(B) Disclosure of Fewer Than Two Additional Fee Types

1.

Disclosure of one or no additional fee types.

i. A financial institution has a prepaid account program with only one fee type that satisfies the criteria in § 1005.18(b)(2)(ix)(A) and thus, pursuant to § 1005.18(b)(2)(ix)(A), the financial institution must disclose that one fee type. The prepaid account program has three other fee types that generate revenue from consumers, but they do not exceed the de minimis threshold or otherwise satisfy the criteria in § 1005.18(b)(2)(ix)(B). Pursuant to § 1005.18(b)(2)(ix)(B), the financial institution is not required to make any additional disclosure, but it may choose to disclose one of the three fee types that do not meet the criteria in § 1005.18(b)(2)(ix)(A).

ii. A financial institution has a prepaid account program with four fee types that generate revenue from consumers, but none exceeds the de minimis threshold or otherwise satisfy the criteria in § 1005.18(b)(2)(ix)(A). Pursuant to § 1005.18(b)(2)(ix)(B), the financial institution is not required to make any disclosure, but it may choose to disclose one or two of the fee types that do not meet the criteria in § 1005.18(b)(2)(ix)(A).

2.

No disclosure of finance charges as an additional fee type.

18(b)(2)(ix)(C) Fee Variations in Additional Fee Types

1.

Two or more fee variations.

2

i.

Two fee variations with different fee amounts.

ii.

More than two fee variations.

iii.

Two fee variations with like fee amounts.

iv.

Multiple service plans.

2

2.

One fee variation under a particular fee type.

i.e.,

18(b)(2)(ix)(D) Timing of Initial Assessment of Additional Fee Types Disclosure

18(b)(2)(ix)(D)(1) Existing Prepaid Account Programs as of April 1, 2019

1.

24 month period with available data.

1

18(b)(2)(ix)(D)(2) Existing Prepaid Account Programs as of April 1, 2019 With Unavailable Data

1.

24 month period without available data.

2

2

18(b)(2)(ix)(E) Timing of Periodic Reassessment and Update of Additional Fee Types Disclosure

18(b)(2)(ix)(E)(2) Periodic Reassessment

1.

Periodic reassessment and, if applicable, update of additional fee types disclosure.

2

4

2

i.

Reassessment with no change in the additional fee types disclosed.

ii.

Reassessment with a change in the additional fee types disclosed.

4

iii.

Reassessment with the addition of an additional fee type already voluntarily disclosed.

2.

Reassessment more frequently than every 24 months.

2

2

18(b)(2)(ix)(E)(3) Fee Schedule Change

1.

Revised prepaid account programs.

3

2

4

4

18(b)(2)(ix)(E)(4) Update Printing Exception

1.

Application of the update printing exception to prepaid accounts sold in retail locations.

4

2

3

4

4

4

18(b)(2)(x) Statement Regarding Overdraft Credit Features

1.

Short form disclosure when overdraft credit feature may be offered.

18(b)(2)(xi) Statement Regarding Registration and FDIC or NCUA Insurance

1.

Disclosure of FDIC or NCUA insurance.

2.

Consumer identification and verification processes.

18(b)(2)(xiii) Statement Regarding Information on All Fees and Services

1.

Financial institution's telephone number.

2.

Financial institution's website.

18(b)(2)(xiv) Additional Content for Payroll Card Accounts

18(b)(2)(xiv)(A) Statement Regarding Wage or Salary Payment Options

1.

Statement options for payroll card accounts.

2.

Statement options for government benefit accounts.

3.

Statement permitted for other prepaid accounts.

18(b)(2)(xiv)(B) Statement Regarding State-Required Information or Other Fee Discounts and Waivers

1.

Statement options for state-required information or other fee discounts or waivers.

18(b)(3) Short Form Disclosure of Variable Fees and Third-Party Fees and Prohibition on Disclosure of Finance Charges

18(b)(3)(i) General Disclosure of Variable Fees

1.

Short form disclosure of variable fees.

18(b)(3)(ii) Disclosure of Variable Periodic Fee

1.

Periodic fee variation alternative.

18(b)(3)(iii) Single Disclosure for Like Fees

1.

Alternative for two-tier fees in the short form disclosure.

i. A financial institution charges \$1 for both in-network and out-of-network automated teller machine withdrawals in the United States. The financial institution may list the \$1 fee once under the general heading ATM withdrawal required by § 1005.18(b)(2)(iii); in that case, it need not disclose the terms in-network or out-of-network.

ii. A financial institution using the multiple service plan short form disclosure pursuant to § 1005.18(b)(6)(iii)(B)(

2

18(b)(3)(iv) Third-Party Fees in General

1.

General prohibition on disclosure of third-party fees in the short form.

18(b)(3)(v) Third-Party Cash Reload Fees

1.

Updating third-party fees.

18(b)(3)(vi) Prohibition on Disclosure of Finance Charges

1.

No disclosure of finance charges in the short form.

See, e.g.,

18(b)(4) Long Form Disclosure Content

18(b)(4)(ii) Fees

1.

Disclosure of all fees.

2.

Disclosure of conditions.

3.

Disclosure of a service or feature without a charge.

4.

Third-party fees.

18(b)(4)(iii) Statement Regarding Registration and FDIC or NCUA Insurance

1.

Statement regarding registration and FDIC or NCUA insurance, including implications thereof.

i.

Bank disclosure of FDIC insurance.

[fdic.gov/deposit/deposits/prepaid.html](https://www.fdic.gov/deposit/deposits/prepaid.html)

ii.

Credit union disclosure of NCUA insurance.

18(b)(4)(vii) Regulation Z Disclosures for Overdraft Credit Features

1.

Long form Regulation Z disclosure of overdraft credit features.

2.

Updates to the long form for changes to the Regulation Z disclosures.

See

18(b)(5) Disclosure Requirements Outside the Short Form Disclosure

1.

Content of disclosure.

2.

Location of disclosure.

18(b)(6)Form of Pre-Acquisition Disclosures

18(b)(6)(i) General

1.

Written pre-acquisition disclosures.

18(b)(6)(i)(B) Electronic Disclosures

1.

Providing pre-acquisition disclosures electronically.

2.

Disclosures responsive to smaller screens.

3.

Machine-readable text.

18(b)(6)(i)(C) Oral Disclosures

1.

Disclosures for prepaid accounts acquired by telephone.

18(b)(6)(ii)Retainable Form

1.

Retainable disclosures.

18(b)(6)(iii)Tabular Format

18(b)(6)(iii)(B)Multiple Service Plans

18(b)(6)(iii)(B)(1) Short Form Disclosure for Default Service Plan

1.

Disclosure of default service plan excludes short-term or promotional service plans.

1

18(b)(6)(iii)(B)(2) Short Form Disclosure for Multiple Service Plans

1.

Disclosure of multiple service plans.

2

1

See

2

e.g.,

2

18(b)(7) Specific Formatting Requirements for Pre-Acquisition Disclosures

18(b)(7)(i) Grouping

18(b)(7)(i)(B) Long Form Disclosure

1.

Conditions must be in close proximity to fee amount.

2.

Category of function for finance charges.

18(b)(7)(ii) Prominence and Size

1.

Minimum type size.

2.

Point refers to printed disclosures and

pixel refers to electronic disclosures.

18(b)(7)(ii)(A) General

1.

Contrast required between type color and background of disclosures.

18(b)(7)(iii) Segregation

1.

Permitted information outside the short form and long form disclosures.

See also

18(b)(8) Terminology of Pre-Acquisition Disclosures

1.

Consistent terminology.

18(b)(9) Prepaid Accounts Acquired in Foreign Languages

1.

Prepaid accounts acquired in foreign languages.

i.

Examples of situations in which foreign language disclosures are required.

A. The financial institution principally uses a foreign language on the packaging material of a prepaid account sold in a retail location or distributed at a bank or credit union branch, even though a few words appear in English on the packaging.

B. The financial institution principally uses a foreign language in a television advertisement for a prepaid account. That advertisement includes a telephone number a consumer can call to acquire the prepaid account, whether by speaking to a customer service representative or interacting with an interactive voice response (IVR) system.

C. The financial institution principally uses a foreign language in an online advertisement for a prepaid account. That advertisement includes a website URL through which a consumer can acquire the prepaid account.

D. The financial institution principally uses a foreign language on a printed advertisement for a

prepaid account. That advertisement includes a telephone number or a website URL a consumer can call or visit to acquire the prepaid account. The pre-acquisition disclosures must be provided to the consumer in that same foreign language prior to the consumer acquiring the prepaid account.

E. The financial institution does not principally use a foreign language on prepaid account packaging material nor does it principally use a foreign language to advertise, solicit, or market a prepaid account. A consumer calls the financial institution and has the option to proceed with the prepaid account acquisition process in a foreign language, whether by speaking to a customer service representative or interacting with an IVR system. (But see § 1005.18(b)(9)(i)(C), which limits the obligation to provide foreign language disclosures for payroll card accounts and government benefit accounts acquired orally by telephone in certain circumstances.)

F. The financial institution does not principally use a foreign language on prepaid account packaging material nor does it principally use a foreign language to advertise, solicit, or market a prepaid account. A consumer visits the financial institution's website. On that website, the consumer has the option to proceed with the prepaid account acquisition process in a foreign language.

ii.

Examples of situations in which foreign language disclosures are not required.

A. A consumer visits the financial institution's branch location in person and speaks to an employee in a foreign language about acquiring a prepaid account. The consumer proceeds with the acquisition process in that foreign language.

B. The financial institution does not principally use a foreign language on prepaid account packaging material nor does it principally use a foreign language to advertise, solicit, or market a prepaid account. A consumer calls the financial institution's customer service line and speaks to a customer service representative in a foreign language. However, if the customer service representative proceeds with the prepaid account acquisition process over the telephone, the financial institution would be required to provide the pre-acquisition disclosures in that foreign language. (But see § 1005.18(b)(9)(i)(C), which limits the obligation to provide foreign language disclosures for payroll

card accounts and government benefit accounts acquired orally by telephone in certain circumstances.)

C. The financial institution principally uses a foreign language in an advertisement for a prepaid account. That advertisement includes a telephone number a consumer can call to acquire the prepaid account. The consumer calls the telephone number provided on the advertisement and has the option to proceed with the prepaid account acquisition process in English or in a foreign language. The consumer chooses to proceed with the acquisition process in English.

D. A consumer calls a government agency to enroll in a government benefits program. The government agency does not offer through its telephone system an option for consumers to proceed in a foreign language. An employee of the government agency assists the consumer with the enrollment process, including helping the consumer acquire a government benefits account. The employee also happens to speak the foreign language in which the consumer is most comfortable communicating, and chooses to communicate with the consumer in that language to facilitate the enrollment process. In this case, the employee offered language interpretation assistance on an informal or ad hoc basis to accommodate the prospective government benefits account holder.

2.

Principally used.

3.

Advertise, solicit, or market a prepaid account.

i. Messages in a leaflet, promotional flyer, newspaper, or magazine.

ii. Electronic messages, such as on a website or mobile application.

iii. Telephone solicitations.

iv. Solicitations sent to the consumer by mail or email.

v. Television or radio commercials.

4.

Information in the long form disclosure in English.

18(c) Access to Prepaid Account Information

1.

Posted transactions.

2.

Electronic history.

3.

Written history.

i. A financial institution may assess a fee or charge to a consumer for responding to subsequent requests for written account transaction history made in a single calendar month. For example, if a consumer requests written account transaction history on June 1 and makes another request on August 5, the financial institution may not assess a fee or charge to the consumer for responding to either request. However, if the consumer requests written account transaction history on June 1 and then makes another request on June 15, the financial institution may assess a fee or charge to the consumer for responding to the request made on June 15, as this is the second response in the same month.

ii. If a financial institution maintains more than 24 months of written account transaction history, it may assess a fee or charge to the consumer for providing a written history for transactions occurring more than 24 months preceding the date the financial institution receives the consumer's request, provided the consumer specifically requests the written account transaction history for that time period.

iii. If a financial institution offers a consumer the ability to request automatic mailings of written account transaction history on a monthly or other periodic basis, it may assess a fee or charge for such automatic mailings but not for the written account transaction history requested pursuant to § 1005.18(c)(1)(iii).

See

4.

12 months of electronic account transaction history.

See

5.

24 months of written account transaction history.

6.

Periodic statement alternative for unverified prepaid accounts.

7.

Inclusion of all fees charged.

8.

Summary totals of fees.

i.

Generally.

ii.

Third-party fees.

9.

Display of summary totals of fees.

e.g.,

18(e) Modified Limitations on Liability and Error Resolution Requirements

1.

Error resolution safe harbor provision.

2.

Electronic access.

3.

Untimely notice of error.

4.

Verification of accounts.

5.

Financial institution has not successfully completed verification.

6.

Account verification prior to acquisition.

18(f) Disclosure of Fees and Other Information

1.

Initial disclosure of fees and other information.

e.g.,

2.

Changes to the Regulation Z disclosures for overdraft credit features.

See

3.

Web site and telephone number on a prepaid account access device.

18(g) Prepaid Accounts Accessible by Hybrid Prepaid-Credit Cards

1.

Covered separate credit feature accessible by a hybrid prepaid-credit card.

2.

Asset feature.

ii. Section 1005.18(g) applies to account terms, conditions, and features that apply to the asset feature of the prepaid account. Section 1005.18(g) does not apply to the account terms, conditions, or features that apply to the covered separate credit feature, regardless of whether it is structured as a separate credit account or as a credit subaccount of the prepaid account that is separate from the asset feature of the prepaid account.

3.

Scope of § 1005.18(g).

4.

Variation in account terms, conditions, or features.

A. Interest paid on funds deposited into the asset feature of the prepaid account, if any;

B. Fees or charges imposed on the asset feature of the prepaid account. See comment 18(g)-5 for additional guidance on how § 1005.18(g) applies to fees or charges imposed on the asset feature of the prepaid account.

C. The type of access device provided to the consumer. For instance, an institution may not provide a PIN-only card on prepaid accounts without a covered separate credit

D. Minimum balance requirements on the asset feature of the prepaid account; or

E. Account features offered in connection with the asset feature of the prepaid account, such as online bill payment services.

5.

Fees.

See

ii. The following examples illustrate how § 1005.18(g) applies to per transaction fees for each transaction to access funds available in the asset feature of the prepaid account.

A. Assume that a consumer has selected a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered. For prepaid accounts without such a credit feature, the financial institution charges \$0.50 for each transaction conducted that accesses funds available in the prepaid account. For prepaid accounts with a credit feature, the financial institution also charges \$0.50 on the asset feature for each transaction conducted that accesses funds available in the asset feature of the prepaid account. In this case, for purposes of § 1005.18(g), the financial institution is imposing the same fee for each transaction that accesses funds in the asset feature of the prepaid account, regardless of whether the prepaid account has a covered separate credit feature accessible by a hybrid prepaid-credit card. Also, with regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in Regulation Z, 12 CFR 1026.61, the

\$0.50 per transaction fee imposed on the asset feature for each transaction that accesses funds available in the asset feature of the prepaid account is not a finance charge under 12 CFR 1026.4(b)(11)(ii). See Regulation Z, 12 CFR 1026.4(b)(11)(ii) and comment 4(b)(11)(ii)-1, for a discussion of the definition of finance charge with respect to fees or charges imposed on the asset feature of a prepaid account with regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61.

B. Same facts as in paragraph A, except that for prepaid accounts with a covered separate credit feature, the financial institution imposes a \$1.25 fee for each transaction conducted that accesses funds available in the asset feature of the prepaid account. In this case, the financial institution is permitted to charge a higher fee under § 1005.18(g)(2) on prepaid accounts with a covered separate credit feature than it charges on prepaid accounts without such a credit feature. The \$0.75 excess is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

C. Same facts as in paragraph A, except that for prepaid accounts with a covered separate credit feature, the financial institution imposes a \$0.25 fee for each transaction conducted that accesses funds available in the asset feature of the prepaid account. In this case, the financial institution is in violation of § 1005.18(g) because it is imposing a lower fee on the asset feature of a prepaid account with a covered separate credit feature than it imposes on prepaid accounts in the same program without such a credit feature.

iii. Where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, any per transaction fees imposed on the asset feature of prepaid accounts, including load and transfer fees, with such a credit feature are comparable only to per transaction fees for each transaction to

A. Assume a financial institution charges \$0.50 on prepaid accounts for each transaction that accesses funds in the asset feature of the prepaid accounts without a covered separate credit

feature. Also, assume that the financial institution charges \$0.50 per transaction on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, for purposes of § 1005.18(g), the financial institution is imposing the same fee for each transaction it pays, regardless of whether the transaction accesses funds available in the asset feature of the prepaid accounts without a covered separate credit feature, or is paid from credit from a covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. Also, for purposes of Regulation Z, 12 CFR 1026.4(b)(11)(ii), the \$0.50 per transaction fee imposed on the asset feature of the prepaid account with a covered separate credit feature is not a finance charge.

B. Assume same facts as in paragraph A above, except that assume the financial institution charges \$1.25 on the asset feature of a prepaid account for each transaction where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction. The financial institution is permitted to charge the higher fee under § 1005.18(g) for transactions that access the covered separate credit feature in the course of the transaction than the amount of the comparable fee it charges for each transaction that accesses funds available in the asset feature of the prepaid accounts without such a credit feature. The \$0.75 excess is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

C. Same facts as in paragraph A, except that the financial institution imposes \$0.25 on the asset feature of the prepaid account for each transaction conducted where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction. In this case, the financial institution is in violation of § 1005.18(g) because it is imposing a lower fee on the asset feature of a prepaid account with a covered separate credit feature than the amount of the comparable fee it imposes on prepaid accounts in the same program without such a credit feature.

D. Assume a financial institution charges \$0.50 on prepaid accounts for each transaction that

accesses funds in the asset feature of the prepaid accounts without a covered separate credit feature. Assume also that the financial institution charges both a \$0.50 per transaction fee and a \$1.25 transfer fee on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, both fees charged on a per-transaction basis for the credit transaction (i.e.,

E. Assume same facts as in paragraph D above, except that assume the financial institution also charges a load fee of \$1.25 whenever funds are transferred or loaded from a separate asset account, such as from a deposit account via a debit card, in the course of a transaction on prepaid accounts without a covered separate credit feature, in addition to charging a \$0.50 per transaction fee. In this case, both fees charged on a per-transaction basis for the credit transaction (i.e.,

i.e.,

i.e.,

iv. A consumer may choose in a particular circumstance to draw or transfer credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or service, obtain cash, or conduct person-to-person transfers.

See

A. Assume a financial institution charges a \$1.25 load fee to transfer funds from a non-covered separate credit feature, such as a non-covered separate credit card account, into prepaid accounts that do not have a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the financial institution charges \$1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction (

i.e.,

i.e.,

i.e.,

B. Assume that a financial institution charges a \$1.25 load fee for a one-time transfer of funds from a separate asset account, such as from a deposit account via a debit card, to a prepaid account without a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the financial institution charges \$1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction (

i.e.,

i.e.,

i.e.,

18(h) Effective Date and Special Transition Rules for Disclosure Provisions

1.

Disclosures not on prepaid account access devices and prepaid account packaging materials.

2.

Disclosures on prepaid account access devices and prepaid account packaging materials.

3.

Form of notice to consumers.

4.

Ability to contact the consumer.

5.

Closed and inactive prepaid accounts.

6.

Account information not available on April 1, 2019.

Electronic and written account transaction history.

ii.

Summary totals of fees.

Section 1005.19 Internet Posting of Prepaid Account Agreements

19(a) Definitions

19(a)(1) Agreement

1.

Provisions contained in separate documents included.

19(a)(2) Amends

1.

Substantive changes.

- i. Addition or deletion of a provision giving the issuer or consumer a right under the agreement, such as a clause that allows an issuer to unilaterally change the terms of an agreement.
- ii. Addition or deletion of a provision giving the issuer or consumer an obligation under the agreement, such as a clause requiring the consumer to pay an additional fee.
- iii. Changes that may affect the cost of the prepaid account to the consumer, such as changes in a provision describing how the prepaid account's monthly fee will be calculated.
- iv. Changes that may affect how the terms of the agreement are construed or applied, such as changes to a choice of law provision.
- v. Changes that may affect the parties to whom the agreement may apply, such as changes to provisions regarding authorized users or assignment of the agreement.
- vi. Changes to the corporate name of the issuer or program manager, or to the issuer's address or identifying number, such as its RSSD ID number or tax identification number.
- vii. Changes to the list of names of other relevant parties, such as the employer for a payroll card program or the agency for a government benefit program. But see § 1005.19(b)(2)(ii) regarding the

timing of submitting such changes to the Bureau.

viii. Changes to the name of the prepaid account program to which the agreement applies.

2.

Non-substantive changes.

i. Correction of typographical errors that do not affect the meaning of any terms of the agreement.

ii. Changes to the issuer's corporate logo or tagline.

iii. Changes to the format of the agreement, such as conversion to a booklet from a full-sheet format, changes in font, or changes in margins.

iv. Reordering sections of the agreement without affecting the meaning of any terms of the agreement.

v. Adding, removing, or modifying a table of contents or index.

vi. Changes to titles, headings, section numbers, or captions.

19(a)(4) Issuer

1.

Issuer.

2.

Use of third-party service providers.

3.

Third-party websites.

19(a)(6) Offers to the General Public

1.

Prepaid accounts offered to limited groups.

2.

Prepaid account agreements not offered to the general public.

19(a)(7) Open Account

1.

Open account.

19(a)(8) Prepaid Account

1.

Prepaid account.

19(b) Submission of Agreements to the Bureau

19(b)(1) Submissions on a Rolling Basis

1.

Rolling submission requirement.

2.

Prepaid accounts offered in conjunction with multiple issuers.

19(b)(2) Amended Agreements

1.

Change-in-terms notices not permissible.

2.

Updates to the list of names of other relevant parties to an agreement.

i. An issuer first submits to the Bureau a payroll card agreement, along with a list of names of the other relevant parties (

i.e.,

ii. On January 1, 2020, a change to the payroll card agreement becomes effective reflecting a new feature and accompanying fee that the issuer has added to the program. The issuer is required, by January 31, 2020, to submit to the Bureau its entire revised agreement and an updated list of the names of other relevant parties to that agreement.

iii. If the issuer has not added any other employers to the agreement by April 1, 2020, the issuer is not required to submit to the Bureau an updated list of names of other relevant parties to that agreement, because the list it previously submitted to the Bureau remains current.

iv. If, however, on March 1, 2020, the issuer adds two new employers under the agreement but

makes no other changes to the agreement, then as of April 1 there are new relevant parties to the agreement that the issuer has not submitted to the Bureau. The issuer is required, by May 1, 2020, to submit to the Bureau an updated list of names of other relevant parties to that agreement reflecting the two employers it added in March. Because the issuer has not made any other changes to the agreement since it was submitted in January, the issuer is not required to re-submit the agreement itself by May 1, 2020.

19(b)(3) Withdrawal of Agreements No Longer Offered

1.

No longer offers agreement.

19(b)(4) De Minimis Exception

1.

Relationship to other exceptions.

2.

De minimis exception.

3.

Date for determining whether issuer qualifies.

4.

Date for determining whether issuer ceases to qualify.

5.

Option to withdraw agreements.

19(b)(6) Form and Content of Agreements Submitted to the Bureau

1.

Agreements currently in effect.

2.

Fee information variations do not constitute separate agreements.

3.

Integrated agreement requirement.

19(c) Posting of Agreements Offered to the General Public

1.

Requirement applies only to agreements offered to the general public.

2.

Issuers that do not otherwise maintain Web sites.

19(d) Agreements for All Open Accounts

1.

Requirement applies to all open accounts.

2.

Agreements sent to consumers.

Section 1005.20 Requirements for Gift Cards and Gift Certificates

20(a) Definitions

1.

Form of card, code, or device.

see

See, however,

see, however,

2.

Electronic promise.

3.

Cards, codes, or other devices redeemable for specific goods or services.

See, e.g.,

4.

Issued primarily for personal, family, or household purposes.

But see

5.

Examples of cards, codes, or other devices issued for business purposes.

- i. Cards, codes, or other devices to reimburse employees for travel or moving expenses.
- ii. Cards, codes, or other devices for employees to use to purchase office supplies and other business-related items.

20(a)(2) Store Gift Card

1.

Relationship between gift certificate and store gift card.

2.

Affiliated group of merchants.

see, e.g.,

3.

Mall gift cards. See

20(a)(3) General-Use Prepaid Card

1.

Redeemable upon presentation at multiple, unaffiliated merchants.

2.

Mall gift cards.

20(a)(4) Loyalty, Award, or Promotional Gift Card

1.

Examples of loyalty, award, or promotional programs.

- i. Consumer retention programs operated or administered by a merchant or other person that provide to consumers cards or coupons redeemable for or towards goods or services or other monetary value as a reward for purchases made or for visits to the participating merchant.
- ii. Sales promotions operated or administered by a merchant or product manufacturer that provide coupons or discounts redeemable for or towards goods or services or other monetary value.

iii. Rebate programs operated or administered by a merchant or product manufacturer that provide cards redeemable for or towards goods or services or other monetary value to consumers in connection with the consumer's purchase of a product or service and the consumer's completion of the rebate submission process.

iv. Sweepstakes or contests that distribute cards redeemable for or towards goods or services or other monetary value to consumers as an invitation to enter into the promotion for a chance to win a prize.

v. Referral programs that provide cards redeemable for or towards goods or services or other monetary value to consumers in exchange for referring other potential consumers to a merchant.

vi. Incentive programs through which an employer provides cards redeemable for or towards goods or services or other monetary value to employees, for example, to recognize job performance, such as increased sales, or to encourage employee wellness and safety.

vii. Charitable or community relations programs through which a company provides cards redeemable for or towards goods or services or other monetary value to a charity or community group for their fundraising purposes, for example, as a reward for a donation or as a prize in a charitable event.

2.

Issued for loyalty, award, or promotional purposes.

3.

Reference to toll-free number and Web site.

20(a)(6) Service Fee

1.

Service fees.

20(a)(7) Activity

1.

Activity.

20(b) Exclusions

1.

Application of exclusion.

See, however,

2.

Eligibility for multiple exclusions.

See, however,

Paragraph 20(b)(1)

1.

Examples of excluded products.

Paragraph 20(b)(2)

1.

Reloadable.

2.

Marketed or labeled as a gift card or gift certificate.

See, however,

3.

Examples of marketed or labeled as a gift card or gift certificate.

A. Using the word gift or present on a card, certificate, or accompanying material, including documentation, packaging and promotional displays.

B. Representing or suggesting that a certificate or card can be given to another person, for example, as a token of appreciation or a stocking stuffer, or displaying a congratulatory message on the card, certificate or accompanying material.

C. Incorporating gift-giving or celebratory imagery or motifs, such as a bow, ribbon, wrapped present, candle, or congratulatory message, on a card, certificate, accompanying documentation, or promotional material.

ii. The term does not include:

- A. Representing that a card or certificate can be used as a substitute for a checking, savings, or deposit account.
- B. Representing that a card or certificate can be used to pay for a consumer's health-related expenses for example, a card tied to a health savings account.
- C. Representing that a card or certificate can be used as a substitute for traveler's checks or cash.
- D. Representing that a card or certificate can be used as a budgetary tool, for example, by teenagers, or to cover emergency expenses.

4.

Reasonable policies and procedures to avoid marketing as a gift card.

i. An issuer or program manager of prepaid cards agrees to sell general-purpose reloadable cards through a retailer. The contract between the issuer or program manager and the retailer establishes the terms and conditions under which the cards may be sold and marketed at the retailer. The terms and conditions prohibit the general-purpose reloadable cards from being marketed as a gift card or gift certificate, and require policies and procedures to regularly monitor or otherwise verify that the cards are not being marketed as such. The issuer or program manager sets up one promotional display at the retailer for gift cards and another physically separated display for excluded products under § 1005.20(b), including general-purpose reloadable cards and wireless telephone cards, such that a reasonable consumer would not believe that the excluded cards are gift cards. The exclusion in § 1005.20(b)(2) applies because policies and procedures reasonably designed to avoid the marketing of the general-purpose reloadable cards as gift cards or gift certificates are maintained, even if a retail clerk inadvertently stocks or a consumer inadvertently places a general-purpose reloadable card on the gift card display.

ii. Same facts as in i., except that the issuer or program manager sets up a single

iii. Same facts as in i., except that the issuer or program manager sets up a single promotional multi-sided display at the retailer on which a variety of prepaid card products, including store gift

cards and general-purpose reloadable cards are sold. Gift cards are segregated from excluded cards, with gift cards on one side of the display and excluded cards on a different side of a display. Signs of equal prominence at the top of each side of the display clearly differentiate between gift cards and the other types of prepaid cards that are available for sale. The retailer does not use any more conspicuous signage suggesting the general availability of gift cards, such as a large sign stating Gift Cards at the top of the display or located near the display. The exclusion in § 1005.20(b)(2) applies because policies and procedures reasonably designed to avoid the marketing of the general-purpose reloadable cards as gift cards or gift certificates are maintained, even if a retail clerk inadvertently stocks or a consumer inadvertently places a general-purpose reloadable card on the gift card display.

iv. Same facts as in i., except that the retailer sells a variety of prepaid card products, including store gift cards and general-purpose reloadable cards, arranged side-by-side in the same checkout lane. The retailer does not affirmatively indicate or represent that gift cards are available, such as by displaying any signage or other indicia at the checkout lane suggesting the general availability of gift cards. The exclusion in § 1005.20(b)(2) applies because policies and procedures reasonably designed to avoid marketing the general-purpose reloadable cards as gift cards or gift certificates are maintained.

5.

Online sales of prepaid cards.

6.

Temporary non-reloadable cards issued in connection with a general-purpose reloadable card.

Paragraph 20(b)(4)

1.

Marketed to the general public.

2.

Examples.

i. A merchant sells its gift cards at a discount to a business which may give them to employees or loyal consumers as incentives or rewards. In determining whether the gift card falls within the exclusion in § 1005.20(b)(4), the merchant must consider

See, however,

ii. A national retail chain decides to market its gift cards only to members of its frequent buyer program. Similarly, a bank may decide to sell gift cards only to its customers. If a member of the general public may become a member of the program or a customer of the bank, the card does not fall within the exclusion in § 1005.20(b)(4) because the general public has the ability to obtain the cards.

See, however,

iii. A card issuer advertises a reloadable card to teenagers and their parents promoting the card for use by teenagers for occasional expenses, schoolbooks and emergencies and by parents to monitor spending. Because the card is marketed to and may be sold to any member of the general public, the exclusion in § 1005.20(b)(4) does not apply.

See, however,

iv. An insurance company settles a policyholder's claim and distributes the insurance proceeds to the consumer by means of a prepaid card. Because the prepaid card is simply the means for providing the insurance proceeds to the consumer and the availability of the card is not advertised to the general public, the exclusion in § 1005.20(b)(4) applies.

v. A merchant provides store credit to a consumer following a merchandise return by issuing a prepaid card that clearly indicates that the card contains funds for store credit. Because the prepaid card is issued for the stated purpose of providing store credit to the consumer and the ability to receive refunds by a prepaid card is not advertised to the general public, the exclusion in § 1005.20(b)(4) applies.

vi. A tax preparation company elects to distribute tax refunds to its clients by issuing prepaid cards, but does not advertise or otherwise promote the ability to receive proceeds in this manner. Because

the prepaid card is simply the mechanism for providing the tax refund to the consumer, and the tax preparer does not advertise the ability to obtain tax refunds by a prepaid card, the exclusion in § 1005.20(b)(4) applies. However, if the tax preparer promotes the ability to receive tax refund proceeds through a prepaid card as a way to obtain faster access to the proceeds, the exclusion in § 1005.20(b)(4) does not apply.

Paragraph 20(b)(5)

1.

Exclusion explained.

2.

Examples.

i. A merchant issues a paper gift certificate that entitles the bearer to a specified dollar amount that can be applied towards a future meal. The merchant fills in the certificate with the name of the certificate holder and the amount of the certificate. The certificate falls within the exclusion in § 1005.20(b)(5) because it is issued in paper form only.

ii. A merchant allows a consumer to prepay for a good or service, such as a car wash or time at a parking meter, and issues a paper receipt bearing a numerical or bar code that the consumer may redeem to obtain the good or service. The exclusion in § 1005.20(b)(5) applies because the code is issued in paper form only.

iii. A merchant issues a paper certificate or receipt bearing a bar code or certificate number that can later be scanned or entered into the merchant's system and redeemed by the certificate or receipt holder towards the purchase of goods or services. The bar code or certificate number is not issued by the merchant in any form other than paper. The exclusion in § 1005.20(b)(5) applies because the bar code or certificate number is issued in paper form only.

iv. An online merchant electronically provides a bar code, card or certificate number, or certificate or coupon to a consumer that the consumer may print on a home printer and later redeem towards the purchase of goods or services. The exclusion in § 1005.20(b)(5) does not apply because the bar

Paragraph 20(b)(6)

1.

Exclusion explained.

2.

Examples.

i. A consumer purchases a prepaid card that entitles the holder to a ticket for entry to an amusement park. The prepaid card may only be used for entry to the park. The card qualifies for the exclusion in § 1005.20(b)(6) because it is redeemable for admission or entry and for goods or services in conjunction with that admission. In addition, if the prepaid card does not have a monetary value, and therefore is not issued in a specified amount, the card does not meet the definitions of gift certificate, store gift card, or general-use prepaid card in § 1005.20(a).

See

ii. Same facts as in i., except that the gift card also entitles the holder of the gift card to a dollar amount that can be applied towards the purchase of food and beverages or goods or services at the park or at nearby affiliated locations. The card qualifies for the exclusion in § 1005.20(b)(6) because it is redeemable for admission or entry and for goods or services in conjunction with that admission.

iii. A consumer purchases a \$25 gift card that the holder of the gift card can use to make purchases at a merchant, or, alternatively, can apply towards the cost of admission to the merchant's affiliated amusement park. The card is not eligible for the exclusion in § 1005.20(b)(6) because it is not redeemable solely for the admission or ticket itself (or for goods and services purchased in conjunction with such admission). The card meets the definition of store gift card and is therefore subject to § 1005.20, unless a different exclusion applies.

20(c) Form of Disclosures

20(c)(1) Clear and Conspicuous

1.

Clear and conspicuous standard.

2.

Abbreviations and symbols.

20(c)(2) Format

1.

Electronic disclosures.

et seq.).

20(c)(3) Disclosure Prior to Purchase

1.

Method of purchase.

2.

Electronic disclosures.

3.

Non-physical certificates and cards.

See also

20(c)(4) Disclosures on the Certificate or Card

1.

Non-physical certificates and cards.

No disclosures on a certificate or card.

See also

20(d) Prohibition on Imposition of Fees or Charges

1.

One-year period.

i. A certificate or card is purchased on January 15 of year one. If there has been no activity on the certificate or card since the certificate or card was purchased, a dormancy, inactivity, or service fee may be imposed on the certificate or card on January 15 of year two.

ii. Same facts as i., and a fee was imposed on January 15 of year two. Because no more than one

dormancy, inactivity, or service fee may be imposed in any given calendar month, the earliest date that another dormancy, inactivity, or service fee may be imposed, assuming there continues to be no activity on the certificate or card, is February 1 of year two. A dormancy, inactivity, or service fee is permitted to be imposed on February 1 of year two because there has been no activity on the certificate or card for the preceding year (February 1 of year one through January 31 of year two), and February is a new calendar month. The imposition of a fee on January 15 of year two is not activity for purposes of § 1005.20(d).

See

iii. Same facts as i., and a fee was imposed on January 15 of year two. On January 31 of year two, the consumer uses the card to make a purchase. Another dormancy, inactivity, or service fee could not be imposed until January 31 of year three, assuming there has been no activity on the certificate or card since January 31 of year two.

2.

Relationship between §§ 1005.20(d)(2) and (c)(3).

3.

Relationship between §§ 1005.20(d)(2), (e)(3), and (f)(2).

4.

One fee per month.

5.

Accumulation of fees.

20(e) Prohibition on Sale of Gift Certificates or Cards With Expiration Dates

1.

Reasonable opportunity.

i. There are policies and procedures established to prevent the sale of a certificate or card unless the certificate or card expiration date is at least five years after the date the certificate or card was sold or initially issued to a consumer; or

ii. A certificate or card is available to consumers to purchase five years and six months before the certificate or card expiration date.

2.

Applicability to replacement certificates or cards.

purchase

3.

Disclosure of funds expiration date not required.

4.

Disclosure not required if no expiration date.

5.

Reference to toll-free telephone number and Web site.

See, however,

6.

Relationship to § 226.20(f)(2).

7.

Distinguishing between certificate or card expiration and funds expiration.

8.

Expiration date safe harbor.

9.

Relationship between §§ 1005.20(d)(2), (e)(3), and (f)(2).

10.

Replacement or remaining balance of an expired certificate or card.

11.

Replacement of a lost or stolen certificate or card not required.

12.

Date of issuance or loading.

13.

Application of expiration date provisions after redemption of certificate or card.

20(f) Additional Disclosure Requirements for Gift Certificates or Cards

1.

Reference to toll-free telephone number and Web site.

See, however,

2.

Relationship to § 226.20(e)(3)(ii).

3.

Relationship between §§ 1005.20(d)(2), (e)(3), and (f)(2).

20(g) Compliance Dates

1.

Period of eligibility for loyalty, award, or promotional programs.

20(h) Temporary Exemption

20(h)(1) Delayed Effective Date

1.

Application to certificates or cards produced prior to April 1, 2010.

2.

Expiration of temporary exemption.

20(h)(2) Additional Disclosures

1.

Disclosures through third parties.

2.

General advertising disclosures.

Section 1005.30 Remittance Transfer Definitions

1.

Applicability of definitions in subpart A.

30(b) Business Day

1.

General.

2.

Substantially all business functions.

3.

Short hours.

4.

Telephone line.

30(c) Designated Recipient

1.

Person.

See

2.

Location in a foreign country.

ii. For transfers to a prepaid account (other than a prepaid account that is a payroll card account or a government benefit account), where the funds are to be received in

iii. Where the sender does not specify information about a designated recipient's account, but instead provides information about the recipient, a remittance transfer provider may make the determination of whether the funds will be received at a location in a foreign country on information that is provided by the sender, and other information the provider may have, at the time the transfer is requested. For example, if a consumer in a State gives a provider the recipient's email address, and the provider has no other information about whether the funds will be received by the recipient at a location in a foreign country, then the provider may determine that funds are not to be received at a location in a foreign country. However, if the provider at the time the transfer is requested has

additional information indicating that funds are to be received in a foreign country, such as if the recipient's email address is already registered with the provider and associated with a foreign account, then the provider has sufficient information to conclude that the remittance transfer will be received at a location in a foreign country. Similarly, if a consumer in a State purchases a prepaid card, and the provider mails or delivers the card directly to the consumer, the provider may conclude that funds are not to be received in a foreign country, because the provider does not know whether the consumer will subsequently send the prepaid card to a recipient in a foreign country. In contrast, the provider has sufficient information to conclude that the funds are to be received in a foreign country if the remittance transfer provider sends a prepaid card to a specified recipient in a foreign country, even if a person located in a State, including the sender, retains the ability to access funds on the prepaid card.

3.

Sender as designated recipient.

30(d) Preauthorized Remittance Transfer

1.

Advance authorization.

30(e) Remittance Transfer

1.

Electronic transfer of funds.

2.

Sent by a remittance transfer provider.

ii. A payment card network or other third party payment service that is functionally similar to a payment card network does not send a remittance transfer when a consumer provides a debit, credit or prepaid card directly to a foreign merchant as payment for goods or services. In such a case, the payment card network or third party payment service is not directly engaged with the sender to send a transfer of funds to a person in a foreign country; rather, the network or third party payment

service is merely providing contemporaneous third-party payment processing and settlement services on behalf of the merchant or the card issuer, rather than on behalf of the sender. In such a case, the card issuer also is not directly engaged with the sender to send an electronic transfer of funds to the foreign merchant when the card issuer provides payment to the merchant. Similarly, where a consumer provides a checking or other account number, or a debit, credit or prepaid card, directly to a foreign merchant as payment for goods or services, the merchant is not acting as an intermediary that sends a transfer of funds on behalf of the sender when it submits the payment information for processing.

iii. However, a card issuer or a payment network may offer a service to a sender where the card issuer or a payment network is an intermediary that is directly engaged with the sender to obtain funds using the sender's debit, prepaid or credit card and to send those funds to a recipient's checking account located in a foreign country. In this case, the card issuer or the payment network is an intermediary that is directly engaged with the sender to send an electronic transfer of funds on behalf of the sender, and this transfer of funds is a remittance transfer because it is made to a designated recipient.

See

3.

Examples of remittance transfers.

i. Examples of remittance transfers include:

A. Transfers where the sender provides cash or another method of payment to a money transmitter or financial institution and requests that funds be sent to a specified location or account in a foreign country.

B. Consumer wire transfers, where a financial institution executes a payment order upon a sender's request to wire money from the sender's account to a designated recipient.

C. An addition of funds to a prepaid card by a participant in a prepaid card program, such as a prepaid card issuer or its agent, that is directly engaged with the sender to add these funds, where

the prepaid card is sent or was previously sent by a participant in the prepaid card program to a person in a foreign country, even if a person located in a State (including a sender) retains the ability to withdraw such funds.

D. International ACH transactions sent by the sender's financial institution at the sender's request.

E. Online bill payments and other electronic transfers that a sender schedules in advance, including preauthorized remittance transfers, made by the sender's financial institution at the sender's request to a designated recipient.

ii. The term remittance transfer does not include, for example:

A. A consumer's provision of a debit, credit or prepaid card, directly to a foreign merchant as payment for goods or services because the issuer is not directly engaged with the sender to send an electronic transfer of funds to the foreign merchant when the issuer provides payment to the merchant.

See

B. A consumer's deposit of funds to a checking or savings account located in a State, because there has not been a transfer of funds to a designated recipient.

See

C. Online bill payments and other electronic transfers that senders can schedule in advance, including preauthorized transfers, made through the Web site of a merchant located in a foreign country and via direct provision of a checking account, credit card, debit card or prepaid card number to the merchant, because the financial institution is not directly engaged with the sender to send an electronic transfer of funds to the foreign merchant when the institution provides payment to the merchant.

See

30(f) Remittance Transfer Provider

1.

Agents.

2.

Normal course of business.

General.

ii.

Safe harbor.

iii.

Transition period.

iv.

Examples.

Example of safe harbor and transition period for 100-transfer safe harbor threshold effective prior to July 21, 2020.

i.e.,

B.

Example of safe harbor for a person that provided 500 or fewer transfers in 2019 and provides 500 or fewer transfers in 2020.

See

C.

Example of safe harbor and transition period for the 500-transfer safe harbor threshold beginning on July 21, 2020.

i.e.,

v.

Continued compliance for transfers for which payment was made before a person qualifies for the safe harbor.

3.

Multiple remittance transfer providers.

30(g) Sender

1.

Determining whether a consumer is located in a State.

2.

Personal, family, or household purposes.

3.

Non-consumer accounts.

bona fide

30(h) Third-Party Fees

1.

Fees imposed on the remittance transfer.

2.

Covered third-party fees.

ii. Examples of covered third-party fees include:

A. Fees imposed on a remittance transfer by intermediary institutions in connection with a wire transfer (sometimes referred to as lifting fees).

B. Fees imposed on a remittance transfer by an agent of the provider at pick-up for receiving the transfer.

3.

Non-covered third-party fees.

See also

Section 1005.31 Disclosures

31(a) General Form of Disclosures

31(a)(1) Clear and Conspicuous

1.

Clear and conspicuous standard.

2.

Abbreviations and symbols.

31(a)(2) Written and Electronic Disclosures

1.

E-Sign Act requirements.

et seq.

See

2.

Paper size.

3.

Retainable electronic disclosures.

4.

Pre-payment disclosures to a mobile telephone.

5.

Disclosures provided by fax.

i.e.,

31(a)(3) Disclosures for Oral Telephone Transactions

1.

Transactions conducted partially by telephone.

2.

Oral telephone transactions.

31(a)(5) Disclosures for Mobile Application or Text Message Transactions

1.

Mobile application and text message transactions.

31(b) Disclosure Requirements

1.

Disclosures provided as applicable.

2.

Substantially similar terms, language, and notices.

31(b)(1) Pre-Payment Disclosures

1.

Fees and taxes.

See

ii. The fees and taxes required to be disclosed by § 1005.31(b)(1)(ii) include all fees imposed and all taxes collected on the remittance transfer by the provider. For example, a provider must disclose any service fee, any fees imposed by an agent of the provider at the time of the transfer, and any State taxes collected on the remittance transfer at the time of the transfer. Fees imposed on the remittance transfer by the provider required to be disclosed under § 1005.31(b)(1)(ii) include only those fees that are charged to the sender and are specifically related to the remittance transfer.

See also

iii. The term used to describe the fees imposed on the remittance transfer by the provider in § 1005.31(b)(1)(ii) and the term used to describe covered third-party fees under § 1005.31(b)(1)(vi) must differentiate between such fees. For example the terms used to describe fees disclosed under § 1005.31(b)(1)(ii) and (vi) may not both be described solely as Fees.

2.

Transfer amount.

3.

Exchange rate for calculation.

31(b)(1)(iv) Exchange Rate

1.

Applicable exchange rate.

2.

Rounding.

3.

Exchange rate used.

31(b)(1)(vi) Disclosure of Covered Third-Party Fees

1.

Fees disclosed in the currency in which the funds will be received.

31(b)(1)(vii) Amount Received

1. Amount received.

31(b)(1)(viii) Statement When Additional Fees and Taxes May Apply

1.

Required disclaimer when non-covered third-party fees and taxes collected by a person other than the provider may apply.

See

2.

Optional disclosure of non-covered third-party fees and taxes collected by a person other than the provider.

See

See

31(b)(2) Receipt

1.

Date funds will be available.

2.

Agencies required to be disclosed.

3.

State agency that licenses or charters a provider.

4.

Web site of the Consumer Financial Protection Bureau.

www.consumerfinance.gov,

consumerfinance.gov/sending-money

consumerfinance.gov/envios.

5.

Date of transfer on receipt.

6.

Transfer date disclosures.

i.e.,

7.

Cancellation disclosure.

31(b)(3) Combined Disclosure

1.

Proof of payment.

2.

Confirmation of scheduling.

31(c) Specific Format Requirements

31(c)(1) Grouping

1.

Grouping.

31(c)(4) Segregation

1.

Segregation.

2.

Directly related.

i. The date and time of the transaction;

ii. The sender's name and contact information;

- iii. The location at which the designated recipient may pick up the funds;
- iv. The confirmation or other identification code;
- v. A company name and logo;
- vi. An indication that a disclosure is or is not a receipt or other indicia of proof of payment;
- vii. A designated area for signatures or initials;
- viii. A statement that funds may be available sooner, as permitted by § 1005.31(b)(2)(ii);
- ix. Instructions regarding the retrieval of funds, such as the number of days the funds will be available to the recipient before they are returned to the sender; and
- x. A statement that the provider makes money from foreign currency exchange.
- xi. Disclosure of any non-covered third-party fees and any taxes collected by a person other than the provider pursuant to § 1005.31(b)(1)(viii).

31(d) Estimates

1.

Terms.

31(e) Timing

1.

Request to send a remittance transfer.

See

2.

When payment is made.

3.

Telephone transfer from an account.

4.

Mobile application and text message transactions.

5.

Statement about cancellation rights.

31(f) Accurate When Payment Is Made

1.

No guarantee of disclosures provided before payment.

31(g) Foreign Language Disclosures

1.

Number of foreign languages used in written disclosure.

i. A remittance transfer provider principally uses only Spanish and Vietnamese to advertise, solicit, or market remittance transfer services at a particular office. The remittance transfer provider may provide all senders with disclosures in English, Spanish, and Vietnamese, regardless of the language the sender uses with the remittance transfer provider to conduct the transaction or assert an error.

ii. Same facts as i. If a sender primarily uses Spanish with the remittance transfer provider to conduct a transaction or assert an error, the remittance transfer provider may provide a written or electronic disclosure in English and Spanish, whether in a single document or two separate documents. If the sender primarily uses English with the remittance transfer provider to conduct the transaction or assert an error, the remittance transfer provider may provide a written or electronic disclosure solely in English. If the sender primarily uses a foreign language with the remittance transfer provider to conduct the transaction or assert an error that the remittance transfer provider does not use to advertise, solicit, or market either orally, in writing, or electronically, at the office in which the sender conducts the transaction or asserts the error, respectively, the remittance transfer provider may provide a written or electronic disclosure solely in English.

2.

Primarily used.

i. A sender initiates a conversation with a remittance transfer provider with a greeting in English and expresses interest in sending a remittance transfer to Mexico in English. If the remittance transfer provider thereafter communicates with the sender in Spanish and the sender conveys the other

information needed to complete the transaction, including the designated recipient's information and the amount and funding source of the transfer, in Spanish, then Spanish is the language primarily used by the sender with the remittance transfer provider to conduct the transaction.

ii. A sender initiates a conversation with the remittance transfer provider with a greeting in English and states in English that there was a problem with a prior remittance transfer to Vietnam. If the remittance transfer provider thereafter communicates with the sender in Vietnamese and the sender uses Vietnamese to convey the information required by § 1005.33(b) to assert an error, then Vietnamese is the language primarily used by the sender with the remittance transfer provider to assert the error.

iii. A sender accesses the Web site of a remittance transfer provider that may be used by senders to conduct remittance transfers or assert errors. The Web site is offered in English and French. If the sender uses the French version of the Web site to conduct the remittance transfer, then French is the language primarily used by the sender with the remittance transfer provider to conduct the transaction.

31(g)(1) General

1.

Principally used.

A. The frequency with which the foreign language is used in advertising, soliciting, or marketing of remittance transfer services at that office;

B. The prominence of the advertising, soliciting, or marketing of remittance transfer services in that foreign language at that office; and

C. The specific foreign language terms used in the advertising soliciting, or marketing of remittance transfer service at that office.

ii. For example, if a remittance transfer provider posts several prominent advertisements in a foreign language for remittance transfer services, including rate and fee information, on a consistent basis in an office, the provider is creating an expectation that a consumer could receive information on

remittance transfer services in the foreign language used in the advertisements. The foreign language used in such advertisements would be considered to be principally used at

2.

Advertise, solicit, or market.

- A. Messages in a foreign language in a leaflet or promotional flyer at an office.
- B. Announcements in a foreign language on a public address system at an office.
- C. On-line messages in a foreign language, such as on the internet.
- D. Printed material in a foreign language on any exterior or interior sign at an office.
- E. Point-of-sale displays in a foreign language at an office.
- F. Telephone solicitations in a foreign language.

ii. Examples illustrating use of a foreign language for purposes other than to advertise, solicit, or market include:

- A. Communicating in a foreign language (whether by telephone, electronically, or otherwise) about remittance transfer services in response to a consumer-initiated inquiry.
- B. Making disclosures in a foreign language that are required by Federal or other applicable law.

3.

Office.

4.

At the office.

Section 1005.32 Estimates

1.

Disclosures where estimates can be used.

32(a) Temporary Exception for Insured Institutions

32(a)(1) General

1.

Control.

2.

Examples of scenarios that qualify for the temporary exception.

i.

Exchange rate.

ii.

Covered third-party fees.

3.

Examples of scenarios that do not qualify for the temporary exception.

i.

Exchange rate.

ii.

Covered third-party fees.

32(b) Permanent Exceptions

32(b)(1) Permanent Exceptions for Transfers to Certain Countries

1.

Laws of the recipient country.

i. Set by the government of the recipient country after the remittance transfer provider sends the remittance transfer or

ii. Set when the designated recipient receives the funds.

2.

Example illustrating when exact amounts can and cannot be determined because of the laws of the recipient country.

i. The laws of the recipient country do not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) when, for example, the government of the recipient country, on a daily basis, sets the exchange rate that must, by law, apply to funds received and the funds are made available to the designated recipient in the local

currency the day after the remittance transfer provider sends the remittance transfer.

ii. In contrast, the laws of the recipient country permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) when, for example, the government of the recipient country ties the value of its currency to the U.S. dollar.

3.

Method by which transactions are made in the recipient country.

4.

Example illustrating when exact amounts can and cannot be determined because of the method by which transactions are made in the recipient country.

i. The method by which transactions are made in the recipient country does not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) when the provider sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is a rate set by the recipient country's central bank on the business day after the provider has sent the remittance transfer.

ii. In contrast, a remittance transfer provider would not qualify for the § 1005.32(b)(1)(i)(B) methods exception if it sends a remittance transfer via international ACH on terms negotiated between the United States government and a private-sector entity or entities in the recipient country, under which the exchange rate is set by the institution acting as the entry point to the recipient country's payments system on the next business day. However, a remittance transfer provider sending a remittance transfer using such a method may qualify for the § 1005.32(a) temporary exception or the exception set forth in § 1005.32(b)(4).

iii. A remittance transfer provider would not qualify for the § 1005.32(b)(1)(i)(B) methods exception if, for example, it sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is set by the recipient country's central bank or other governmental authority before the sender

requests a transfer.

5.

Safe harbor list.

6.

Reliance on Bureau list of countries.

7.

Change in laws of recipient country.

i. If the laws of a recipient country change such that a remittance transfer provider can determine exact amounts, the remittance transfer provider must begin providing exact amounts for the required disclosures as soon as reasonably practicable if the provider has information that the country legally permits the provider to determine exact disclosure amounts.

ii. If the laws of a recipient country change such that a remittance transfer provider cannot determine exact disclosure amounts, the remittance transfer provider may provide estimates under § 1005.32(b)(1)(i), even if that country does not appear on the list published by the Bureau.

2.

Example illustrating when exact amounts can and cannot be determined because of the laws of the recipient country.

i. The laws of the recipient country do not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) when, for example, the government of the recipient country, on a daily basis, sets the exchange rate that must, by law, apply to funds received and the funds are made available to the designated recipient in the local currency the day after the remittance transfer provider sends the remittance transfer.

ii. In contrast, the laws of the recipient country permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) when, for example, the government of the recipient country ties the value of its currency to the U.S. dollar.

3.

Method by which transactions are made in the recipient country.

4.

Example illustrating when exact amounts can and cannot be determined because of the method by which transactions are made in the recipient country.

i. The method by which transactions are made in the recipient country does not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) when the provider sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is a rate set by the recipient country's central bank on the business day after the provider has sent the remittance transfer.

ii. In contrast, a remittance transfer provider would not qualify for the § 1005.32(b)(1)(i)(B) methods exception if it sends a remittance transfer via international ACH on terms negotiated between the United States government and a private-sector entity or entities in the recipient country, under which the exchange rate is set by the institution acting as the entry point to the recipient country's payments system on the next business day. However, a remittance transfer provider sending a remittance transfer using such a method may qualify for the § 1005.32(a) temporary exception.

iii. A remittance transfer provider would not qualify for the § 1005.32(b)(1)(i)(B) methods exception if, for example, it sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is set by the recipient country's central bank or other governmental authority before the sender requests a transfer.

5.

Safe harbor list.

6.

Reliance on Bureau list of countries.

7.

Change in laws of recipient country.

ii. If the laws of a recipient country change such that a remittance transfer provider cannot determine exact disclosure amounts, the remittance transfer provider may provide estimates under § 1005.32(b)(1)(i), even if that country does not appear on the list published by the Bureau.

32(b)(2) Permanent Exceptions for Transfers Scheduled Before the Date of Transfer

1.

Fixed amount of foreign currency.

i.e.,

i.e.,

i.e.,

2.

Relationship to § 1005.10(d).

32(b)(3) Permanent Exception for Optional Disclosure of Non-Covered Third-Party Fees and Taxes Collected on the Remittance Transfer by a Person Other Than the Provider

1.

Reasonable sources of information.

32(b)(4) Permanent Exception for Estimation of the Exchange Rate by an Insured Institution

1.

Determining the exact exchange rate.

i.

Example where an insured institution cannot determine the exact exchange rate.

A. An insured institution or its service provider does not set the exchange rate required to be disclosed under § 1005.31(b)(1)(iv), and the rate is set when the funds are deposited into the recipient's account by the designated recipient's institution that does not have a correspondent relationship with, and does not act as an agent of, the insured institution.

ii.

Examples where an insured institution can determine the exact exchange rate.

A. An insured institution has a correspondent relationship with an intermediary financial institution (or the intermediary financial institution acts as an agent of the insured institution) and that intermediary financial institution sets the exchange rate required to be disclosed under § 1005.31(b)(1)(iv) for a remittance transfer.

B. An insured institution or its service provider converts the funds into the local currency to be received by the designated recipient for a remittance transfer using an exchange rate that the insured institution or its service provider sets. The insured institution can determine the exact exchange rate for purposes of § 1005.32(b)(4)(i)(B) for the remittance transfer even if the insured institution does not have a correspondent relationship with an intermediary financial institution in the transmittal route or the designated recipient's institution, and an intermediary financial institution in the transmittal route or the designated recipient's institution does not act as an agent of the insured institution.

2.

Threshold.

i. The number of remittance transfers provided includes transfers in the prior calendar year to that country when the designated recipients of those transfers received funds in the country's local currency regardless of whether the exchange rate was estimated for those transfers. For example, an insured institution exceeds the 1,000-transfer threshold in the prior calendar year if the insured institution provided 700 remittance transfers to a country in the prior calendar year when the designated recipients of those transfers received funds in the country's local currency when the exchange rate was estimated for those transfers and also sends 400 remittance transfers to the same country in the prior calendar year when the designated recipients of those transfers received funds in the country's local currency and the exchange rate for those transfers was not estimated.

ii. The number of remittance transfers does not include remittance transfers to a country in the prior calendar year when the designated recipients of those transfers did not receive the funds in the

country's local currency. For example, an insured institution does not exceed the 1,000-transfer threshold in the prior calendar year if the insured institution provides 700 remittance transfers to a country in the prior calendar year when the designated recipients of those transfers received funds in the country's local currency and also sends 400 remittance transfers to the same country in the prior calendar year when the designated recipients of those transfers did not receive funds in the country's local currency.

3.

Transition period.

32(b)(5) Permanent Exception for Estimation of Covered Third-Party Fees by an Insured Institution

1.

Insured institution cannot determine the exact covered third-party fees.

i. The insured institution does not have a correspondent relationship with the designated recipient's institution;

ii. The designated recipient's institution does not act as an agent of the insured institution;

iii. The insured institution does not have an agreement with the designated recipient's institution with respect to the imposition of covered third-party fees on the remittance transfer (

e.g.,

iv. The insured institution does not know at the time the disclosures are given that the only intermediary financial institutions that will impose covered third-party fees on the transfer are those institutions that have a correspondent relationship with or act as an agent for the insured institution, or have otherwise agreed upon the covered third-party fees with the insured institution.

2.

Insured institution can determine the exact covered third-party fees.

i. An insured institution has a correspondent relationship with the designated recipient's institution;

ii. The designated recipient's institution acts as an agent of the insured institution;

iii. An insured institution has an agreement with the designated recipient's institution with respect to

the imposition of covered third-party fees on the remittance transfer; or

iv. An insured institution knows at the time the disclosures are given that the only intermediary financial institutions that will impose covered third-party fees on the transfer are those institutions that have a correspondent relationship with or act as an agent for the insured institution, or have otherwise agreed upon the covered third-party fees with the insured institution.

3.

Threshold.

i. The number of remittance transfers provided includes remittance transfers in the prior calendar year to that designated recipient's institution regardless of whether the covered third-party fees were estimated for those transfers. For example, an insured institution exceeds the 500-transfer threshold in the prior calendar year if an insured institution provides 300 remittance transfers to the designated recipient's institution in the prior calendar year when the covered third-party fees were estimated for those transfers and also sends 400 remittance transfers to the designated recipient's institution in the prior calendar year and the covered third-party fees for those transfers were not estimated.

ii. The number of remittance transfers includes remittance transfers provided to the designated recipient's institution in the prior calendar year regardless of whether the designated recipients received the funds in the country's local currency or in another currency. For example, an insured institution exceeds the 500-transfer threshold in the prior calendar year if the insured institution provides 300 remittance transfers to the designated recipient's institution in the prior calendar year when the designated recipients of those transfers received funds in the country's local currency and also sends 400 remittance transfers to the same designated recipient's institution in the prior calendar year when the designated recipients of those transfers did not receive funds in the country's local currency.

iii. The number of remittance transfers includes remittance transfers provided to the designated recipient's institution and any of its branches in the country to which the particular transfer described in § 1005.32(b)(5) is being sent. For example, if the particular remittance transfer described in §

1005.32(b)(5) is being sent to the designated recipient's institution Bank XYZ in Nigeria, the number 4.

United States Federal statute or regulation.

i. Prohibits the insured institution from disclosing exact covered third-party fees in disclosures for transfers to a designated recipient's institution; or

ii. Makes it infeasible for the insured institution to form a relationship with the designated recipient's institution and that relationship is necessary for the insured institution to be able to determine, at the time it must provide the applicable disclosures, exact covered third-party fees.

5.

Transition period.

32(c) Bases for Estimates

32(c)(1) Exchange Rate

1. Most recent exchange rate for qualifying international ACH transfers.

i.e.,

2.

Publicly available.

3.

Spread.

4.

Most recent.

32(c)(3) Covered Third-Party Fees

1.

Potential transmittal routes.

32(d) Bases for Estimates for Transfers Scheduled Before the Date of Transfer

1.

In general.

Section 1005.33 Procedures for Resolving Errors

33(a) Definition of Error

1.

Incorrect amount of currency paid by sender.

2.

Incorrect amount of currency received coverage.

3.

Incorrect amount of currency received examples.

i. A consumer requests to send funds to a relative in Mexico to be received in local currency. Upon receiving the sender's payment, the remittance transfer provider provides a receipt indicating that the amount of currency that will be received by the designated recipient will be 1180 Mexican pesos, after fees and taxes are applied. However, when the relative picks up the transfer in Mexico a day later, he only receives 1150 Mexican pesos because the exchange rate applied by the recipient agent in Mexico was lower than the exchange rate used by the provider, prior to any rounding of the exchange rate, to disclose the amount of currency to be received by the designated recipient on the receipt. Because the designated recipient has received less than the amount of currency disclosed on the receipt, an error has occurred.

ii. A consumer requests to send funds to a relative in Colombia to be received in local currency. The remittance transfer provider provides the sender a receipt stating an

iii. Same facts as in ii., except that the receipt provided by the remittance transfer provider does not reflect additional fees that are imposed by the receiving agent in Colombia on the transfer. Because the designated recipient will receive less than the amount of currency disclosed in the receipt due to the additional covered third-party fees, an error has occurred.

iv. A consumer requests to send US\$250 to a relative in India to a U.S. dollar-denominated account held by the relative at an Indian bank. Instead of the US\$250 disclosed on the receipt as the amount to be sent, the remittance transfer provider sends US\$200, resulting in a smaller deposit to the

designated recipient's account than was disclosed as the amount to be received after fees and taxes. Because the designated recipient received less than the amount of currency that was disclosed, an error has occurred.

v. A consumer requests to send US\$100 to a relative in a foreign country to be received in local currency. The remittance transfer provider provides the sender a receipt that discloses an estimated exchange rate, other taxes, and amount of currency that will be received due to the law in the foreign country requiring that the exchange rate be set by the foreign country's central bank. When the relative picks up the remittance transfer, the relative receives less currency than the estimated amount disclosed to the sender on the receipt due to application of the actual exchange rate, fees, and taxes, rather than any estimated amounts. Because § 1005.32(b) permits the remittance transfer provider to disclose an estimate of the amount of currency to be received, no error has occurred unless the estimate was not based on an approach set forth under § 1005.32(c).

vi. A sender requests that his bank send US\$120 to a designated recipient's account at an institution in a foreign country. The foreign institution is not an agent of the provider. Only US\$100 is deposited into the designated recipient's account because the recipient institution imposed a US\$20 incoming wire fee and deducted the fee from the amount transferred. Because this fee is a non-covered third-party fee that the provider is not required to disclose under § 1005.31(b)(1)(vi), no error has occurred if the provider provided the disclosure required by § 1005.31(b)(1)(viii).

4.

Incorrect amount of currency received extraordinary circumstances.

5.

Failure to make funds available by disclosed date of availability coverage.

i. Late or non-delivery of a remittance transfer;

ii. Delivery of funds to the wrong account;

iii. The fraudulent pick-up of a remittance transfer in a foreign country by a person other than the designated recipient;

iv. The recipient agent or institution's retention of the remittance transfer, instead of making the funds available to the designated recipient.

6.

Failure to make funds available by disclosed date of availabilityextraordinary circumstances.

7.

Failure to make funds available by disclosed date of availabilityfraud and other screening procedures.

8.

Sender account number or recipient institution identifier error.

9.

Account number or recipient institution identifier.

10.

Recipient-requested changes.

11.

Change from disclosure made in reliance on sender information.

See, e.g.,

33(b) Notice of Error From Sender

1.

Person asserting or discovering error.

2.

Content of error notice.

3.

Address on notice of error.

4.

Effect of late notice.

5.

Notice of error provided to agent.

6.

Consumer notice of error resolution rights.

33(c) Time Limits and Extent of Investigation

1.

Notice to sender of finding of error.

2.

Incorrect or insufficient information provided for transfer.

See

3.

Designation of requested remedy.

4.

Default remedy.

5.

Amount appropriate to resolve the error.

1

2

6.

Form of refund.

1

7.

Remedies for incorrect amount paid.

8.

Correction of an error if funds not available by disclosed date.

9.

Charges for error resolution.

10.

Correction without investigation.

11.

Procedure for sending a new remittance transfer after a sender provides incorrect or insufficient information.

12.

Determining amount of refund.

i. A sender instructs a remittance transfer provider to send US\$100 to a designated recipient in local currency, for which the provider charges a transfer fee of US\$10 (and thus the sender pays the provider \$110). The provider's correspondent imposes a fee of US\$15 that it deducts from the amount of the transfer. The sender provides incorrect or insufficient information that results in non-delivery of the remittance transfer as requested. Once the provider determines that an error occurred because the sender provided incorrect or insufficient information, the provider must provide the report required by § 1005.33(c)(1) or (d)(1) and inform the sender, pursuant to § 1005.33(c)(1) or (d)(1), that it will refund US\$95 to the sender within three business days, unless the sender chooses to apply the US\$95 towards a new remittance transfer and the provider agrees. Of the \$95 that is refunded to the sender, \$10 reflects the refund of the provider's transfer fee, and \$85 reflects the refund of the amount of funds provided by the sender in connection with the transfer which was not properly transmitted. The provider is not required to refund the US\$15 fee imposed by the correspondent (unless the \$15 will be refunded to the provider by the correspondent).

ii. A sender instructs a remittance transfer provider to send US\$100 to a designated recipient in a foreign country, for which the provider charges a transfer fee of US\$10 (and thus the sender pays the provider US\$110) and an intermediary institution charges a lifting fee of US\$5, such that the designated recipient is expected to receive only US\$95, as indicated in the receipt. If an error occurs because the sender provides incorrect or insufficient information that results in non-delivery of the remittance transfer by the date of availability stated in the disclosure provided to the sender for the

remittance transfer under § 1005.31(b)(2) or (3), the provider is required to refund, or reapply if requested and the provider agrees, \$105 unless the intermediary institution refunds to the provider the US\$5 fee. If the sender requests to have the transfer amount applied to a new remittance transfer pursuant to § 1005.33(c)(2)(iii) and provides the corrected or additional information, and the remittance transfer provider agrees to a resend remedy, the remittance transfer provider may charge the sender another transfer fee of US\$10 to send the remittance transfer again with the corrected or additional information necessary to complete the transfer. Insofar as the resend is an entirely new remittance transfer, the provider must provide a prepayment disclosure and receipt or combined disclosure in accordance with, among other provisions, the timing requirements of § 1005.31(f) and the cancellation provision of § 1005.34(a).

iii. In connection with a remittance transfer, a provider imposes a \$15 tax that it then remits to a State taxing authority. An error occurs because the sender provided incorrect or insufficient information that resulted in non-delivery of the transfer to the designated recipient. The provider may deduct \$15 from the amount it refunds to the sender pursuant to § 1005.33(c)(2)(iii) unless the relevant tax law will result in the \$15 tax being refunded to the provider by the State taxing authority because the transfer was not completed.

33(d) Procedures if Remittance Transfer Provider Determines No Error or Different Error Occurred

1.

Error different from that alleged.

33(e) Reassertion of Error

1.

Withdrawal of error; right to reassert.

33(f) Relation to Other Laws

1.

Concurrent error obligations.

2.

Holder in due course.

3.

Assertion of same error with multiple parties.

33(g) Error Resolution Standards and Recordkeeping Requirements

1.

Record retention requirements.

33(h) Incorrect Account Number Supplied

1.

Reasonable methods of verification.

2.

Reasonable efforts.

i. The remittance transfer provider promptly calls or otherwise contacts the institution that received the transfer, either

ii. The remittance transfer provider promptly uses a messaging service through a funds transfer system to contact institution that received the transfer, either directly or indirectly through any correspondent(s) or other intermediaries or service providers used for the particular transfer, to request that the amount that was to be received by the designated recipient be returned, in accordance with the messaging service's rules and protocol, and if required by law or contract, by requesting that the recipient institution obtain a debit authorization from the holder of the incorrectly credited account.

3.

Promptness of Reasonable Efforts.

Section 1005.34 Procedures for Cancellation and Refund of Remittance Transfers

34(a) Sender Right of Cancellation and Refund

1.

Content of cancellation request.

2.

Notice of cancellation right.

3.

Thirty-minute cancellation right.

4.

Cancellation request provided to agent.

5.

Payment made.

34(b) Time Limits and Refund Requirements

1.

Form of refund.

2.

Fees and taxes refunded.

Section 1005.35 Acts of Agents

1.

General.

Section 1005.36 Transfers Scheduled Before the Date of Transfer

1.

Applicability of subpart B.

36(a) Timing

36(a)(2) Subsequent Preauthorized Remittance Transfers

1.

Changes in Disclosures.

2.

Clearly and conspicuously.

3.

Reasonable time.

36(b) Accuracy

1.

Use of estimates.

2.

Subsequent preauthorized remittance transfers.

3.

Receipts.

36(c) Cancellation

1.

Scheduled remittance transfer.

i. A sender on March 1 requests a remittance transfer provider to send a wire transfer to pay a bill in a foreign country on March 3.

ii. A sender on March 1 requests that a remittance transfer provider send a remittance transfer on March 15, but the provider requires the sender to confirm the request on March 14 in order to send the transfer.

iii. A sender on March 1 requests that a remittance transfer provider send an ACH transfer, and that transfer is sent on March 2, but due to the time required for processing, funds will not be deducted from the sender's account until March 5.

2.

Cancelled preauthorized remittance transfers.

3.

Concurrent cancellation obligations.

36(d) Date of Transfer for Subsequent Preauthorized Remittance Transfers

1.

General.

2.

Delivery of disclosure.

3.

Disclosure of the date of transfer.

e.g.,

e.g.,

e.g.,

4.

Accuracy requirements.

Appendix A Model Disclosure Clauses and Forms

1.

Review of forms.

2.

Use of forms.

3.

Altering the clauses.

4.

Model forms for remittance transfers.

i. The model forms contain information that is not required by subpart B, including a confirmation code, the sender's name and contact information, and the optional disclosure of the estimated amount of these non-covered third-party fees and taxes collected by a person other than the provider as part of the disclaimer. Additional information not required by subpart B may be presented on the model forms as permitted by § 1005.31(b)(1)(viii) and (c)(4). Any additional information must be presented consistent

ii. Use of the model forms is optional. A remittance transfer provider may change the forms by rearranging the format or by making modifications to the language of the forms, in each case without

modifying the substance of the disclosures. Any rearrangement or modification of the format of the model forms must be consistent with the form, grouping, proximity, and other requirements of § 1005.31(a) and (c). Providers making revisions that do not comply with this section will lose the benefit of the safe harbor for appropriate use of Model Forms A-30 to A-41.

iii. Permissible changes to the language and format of the model forms include, for example:

A. Substituting the information contained in the model forms that is intended to demonstrate how to complete the information in the model formssuch as names, addresses, and Web sites; dates; numbers; and State-specific contact informationwith information applicable to the remittance transfer. In addition, if the applicable non-covered third-party fees are imposed by an institution other than a bank, a provider could modify the disclaimer accordingly.

B. Eliminating disclosures that are not applicable to the transfer, as described under § 1005.31(b). For example, if only covered third-party fees are imposed, a provider would not use a disclaimer related to additional fees that may apply because all applicable fees are covered and included in the disclosure as required under § 1005.31(b)(1)(vi).

C. Correcting or updating telephone numbers, mailing addresses, or Web site addresses that may change over time.

D. Providing the disclosures on a paper size that is different from a register receipt and 8.5 inch by 11 inch formats.

E. Adding a term substantially similar to estimated in close proximity to the specified terms in § 1005.31(b)(1) and (2), as required under § 1005.31(d).

F. Providing the disclosures in a foreign language, or multiple foreign languages, subject to the requirements of § 1005.31(g).

G. Substituting cancellation language to reflect the right to a cancellation made pursuant to the requirements of § 1005.36(c).

iv. Changes to the model forms that are not permissible include, for example, adding information that is not segregated from the required disclosures, other than as permitted by § 1005.31(c)(4).

[76 FR 81023, Dec. 27, 2011, as amended at 78 FR 18224, Mar. 26, 2013; 77 FR 6297, Feb. 7, 2012; 77 FR 50285; 77 FR 50285, Aug. 20, 2012; 78 FR 30714, May 22, 2013; 78 FR 49366, Aug. 14, 2013; 79 FR 55993, Sept. 18, 2014; 81 FR 70320, Oct. 12, 2016; 81 FR 84345, Nov. 22, 2016; 83 FR 6420, Feb. 13, 2018; 85 FR 34905, June 5, 2020]

Pt. 1006

PART 1006DEBT COLLECTION PRACTICES (REGULATION F)

Subpart AGeneral

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1006.1

Authority, purpose, and coverage.

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1006.18

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1006.26

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1006.30

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1006.34

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1006.38

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1006.42

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Appendix A to Part 1006 Procedures for State Application for Exemption From the Provisions of the Act

Appendix B to Part 1006 Model Forms

Appendix C to Part 1006 Issuance of Advisory Opinions

Supplement I to Part 1006 Official Interpretations

Authority:

12 U.S.C. 5512, 5514(b), 5532; 15 U.S.C. 1692

I

Source:

85 FR 76887, Nov. 30, 2020, unless otherwise noted.

Subpart A General

§ 1006.1

Authority, purpose, and coverage.

(a)

Authority.

I

et seq.;

(b)

Purpose.

(c)

Coverage.

(2) Section 1006.34(c)(2)(iii) and (c)(3)(iv) applies to debt collectors only when they are collecting debt related to a consumer financial product or service as defined in § 1006.2(f).

[85 FR 76887, Nov. 30, 2020, as amended at 86 FR 5853, Jan. 19, 2021]

§ 1006.2

Definitions.

For purposes of this part, the following definitions apply:

(a)

Act

FDCPA

et seq.

(b)

Attempt to communicate

(c)

Bureau

(d)

Communicate

communication

(e)

Consumer

consumer

(f)

Consumer financial product or service

(g)

Creditor

(h)

Debt

(i)(1)

Debt collector

(2) The term debt collector excludes:

(i) Any officer or employee of a creditor while the officer or employee is collecting debts for the creditor in the creditor's name;

(ii) Any person while acting as a debt collector for another person if:

(A) The person acting as a debt collector does so only for persons with whom the person acting as a debt collector is related by common ownership or affiliated by corporate control; and

(B) The principal business of the person acting as a debt collector is not the collection of debts;

(iii) 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 the officer's or employee's official duties;

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

(v) Any nonprofit organization that, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in liquidating their debts by receiving payment from such consumers and distributing such amounts to creditors;

(vi) Any person collecting or attempting to collect any debt owed or due, or asserted to be owed or due to another, to the extent such debt collection activity:

(A) Is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;

(B) Concerns a debt that such person originated;

(C) Concerns a debt that was not in default at the time such person obtained it; or

(D) Concerns a debt that such person obtained as a secured party in a commercial credit transaction involving the creditor; and

(vii) A private entity, to the extent such private entity is operating a bad check enforcement program that complies with section 818 of the Act.

(j)

Limited-content message

(1)

Required content.

(i) A business name for the debt collector that does not indicate that the debt collector is in the debt collection business;

(ii) A request that the consumer reply to the message;

(iii) The name or names of one or more natural persons whom the consumer can contact to reply to the debt collector; and

(iv) A telephone number or numbers that the consumer can use to reply to the debt collector.

(2)

Optional content.

(i) A salutation;

(ii) The date and time of the message;

(iii) Suggested dates and times for the consumer to reply to the message; and

(iv) A statement that if the consumer replies, the consumer may speak to any of the company's representatives or associates.

(k)

Person

(l)

State

[85 FR 76887, Nov. 30, 2020, as amended at 86 FR 5853, Jan. 19, 2021]

Subpart B Rules for FDCPA Debt Collectors

§ 1006.6

Communications in connection with debt collection.

(a)

Definition.

consumer

(1) The consumer's spouse;

(2) The consumer's parent, if the consumer is a minor;

(3) The consumer's legal guardian;

(4) The executor or administrator of the consumer's estate, if the consumer is deceased; and

(5) A confirmed successor in interest, as defined in Regulation X, 12 CFR 1024.31, or Regulation Z, 12 CFR 1026.2(a)(27)(ii).

(b)

Communications with a consumer

Prohibitions regarding unusual or inconvenient times or places.

(i) At any unusual time, or at a time that the debt collector knows or should know is inconvenient to the consumer. In the absence of the debt collector's knowledge of circumstances to the contrary, a time before 8:00 a.m. and after 9:00 p.m. local time at the consumer's location is inconvenient; or

(ii) At any unusual place, or at a place that the debt collector knows or should know is inconvenient to the consumer.

(2)

Prohibitions regarding consumer represented by an attorney.

- (i) Fails to respond within a reasonable period of time to a communication from the debt collector; or
- (ii) Consents to the debt collector's direct communication with the consumer.

(3)

Prohibitions regarding consumer's place of employment.

(4)

Exceptions.

- (i) The prior consent of the consumer, given directly to the debt collector during a communication that does not violate paragraphs (b)(1) through (3) of this section; or
- (ii) The express permission of a court of competent jurisdiction.

(c)

Communications with a consumer after refusal to pay or cease communication notice

Prohibition.

(2)

Exceptions.

- (i) To advise the consumer that the debt collector's further efforts are being terminated;
- (ii) To notify the consumer that the debt collector or creditor may invoke specified remedies that the debt collector or creditor ordinarily invokes; or
- (iii) Where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

(d)

Communications with third parties

Prohibitions.

- (i) The consumer;
- (ii) The consumer's attorney;
- (iii) A consumer reporting agency, if otherwise permitted by law;

- (iv) The creditor;
- (v) The creditor's attorney; or
- (vi) The debt collector's attorney.

(2)

Exceptions.

- (i) For the purpose of acquiring location information, as provided in § 1006.10;
- (ii) With the prior consent of the consumer given directly to the debt collector;
- (iii) With the express permission of a court of competent jurisdiction; or
- (iv) As reasonably necessary to effectuate a postjudgment judicial remedy.

(3)

Reasonable procedures for email and text message communications.

- (i) The debt collector communicated with the consumer by sending an email to an email address described in paragraph (d)(4) of this section or a text message to a telephone number described in paragraph (d)(5) of this section; and
- (ii) The debt collector did not communicate with the consumer by sending an email to an email address or a text message to a telephone number that the debt collector knows has led to a disclosure prohibited by paragraph (d)(1) of this section.

(4)

Procedures for email addresses.

(i)

Procedures based on communication between the consumer and the debt collector.

- (B) The debt collector has received directly from the consumer prior consent to use the email address to communicate with the consumer about the debt and the consumer has not withdrawn that consent; or

(ii)

Procedures based on communication by the creditor.

(B) The creditor used the email address to communicate with the consumer about the account and the consumer did not ask the creditor to stop using it;

(C) Before the debt collector used the email address to communicate with the consumer about the debt, the creditor sent the consumer a written or electronic notice, to an address the creditor obtained from the consumer and used to communicate with the consumer about the account, that clearly and conspicuously disclosed:

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5

(D) The opt-out period provided under paragraph (d)(4)(ii)(C)(

5

(E) The email address has a domain name that is available for use by the general public, unless the debt collector knows the address is provided by the consumer's employer.

(iii)

Procedures based on communication by the prior debt collector.

(B) The immediately prior debt collector used the email address to communicate with the consumer about the debt; and

(C) The consumer did not opt out of such communications.

(5)

Procedures for telephone numbers for text messages.

(i) The consumer used the telephone number to communicate with the debt collector about the debt by text message, the consumer has not since opted out of text message communications to that telephone number, and within the past 60 days either:

(A) The consumer sent the text message described in paragraph (d)(5)(i) of this section or a new text message to the debt collector from that telephone number; or

(B) The debt collector confirmed, using a complete and accurate database, that the telephone number has not been reassigned from the consumer to another user since the date of the consumer's most recent text message to the debt collector from that telephone number; or

(ii) The debt collector received directly from the consumer prior consent to use the telephone number to communicate with the consumer about the debt by text message, the consumer has not since withdrawn that consent, and within the past 60 days the debt collector either:

(A) Obtained the prior consent described in paragraph (d)(5)(ii) of this section or renewed consent from the consumer; or

(B) Confirmed, using a complete and accurate database, that the telephone number has not been reassigned from the consumer to another user since the date of the consumer's most recent consent to use that telephone number to communicate about the debt by text message.

(e)

Opt-out notice for electronic communications or attempts to communicate.

§ 1006.10

Acquisition of location information.

(a)

Definition.

location information

(1) Place of abode and telephone number at such place; or

(2) Place of employment.

(b)

Form and content of location communications.

(1) Identify himself or herself individually by name, state that he or she is confirming or correcting the consumer's location information, and, only if expressly requested, identify his or her employer;

(2) Not state that the consumer owes any debt;

(3) Not communicate by postcard;

(4) Not use any language or symbol on any envelope or in the contents of any communication by mail indicating that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

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

(c)

Frequency of location communications.

§ 1006.14

Harassing, oppressive, or abusive conduct.

(a)

In general.

(b)

Repeated or continuous telephone calls or telephone conversations

In general.

(2)

Telephone call frequencies; presumptions of compliance and violation.

(A) More than seven times within seven consecutive days; nor

(B) Within a period of seven consecutive days after having had a telephone conversation with the

person in connection with the collection of such debt. The date of the telephone conversation is the first day of the seven-consecutive-day period.

(ii) Subject to the exclusions in paragraph (b)(3) of this section, a debt collector is presumed to violate paragraph (b)(1) of this section and FDCPA section 806(5) if the debt collector places a telephone call to a particular person in connection with the collection of a particular debt in excess of either of the telephone call frequencies described in paragraph (b)(2)(i) of this section.

(3)

Certain telephone calls excluded from the telephone call frequencies.

(i) Placed with such person's prior consent given directly to the debt collector and within a period no longer than seven consecutive days after receiving the prior consent, with the date the debt collector receives prior consent counting as the first day of the seven-consecutive-day period;

(ii) Not connected to the dialed number; or

(iii) Placed to the persons described in § 1006.6(d)(1)(ii) through (vi).

(4)

Definition.

(c)

Violence or other criminal means.

(d)

Obscene or profane language.

(e)

Debtor's list.

(f)

Coercive advertisements.

(g)

Meaningful disclosure of identity.

(h)

Prohibited communication media

In general.

(2)

Exceptions.

(i) If a person opts out of receiving electronic communications from a debt collector, a debt collector may send an electronic confirmation of the person's request to opt out, provided that the electronic confirmation contains no information other than a statement confirming the person's request and that the debt collector will honor it;

(ii) If a person initiates contact with a debt collector using a medium of communication that the person previously requested the debt collector not use, the debt collector may respond once through the same medium of communication used by the person; or

(iii) If otherwise required by applicable law, a debt collector may communicate or attempt to communicate with a person in connection with the collection of any debt through a medium of communication that the person has requested the debt collector not use to communicate with the person.

§ 1006.18

False, deceptive, or misleading representations or means.

(a)

In general.

(b)

False, deceptive, or misleading representations.

(i) The debt collector is vouched for, bonded by, or affiliated with the United States or any State, including through the use of any badge, uniform, or facsimile thereof.

(ii) The debt collector operates or is employed by a consumer reporting agency, as defined by section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(iii) Any individual is an attorney or that any communication is from an attorney.

- (iv) The consumer committed any crime or other conduct in order to disgrace the consumer.
- (v) A sale, referral, or other transfer of any interest in a debt causes or will cause the consumer to:
 - (A) Lose any claim or defense to payment of the debt; or
 - (B) Become subject to any practice prohibited by this part.
- (vi) Accounts have been turned over to innocent purchasers for value.
- (vii) Documents are legal process.
- (viii) Documents are not legal process forms or do not require action by the consumer.
- (2) A debt collector must not falsely represent:
 - (i) The character, amount, or legal status of any debt.
 - (ii) Any services rendered, or compensation that may be lawfully received, by any debt collector for the collection of a debt.
- (3) A debt collector must not represent or imply that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.
- (c)
False, deceptive, or misleading collection means.
 - (1) Threaten to take any action that cannot legally be taken or that is not intended to be taken.
 - (2) Communicate or threaten to communicate to any person credit information that the debt collector knows or should know is false, including the failure to communicate that a disputed debt is disputed.
 - (3) Use or distribute any written communication that simulates or that the debt collector falsely represents to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or that creates a false impression about its source, authorization, or approval.
 - (4) Use any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(d)

False representations or deceptive means.

(e)

Disclosures required

Initial communications.

(2)

Subsequent communications.

(3)

Exception.

(4)

Translated disclosures.

(f)

Assumed names.

§ 1006.22

Unfair or unconscionable means.

(a)

In general.

(b)

Collection of unauthorized amounts.

(c)

Postdated payment instruments.

(1) Accept from any person a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten, nor less than three, days (excluding legal public holidays identified in 5 U.S.C. 6103(a), Saturdays, and Sundays) prior to such deposit.

(2) Solicit any postdated check or other postdated payment instrument for the purpose of

threatening or instituting criminal prosecution.

(3) Deposit or threaten to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(d)

Charges resulting from concealment of purpose.

(e)

Nonjudicial action regarding property.

(1) There is no present right to possession of the property claimed as collateral through an enforceable security interest;

(2) There is no present intention to take possession of the property; or

(3) The property is exempt by law from such dispossession or disablement.

(f)

Restrictions on use of certain media.

(1) Communicate with a consumer regarding a debt by postcard.

(2) Use any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by mail, except that a debt collector may use the debt collector's business name on an envelope if

(3) Communicate or attempt to communicate with a consumer by sending an email to an email address that the debt collector knows is provided to the consumer by the consumer's employer, unless the email address is one described in § 1006.6(d)(4)(i) or (iii).

(4) Communicate or attempt to communicate with a person in connection with the collection of a debt through a social media platform if the communication or attempt to communicate is viewable by the general public or the person's social media contacts.

(g)

Safe harbor for certain emails and text messages relating to the collection of a debt.

§ 1006.26

Collection of time-barred debts.

(a)

Definitions.

(1)

Statute of limitations

(2)

Time-barred debt

(b)

Legal actions and threats of legal actions prohibited.

[86 FR 5854, Jan. 19, 2021]

§ 1006.30

Other prohibited practices.

(a)

Required actions prior to furnishing information

In general.

(i) Speaks to the consumer about the debt in person or by telephone; or

(ii) Places a letter in the mail or sends an electronic message to the consumer about the debt and waits a reasonable period of time to receive a notice of undeliverability. During the reasonable period, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such a notification during the reasonable period, the debt collector must not furnish information about the debt to a consumer reporting agency until the debt collector otherwise satisfies this paragraph (a)(1).

(2)

Special rule information furnished to certain specialty consumer reporting agencies.

(b)

Prohibition on the sale, transfer for consideration, or placement for collection of certain debts

In general.

(2)

Exceptions

In general.

(A) Transfers the debt to the debt's owner;

(B) Transfers the debt to a previous owner of the debt, if the transfer is authorized under the terms of the original contract between the debt collector and the previous owner; or

(C) Transfers the debt as a result of a merger, acquisition, purchase and assumption transaction, or a transfer of substantially all of the debt collector's assets.

(ii)

Secured claims in bankruptcy.

(iii)

Securitizations and pledges of debt.

(c)

Multiple debts.

(1) Must not apply the payment to any debt that is disputed by the consumer; and

(2) If applicable, must apply the payment in accordance with the consumer's directions.

(d)

Legal actions by debt collectors

Action to enforce interest in real property.

(2)

Other legal actions.

(i) Signed the contract sued upon; or

(ii) Resides at the commencement of the action.

(3)

Authorization of actions.

(e)

Furnishing certain deceptive forms.

[85 FR 76887, Nov. 30, 2020, as amended at 86 FR 5854, Jan. 19, 2021]

§ 1006.34

Notice for validation of debts.

(a)

Validation information required

In general.

(i) By sending the consumer a validation notice in the manner required by § 1006.42:

(A) In the initial communication, as defined in paragraph (b)(2) of this section; or

(B) Within five days of that initial communication; or

(ii) By providing the validation information orally in the initial communication.

(2)

Exception.

(b)

Definitions.

(1)

Clear and conspicuous

(2)

Initial communication

(i) The Internal Revenue Code of 1986 (26 U.S.C. 1

et seq.

(ii) Title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 through 6827); or

(iii) Any provision of Federal or State law or regulation mandating notice of a data security breach or privacy risk.

(3)

Itemization date

- (i) The last statement date, which is the date of the last periodic statement or written account statement or invoice provided to the consumer by a creditor;
- (ii) The charge-off date, which is the date the debt was charged off;
- (iii) The last payment date, which is the date the last payment was applied to the debt;
- (iv) The transaction date, which is the date of the transaction that gave rise to the debt; or
- (v) The judgment date, which is the date of a final court judgment that determines the amount of the debt owed by the consumer.

(4)

Validation notice

(5)

Validation period

(c)

Validation information.

(1)

Debt collector communication disclosure.

(2)

Information about the debt.

- (i) The debt collector's name and the mailing address at which the debt collector accepts disputes and requests for original-creditor information.
- (ii) The consumer's name and mailing address.
- (iii) If the debt collector is collecting a debt related to a consumer financial product or service as defined in § 1006.2(f), the name of the creditor to whom the debt was owed on the itemization date.
- (iv) The account number, if any, associated with the debt on the itemization date, or a truncated version of that number.
- (v) The name of the creditor to whom the debt currently is owed.

(vi) The itemization date.

(vii) The amount of the debt on the itemization date.

(viii) An itemization of the current amount of the debt reflecting interest, fees, payments, and credits since the itemization date. A debt collector may disclose the itemization on a separate page provided in the same communication with a validation notice, if the debt collector includes on the validation notice, where the itemization would have appeared, a statement referring to that separate page.

(ix) The current amount of the debt.

(3)

Information about consumer protections.

(ii) The date that the debt collector will consider the end date of the validation period and a statement that, if the consumer requests in writing on or before that date the name and address of the original creditor, the debt collector must cease collection of the debt until the debt collector sends the consumer the name and address of the original creditor, if different from the current creditor.

(iii) The date that the debt collector will consider the end date of the validation period and a statement that, unless the consumer contacts the debt

(iv) If the debt collector is collecting debt related to a consumer financial product or service as defined in § 1006.2(f), a statement that informs the consumer that additional information regarding consumer protections in debt collection is available on the Bureau's website at www.cfpb.gov/debt-collection.

(v) If the debt collector sends the validation notice electronically, a statement explaining how a consumer can, as described in paragraphs (c)(4)(i) and (ii) of this section, dispute the debt or request original-creditor information electronically.

(4)

Consumer-response information.

(i)

Dispute prompts.

(A) I want to dispute the debt because I think;;

(B) This is not my debt.;

(C) The amount is wrong.; and

(D) Other (please describe on reverse or attach additional information).

(ii)

Original-creditor information prompt.

(iii)

Mailing addresses.

(5)

Special rule for certain residential mortgage debt.

(i) Provides the consumer, in the same communication with the validation notice, a copy of the most recent periodic statement provided to the consumer under Regulation Z, 12 CFR 1026.41(b); and

(ii) Includes on the validation notice, where the validation information required by paragraphs (c)(2)(vi) through (viii) of this section would have appeared, a statement referring to that periodic statement.

(d)

Form of validation information

In general.

(2)

Safe harbor

In general.

(A) Omits any or all of the optional disclosures shown on Model Form B-1; or

(B) Adds any or all of the optional disclosures described in paragraph (d)(3) of this section that are not shown on Model Form B-1, provided that any such optional disclosures are no more prominent

than any of the validation information required by paragraph (c) of this section.

(ii)

Certain disclosures on a separate page.

(iii)

Substantially similar form.

(3)

Optional disclosures.

(i)

Telephone contact information.

(ii)

Reference code.

(iii)

Payment disclosures.

(A) The statement, Contact us about your payment options., using that phrase or a substantially similar phrase; and

(B) Below the consumer-response information required by paragraphs (c)(4)(i) and (ii) of this section, the statement, I enclosed this amount:, using that phrase or a substantially similar phrase, payment instructions after that statement, and a prompt.

(iv)

Disclosures under applicable law

Disclosures on the reverse of the validation notice.

(B)

Disclosures on the front of the validation notice.

(v)

Information about electronic communications.

(A) The debt collector's website and email address.

(B) If the validation information is not provided electronically, a statement explaining how a consumer can, as described in paragraphs (c)(4)(i) and (ii) of this section, dispute the debt or request original-creditor information electronically.

(vi)

Spanish-language translation disclosures.

(A) The statement, Póngase en contacto con nosotros para solicitar una copia de este formulario en español (which means Contact us to request a copy of this form in Spanish), using that phrase or a substantially similar phrase in Spanish. If providing this optional disclosure, a debt collector may include supplemental information in Spanish that specifies how a consumer may request a Spanish-language validation notice.

(B) With the consumer-response information required by paragraph (c)(4) of this section, the statement Quiero este formulario en español (which means I want this form in Spanish), using that phrase or a substantially similar phrase in Spanish, next to a prompt.

(vii) The merchant brand, affinity brand, or facility name, if any, associated with the debt.

(viii) If a debt collector is collecting debt other than debt related to a consumer financial product or service as defined in § 1006.2(f), the information specified in paragraph (c)(2)(iii) or (c)(3)(iv) of this section.

(4)

Validation notices delivered electronically.

(i)

Prompts.

(ii)

Hyperlinks.

(A) Connect a consumer to the debt collector's website;

(B) Connect a consumer to the Bureau's debt collection website as disclosed pursuant to paragraph (c)(3)(iv) of this section; or

(C) Permit a consumer to respond to the dispute and original-creditor information prompts required by paragraphs (c)(4)(i) and (ii) of this section.

(e)

Translation into other languages

In general.

(i) Sends the consumer an English-language validation notice in the same communication as the translated validation notice; or

(ii) Previously provided the consumer an English-language validation notice, in which case the debt collector need not send the consumer an English-language validation notice in the same communication as the translated validation notice.

(2)

Spanish-language validation notice requirement to provide after optional disclosure.

[86 FR 5854, Jan. 19, 2021]

§ 1006.38

Disputes and requests for original-creditor information.

(a)

Definitions.

(1)

Duplicative dispute

(i) Is substantially the same as a dispute previously submitted by the consumer in writing within the validation period for which the debt collector already has satisfied the requirements of paragraph (d)(2)(i) of this section; and

(ii) Does not include new and material information to support the dispute.

(2)

Validation period

(b)

Overshadowing of rights to dispute or request original-creditor information

Prohibition.

(2)

Safe harbor.

(c)

Requests for original-creditor information.

(1)

In general.

(2)

Special rule if the current creditor and the original creditor are the same.

(d)

Disputes

Failure to dispute.

(2)

Response to disputes.

(i) Sends a copy either of verification of the debt or of a judgment to the consumer in writing or electronically in the manner required by § 1006.42; or

(ii) In the case of a dispute that the debt collector reasonably determines is a duplicative dispute, either:

(A) Notifies the consumer in writing or electronically in the manner required by § 1006.42(a)(1) that the dispute is duplicative, provides a brief statement of the reasons for the determination, and refers the consumer to the debt collector's response to the earlier dispute; or

(B) Satisfies paragraph (d)(2)(i) of this section.

[85 FR 76887, Nov. 30, 2020, as amended at 86 FR 5856, Jan. 19, 2021]

§ 1006.42

Sending required disclosures.

(a)

Sending required disclosures

In general.

(2)

Exceptions.

(b)

Requirements for certain disclosures sent electronically.

[85 FR 76887, Nov. 30, 2020, as amended at 86 FR 5856, Jan. 19, 2021]

Subpart C [Reserved]

Subpart D Miscellaneous

§ 1006.100

Record retention.

(a)

In general.

(b)

Special rule for telephone call recordings.

§ 1006.104

Relation to State laws.

Neither the Act nor the corresponding provisions of this part annul, alter, affect, or exempt any person subject to the provisions of the Act or the corresponding provisions of this part from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of the Act or the corresponding provisions of this part, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with the Act or the corresponding provisions of this part if the protection such law affords any consumer is greater than the protection provided by the Act or the corresponding provisions of this part.

§ 1006.108

Exemption for State regulation.

(a)

Exemption for State regulation.

(b)

Procedures and criteria.

Pt. 1006, App. A

Appendix A to Part 1006 Procedures for State Application for Exemption From the Provisions of the Act

I. Purpose and Definitions

(a) This appendix establishes procedures and criteria whereby States may apply to the Bureau for exemption of a class of debt collection practices within the applying State from the provisions of the Act and the corresponding provisions of this part as provided in section 817 of the Act (15 U.S.C. 1692o).

(b) For purposes of this appendix:

(1)

Applicant State law

(2)

Class of debt collection practices

(3)

Relevant Federal law

(4)

State law

II. Application

Any State may apply to the Bureau pursuant to the terms of this appendix for a determination that the applicant State law contains requirements that, for a class of debt collection practices within that

State, are substantially similar to the requirements that relevant Federal law imposes on that class of debt collection practices, and that the applicant State law contains adequate provision for State enforcement. The application must be in writing, addressed to the Assistant Director, Office of Regulations, Division of Research, Monitoring, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552, signed by the Governor, Attorney General, or State official having primary enforcement responsibility under the State law that applies to the class of debt collection practices, and must be supported by the documents specified in this appendix.

III. Supporting Documents

The application must be accompanied by the following, which may be submitted in paper or electronic form:

- (a) A copy of the applicant State law.
- (b) A comparison of each provision of relevant Federal law with the corresponding provisions of the applicant State law, together with reasons supporting the claim that the corresponding provisions of the applicant State law are substantially similar to the provisions of relevant Federal law, and an explanation as to why any differences between the State statute or regulation and Federal law are not inconsistent with the provisions of relevant Federal law and do not result in a diminution in the protection otherwise afforded consumers; and a statement that no other State laws (including administrative or judicial interpretations) are related to, or would have an effect upon, the State law that is being considered by the Bureau in making its determination.
- (c) A comparison of the provisions of the State law that provide for enforcement with the provisions of section 814 of the Act (15 U.S.C. 1692

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- (d) A statement identifying the office designated or to be designated to enforce the applicant State law. The statement must show how the office provides for adequate enforcement of the applicant State law, including by showing that the office has necessary facilities, personnel, and funding. The

statement must include, for example, complete information regarding the fiscal arrangements for administrative enforcement (including the amount of funds available or to be provided), the number and qualifications of personnel engaged or to be engaged in enforcement, and a description of the procedures under which the applicant State law is to be enforced by the State.

IV. Criteria for Determination

The Bureau will consider the criteria set forth below, and any other relevant information, in determining whether the applicant State law is substantially similar to relevant Federal law and whether there is adequate provision for enforcement of the applicant State law. In making that determination, the Bureau primarily will consider each provision of the applicant State law in comparison with each corresponding provision in relevant Federal law, and not the State law as a whole in comparison with the Act as a whole.

(a)(1) In order for the applicant State law to be substantially similar to relevant Federal law, the applicant State law at least must provide that:

(i) Definitions and rules of construction, as applicable, import a meaning and have an application that are substantially similar to those prescribed by relevant Federal law.

(ii) Debt collectors provide all of the applicable notices required by relevant Federal law, with the content and in the terminology, form, and time periods prescribed pursuant to relevant Federal law. The Bureau may determine whether additional notice requirements under the applicant State law affect a determination that the applicant State law is substantially similar to relevant Federal law.

(iii) Debt collectors take all affirmative actions and abide by obligations substantially similar to those prescribed by relevant Federal law under substantially similar conditions and within substantially similar time periods as are prescribed under relevant Federal law;

(iv) Debt collectors abide by prohibitions that are substantially similar to those prescribed by relevant Federal law;

(v) Consumers' obligations or responsibilities are no more costly, lengthy, or burdensome than consumers' corresponding obligations or responsibilities under relevant Federal law; and

(vi) Consumers' rights and protections are substantially similar to those provided by relevant Federal law under conditions or within time periods that are substantially similar to those prescribed by relevant Federal law.

(2) In applying the criteria set forth in paragraph IV(a)(1) of this appendix, the Bureau will not consider adversely any additional requirements of State law that are not inconsistent with the purpose of the Act or the requirements imposed under relevant Federal law.

(b) In determining whether provisions for enforcement of the applicant State law are adequate, consideration will be given to the extent to which, under the applicant State law, provision is made for administrative enforcement, including necessary facilities, personnel, and funding.

V. Public Comment

In connection with any application that has been filed in accordance with the requirements of parts II and III of this appendix and following initial review of the application, a proposed rule concerning the application for exemption will be published by the Bureau in the Federal Register,

VI. Exemption From Requirements

If the Bureau determines on the basis of the information before it that, under the applicant State law, a class of debt collection practices is subject to requirements substantially similar to those imposed under relevant Federal law and that there is adequate provision for State enforcement, the Bureau will exempt the class of debt collection practices in that State from the requirements of relevant Federal law and section 814 of the Act in the following manner and subject to the following conditions:

(a) A final rule granting the exemption will be published in the Federal Register,

Federal Register

(b) Any State that receives an exemption must, through its appropriate official, take the following steps:

(i) Inform the Assistant Director, Office of Regulations, Division of Research, Monitoring, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552 in writing within 30 days of any change in the applicant State law. The report of any such change must contain copies of the full text of that change, together with statements setting forth the information and opinions regarding that change that are specified in paragraph III.

(ii) Provide, not later than two years after the date the exemption is granted, and every two years thereafter, a report to the Bureau in writing concerning the manner in which the State has enforced the applicant State law in the preceding two years and an update of the information required under paragraph III(d) of this appendix.

(c) The Bureau will inform any State that receives such an exemption, through its appropriate official, of any subsequent amendments of the Act or this part that might necessitate the amendment of State law for the exemption to continue.

(d) After an exemption is granted, the requirements of the applicable State law constitute the requirements of relevant Federal law, except to the extent such State law imposes requirements not imposed by the Act or this part.

VII. Adverse Determination

(a) If, after publication of a proposed rule in the
Federal Register

(b) If, after having afforded the State authority such opportunity to demonstrate the basis for granting an exemption, the Bureau finds on the basis of the information before it that it still cannot make a favorable determination in connection with the application, the Bureau will publish in the
Federal Register

VIII. Revocation of Exemption

(a) The Bureau reserves the right to revoke any exemption granted under the provisions of the Act or this part, if at any time it determines that the State law does not, in fact, impose requirements that are substantially similar to relevant Federal law or that there is not, in fact, adequate provision for

State enforcement.

(b) Before revoking any such exemption, the Bureau will notify the State of the facts or conduct that, in the Bureau's opinion, warrant such revocation, and will afford that State such opportunity as the Bureau deems appropriate in the circumstances to demonstrate continued eligibility for an exemption.

(c) If, after having been afforded the opportunity to demonstrate or achieve compliance, the Bureau determines that the State has not done so, a proposed rule to revoke such exemption will be published in the
Federal Register.

(d) If such exemption is revoked, a final rule revoking the exemption will be published by the Bureau
in the
Federal Register,
Federal Register

[85 FR 76887, Nov. 30, 2020, as amended at 88 FR 16538, Mar. 20, 2023]

Pt. 1006, App. B

Appendix B to Part 1006Model Forms

B-1 Model Form for Validation Notice

ER19JA21.028

[86 FR 5856, Jan. 19, 2021]

Pt. 1006, App. C

Appendix C to Part 1006Issuance of Advisory Opinions

1.

Advisory opinions.

2.

Requests for issuance of advisory opinions.

Federal Register

consumerfinance.gov.

3.

Bureau-issued advisory opinions.

a.

Safe Harbors from Liability under the Fair Debt Collection Practices Act for Certain Actions Taken in Compliance with Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z),

Pt. 1006, Supp. I

Supplement I to Part 1006 Official Interpretations

Introduction

1. Official status.

et seq.

2. Procedure for requesting interpretations.

Federal Register

3. Comment designations.

Subpart A General

Section 1006.2 Definitions

2(b) Attempt To Communicate

1.

Examples.

i. Assume that a debt collector places a telephone call to a person about a debt. Regardless of whether the debt collector reaches the person, the debt collector has attempted to communicate with the person.

ii. Assume that a debt collector places a telephone call to a person about a debt and leaves a voicemail message. Regardless of whether the voicemail message consists solely of a limited-content message or includes content that conveys, directly or indirectly, information about a

debt, the debt collector has attempted to communicate with the person.

2(d) Communicate or Communication

1.

Any medium.

2.

Information regarding a debt.

2(h) Debt

1.

Consumer.

2(i) Debt Collector

1.

In general.

2(j) Limited-Content Message

1.

In general.

2.

Message for a consumer.

3.

Meaningful disclosure of identity.

2(j)(1) Required Content

1.

Example.

2(j)(2) Optional Content

1.

In general.

2.

Example.

Subpart B Rules for FDCPA Debt Collectors

Section 1006.6 Communications in Connection With Debt Collection

6(a) Consumer

Paragraph 6(a)(1)

1.

Spouse.

Paragraph 6(a)(2)

1.

Parent.

Paragraph 6(a)(4)

1.

Personal representative.

6(b) Communications With a Consumer

6(b)(1) Prohibitions Regarding Unusual or Inconvenient Times or Places

1.

Designation of inconvenience.

i. Assume that a creditor places a debt for collection with a debt collector. To facilitate collection of the debt, the creditor provides the debt collector a file that includes recent notes stating that the consumer cannot be disturbed on Tuesdays and Thursdays through the end of the calendar year. Based on these facts, the debt collector knows or should know that Tuesdays and Thursdays through the end of the calendar year are inconvenient to the consumer. Unless the consumer informs the debt collector that those times are no longer inconvenient, § 1006.6(b)(1)(i) prohibits the debt collector from communicating or attempting to communicate with the consumer on those days through the end of the calendar year.

ii. Assume that a debt collector calls a consumer. The consumer answers the call but states I am

busy or I cannot talk now. The debt collector asks the consumer when would be a convenient time. The consumer responds, on weekdays, except from 3:00 p.m. to 5:00 p.m. The debt collector asks the consumer whether there would be a convenient time on weekends. The consumer responds no. Based on these facts, the debt collector knows or should know that the time period between 3:00 p.m. and 5:00 p.m. on weekdays, and all times on weekends, are inconvenient to the consumer. Thereafter, unless the consumer informs the debt collector that those times are no longer inconvenient, § 1006.6(b)(1)(i) prohibits the debt collector from communicating or attempting to communicate with the consumer at those times.

iii. Assume that a consumer tells a debt collector not to communicate with the consumer at a particular place, such as the consumer's home. The debt collector asks whether the consumer intends to prohibit the debt collector from communicating with the consumer through all media associated with the consumer's home, including, for example, mail. Absent such additional information, the debt collector knows or should know that communications to the consumer at home, including mail to the consumer's home address and calls to the consumer's home landline telephone number, are inconvenient. Thereafter, unless the consumer informs the debt collector that the place is no longer inconvenient, § 1006.6(b)(1)(ii) prohibits the debt collector from communicating or attempting to communicate with the consumer at the consumer's home. See comment 6(b)(1)(ii)-1 for additional guidance regarding communications or attempts to communicate at an inconvenient place.

2.

Consumer-initiated communication.

i. Assume the same facts as in comment 6(b)(1)-1.ii, except that, after the consumer tells the debt collector that weekdays from 3:00 p.m. to 5:00 p.m. and weekends are inconvenient, the consumer sends an email message to the debt collector at 3:30 p.m. on Wednesday. Based on these facts, § 1006.6(b)(1)(i) does not prohibit the debt collector from responding once by email message before 5:00 p.m. on that day. Unless the

ii. Assume the same facts as in comment 6(b)(1)-1.iii, except that, after the consumer tells the debt collector not to communicate with the consumer at home, the consumer calls the debt collector from the consumer's home landline telephone number. Based on these facts, § 1006.6(b)(1)(ii) does not prohibit the debt collector from responding once by communicating with the consumer on that telephone call. Unless the consumer informs the debt collector that the place is no longer inconvenient, § 1006.6(b)(1)(ii) prohibits the debt collector from future communications or attempts to communicate with the consumer at home.

iii. Assume that a consumer tells a debt collector that all communications to the consumer on Friday every week are inconvenient to the consumer. On a Friday, the consumer visits the debt collector's website and uses the debt collector's mobile application. Based on these facts, while the consumer navigates the website or uses the mobile application, § 1006.6(b)(1)(i) does not prohibit the debt collector from conveying information to the consumer about the debt through the website or mobile application. Once the consumer stops navigating the website or using the mobile application, however, § 1006.6(b)(1)(i) prohibits the debt collector from further communications or attempts to communicate on that day. And unless the consumer informs the debt collector that those times are no longer inconvenient, § 1006.6(b)(1)(i) prohibits the debt collector from future communications or attempts to communicate with the consumer on Fridays.

iv. Assume the same facts as in comment 6(b)(1)-2.iii, except that after the consumer visits the debt collector's website and uses the debt collector's mobile application, the consumer sends an email message to the debt collector at 8:30 p.m. on Friday. Based on these facts, § 1006.6(b)(1)(i) does not prohibit the debt collector from responding once, such as by sending an automated email message reply generated in response to the consumer's email message. Unless the consumer informs the debt collector that those times are no longer inconvenient, § 1006.6(b)(1)(i) prohibits the debt collector from future communications or attempts to communicate with the consumer on Fridays.

Paragraph 6(b)(1)(i)

1.

Time of electronic communication.

2.

Consumer's location.

i. Assume that a debt collector's information indicates that a consumer has a mobile telephone number with an area code associated with the Eastern time zone and a residential address in the Pacific time zone. The convenient times to communicate with the consumer are after 11:00 a.m. Eastern time (8:00 a.m. Pacific time) and before 9:00 p.m. Eastern time (6:00 p.m. Pacific time).

ii. Assume that a debt collector's information indicates that a consumer has a mobile telephone number with an area code associated with the Eastern time zone and a landline telephone number with an area code associated with the Mountain time zone. The convenient times to communicate with the consumer are after 10:00 a.m. Eastern time (8:00 a.m. Mountain time) and before 9:00 p.m. Eastern time (7:00 p.m. Mountain time).

Paragraph 6(b)(1)(ii)

1.

Communications or attempts to communicate at unusual or inconvenient places.

i. Assume the same facts as in comment 6(b)(1)-1.iii. Unless the debt collector knows that the consumer is at home, a telephone call to the consumer's mobile telephone number or an electronic communication, including, for example, an email message or a text message to the consumer's mobile telephone, does not violate § 1006.6(b)(1)(ii) even if the consumer receives or views the communication while at home.

6(b)(2) Prohibitions Regarding Consumer Represented by an Attorney

1.

Consumer-initiated communications.

6(b)(3) Prohibitions Regarding Consumer's Place of Employment

1.

Communications at consumer's place of employment.

2.

Employer-provided email.

6(b)(4) Exceptions

Paragraph 6(b)(4)(i)

1.

Prior consent in general.

2.

Directly to the debt collector.

6(c) Communications With a Consumer After Refusal To Pay or Cease Communication Notice

6(c)(1) Prohibitions

1.

Notification complete upon receipt.

i. Assume that on August 3, a consumer places in the mail a written notification to a debt collector that the consumer either refuses to pay a debt or wants the debt collector to cease further communication with

2.

Interpretation of the E-SIGN Act.

6(c)(2) Exceptions

1.

Written early intervention notice for mortgage servicers.

2.

Other mortgage servicing rule provisions.

6(d) Communications With Third Parties

6(d)(2) Exceptions

1.

Prior consent.

6(d)(3) Reasonable Procedures for Email and Text Message Communications

Paragraph 6(d)(3)(ii)

1.

Knowledge of prohibited disclosure.

6(d)(4) Procedures for Email Addresses

6(d)(4)(i) Procedures Based on Communication Between the Consumer and the Debt Collector

Paragraph 6(d)(4)(i)(B)

1.

Prior consent in general.

2.

Prior consent consumer-provided email address.

6(d)(4)(ii) Procedures Based on Communication by the Creditor

Paragraph 6(d)(4)(ii)(B)

1.

Communications about the account.

Paragraph 6(d)(4)(ii)(C)

1.

Clear and conspicuous.

2.

Sample language.

i. When a creditor sends the notice in writing, the creditor may use, but is not required to use, the following language to satisfy § 1006.6(d)(4)(ii)(C): We are transferring your account to ABC debt collector, and we are providing ABC debt collector with the following email address for you: [email address]. ABC debt collector may use this email address to communicate with you about the debt. If others have access to this email address, then it is possible they may see the emails. If you would

like to opt out of communications by ABC debt collector to [email address], please fill out the enclosed form and return it in the enclosed envelope so that we receive it by [date].

ii. When a creditor sends the notice electronically, the creditor may use, but is not required to use, the following language to satisfy § 1006.6(d)(4)(ii)(C): We are transferring your account to ABC debt collector, and we are providing ABC debt collector with the following email address for you: [email address]. ABC debt collector may use this email address to communicate with you about the debt. If others have access to this email address, then it is possible they may see the emails. If you would like to opt out of communications by ABC debt collector to [email address], please click here by [date].

3.

Combined notice.

Paragraph 6(d)(4)(ii)(C)(1)

1.

Identification of the debt collector.

1

Paragraph 6(d)(4)(ii)(C)(4)

1.

Reasonable and simple method to opt out.

4

i. When the creditor sends the notice in writing, reasonable and simple methods for opting out include providing a reply form and a pre-addressed envelope together with the opt-out notice. Requiring a consumer to call or write to obtain a form for opting out, rather than including the form with the opt-out notice, does not meet the requirement to provide a reasonable and simple method for opting out.

ii. When the creditor sends the notice electronically, reasonable and simple methods for opting out include providing an electronic means to opt out, such as a hyperlink, or allowing the consumer to

opt out by replying to the communication with the word stop. Requiring a consumer who receives the opt-out notice electronically to opt out by postal mail, telephone, or visiting a website without providing a link does not meet the requirement to provide a reasonable and simple method for opting out.

Paragraph 6(d)(4)(ii)(C)(5)

1.

Recipient of opt-out request.

5

Paragraph 6(d)(4)(ii)(D)

1.

Effect of opt-out request after expiration of opt-out period.

2.

Scope of opt-out request.

Paragraph 6(d)(4)(ii)(E)

1.

Domain name available for use by the general public.

e.g., john.doe@springsidemortgage.com

e.g., john.doe@agency.gov,

john.doe@university.edu,

john.doe@nonprofit.org

2.

Knowledge of employer-provided email address.

6(d)(4)(iii) Procedures Based on Communication by the Prior Debt Collector

1.

Immediately prior debt collector.

2.

Examples.

i. After obtaining a consumer's email address in accordance with the procedures in § 1006.6(d)(4)(i) or (ii), ABC debt collector communicates with the consumer about the debt using that email address and the consumer does not opt out. ABC debt collector returns the debt to the creditor, who places it with XYZ debt collector. XYZ debt collector communicates with the consumer about the debt using the email address obtained by ABC debt collector. Assuming that the requirements of § 1006.6(d)(3)(ii) are satisfied, XYZ debt collector may have a bona fide error defense to civil liability for any unintentional third-party disclosure that occurs during that communication because a prior debt collector (

i.e.,

i.e.,

ii. After obtaining a consumer's email address in accordance with the procedures in § 1006.6(d)(4)(i) or (ii), ABC debt collector communicates with the consumer about the debt using that email address and the consumer does not opt out. ABC debt collector returns the debt to the creditor, who places it with EFG debt collector. EFG debt collector communicates with the consumer about the debt using the email address obtained by ABC debt collector, and the consumer does not opt out. EFG debt collector returns the debt to the creditor, who places it with XYZ debt collector. XYZ debt collector communicates with the consumer about the debt using the email address obtained by ABC debt collector and used by EFG debt collector. Assuming that the requirements of § 1006.6(d)(3)(ii) are satisfied, XYZ debt collector may have a bona fide error defense to civil liability for any unintentional third-party disclosure that occurs during that communication because a prior debt collector (

i.e.,

i.e.,

iii. After obtaining a consumer's email address in accordance with the procedures in § 1006.6(d)(4)(i) or (ii), ABC debt collector communicates with the consumer about the debt using that email address and the consumer does not opt out. ABC debt collector returns the debt to the

creditor, who places it with EFG debt collector, who chooses not to communicate with the consumer by email. EFG debt collector returns the debt to the creditor, who places it with XYZ debt collector. XYZ debt collector communicates with the consumer about the debt using the email address obtained by ABC debt collector. Section 1006.6(d)(4)(iii) does not provide XYZ debt collector with a bona fide error defense to civil liability for any unintentional third-party disclosure that occurs during that communication because the immediately prior debt collector (

i.e.,

6(d)(5) Procedures for Telephone Numbers for Text Messages

1.

Complete and accurate database.

In re Advanced Methods to Target & Eliminate Unlawful Robocalls

Paragraph 6(d)(5)(i)

1.

Response to telephone call by consumer.

Paragraph 6(d)(5)(ii)

1.

Prior consent.

6(e) Opt-Out Notice for Electronic Communications or Attempts To Communicate

1.

In general.

4

i. Assume that a debt collector sends a text message to a consumer's mobile telephone number. The text message includes the following instruction: Reply STOP to stop texts to this telephone number. Assuming that it is readily noticeable and legible to consumers, this instruction constitutes a clear and conspicuous statement describing a reasonable and simple method to opt out of receiving further text messages from the debt collector to that telephone number consistent with § 1006.6(e).

No minimum type size is mandated.

ii. Assume that a debt collector sends the consumer an email that includes a hyperlink labeled: Click here to opt out of further emails to this email address. Assuming that it is readily noticeable and legible to consumers, this instruction constitutes a clear and conspicuous statement describing a reasonable and simple method to opt out of receiving further emails from the debt collector to that email address consistent with § 1006.6(e). No minimum type size is mandated.

iii. Assume that a debt collector sends the consumer an email that includes instructions in a textual format explaining that the consumer may opt out of receiving further email communications from the debt collector to that email address by replying with the word stop in the subject line. Assuming that it is readily noticeable and legible to consumers, this instruction constitutes a clear and conspicuous statement describing a reasonable and simple method to opt out of receiving further emails from the debt collector to that email address consistent with § 1006.6(e). No minimum type size is mandated.

Section 1006.10Acquisition of Location Information

10(a) Definition

1.

Location information about deceased consumers.

10(b) Form and Content of Location Communications

Paragraph 10(b)(2)

1.

Executors, administrators, or personal representatives of a deceased consumer's estate.

Section 1006.14Harassing, Oppressive, or Abusive Conduct

14(a) In General

1.

General prohibition.

i. Assume that, in connection with the collection of a debt, a debt collector sends a consumer numerous, unsolicited text messages per day for several consecutive days. The consumer does not

respond. Assume further that the debt collector does not communicate or attempt to communicate with the consumer using any other communication medium and that, by sending the text messages, the debt collector has not violated § 1006.14(b) through (h). Even though the debt collector's conduct does not violate any specific prohibition under § 1006.14(b) through (h), it is likely that the natural consequence of the debt collector's text messages is to harass, oppress, or abuse the person receiving the text messages; when such natural consequence occurs, the debt collector has violated § 1006.14(a) and FDCPA section 806.

2.

Cumulative effect of conduct.

i. Assume that a debt collector places seven unanswered telephone calls within seven consecutive days to a consumer in connection with the collection of a debt. During this same period, the debt collector also sends multiple additional unsolicited emails about the debt to the consumer. The consumer does not respond. The frequency of the debt collector's telephone calls during the seven-day period does not exceed the telephone call frequencies described in § 1006.14(b)(2)(i), so the debt collector is presumed to comply with § 1006.14(b)(1). Assume further that no evidence is offered to rebut the presumption of compliance, such that the debt collector complies with § 1006.14(b)(1). Also assume that, for purposes of this illustrative example only, the frequency of the debt collector's emails alone does not violate § 1006.14(a). It nevertheless is likely that the cumulative effect of the debt collector's telephone calls and emails is harassment; when such natural consequence occurs, the debt collector has violated § 1006.14(a) and FDCPA section 806.

14(b) Repeated or Continuous Telephone Calls or Telephone Conversations

1.

Placing telephone calls repeatedly or continuously.

e.g.,

14(b)(1) In General

1.

Effect of compliance.

2.

Example.

14(b)(2) Telephone Call Frequencies; Presumptions of Compliance and Violation

Paragraph 14(b)(2)(i)

1.

Presumption of compliance; examples.

i. On Wednesday, April 1, a debt collector first attempts to communicate with a consumer in connection with the collection of a credit card debt by placing a telephone call and leaving a limited-content message. Between Thursday, April 2, and Tuesday, April 7, the debt collector places six more telephone calls to the consumer about the debt, all of which go unanswered. As of Tuesday, April 7, the debt collector has placed seven telephone calls to the consumer in connection with the collection of the credit card debt within the period of seven consecutive days that started on Wednesday, April 1. Assume the debt collector does not place any additional telephone calls about the debt until Wednesday, April 8. Under § 1006.14(b)(2)(i), the debt collector is presumed to comply with § 1006.14(b)(1) and FDCPA section 806(5).

ii. On Thursday, August 13, a consumer places a telephone call to, and initiates a telephone conversation with, a debt collector regarding a particular debt. Assume that the debt collector does not place a telephone call to the consumer in connection with the collection of that debt again prior to Thursday, August 20. The debt collector is presumed to comply with § 1006.14(b)(1) and FDCPA section 806(5).

iii. On Tuesday, October 6, a debt collector first attempts to communicate with a particular third party for the purpose of acquiring location information about a consumer by placing a telephone call to that third party. The call is unanswered. The debt collector places up to six more unanswered telephone calls to that third party for the purpose of acquiring location information about the consumer through Monday, October 12. The debt collector is presumed to comply with §

1006.14(b)(1) and FDCPA section 806(5). See § 1006.10(c) for further guidance concerning when a debt collector is prohibited from communicating with a person other than the consumer for the purpose of acquiring location information.

2.

Factors to rebut the presumption of compliance.

i. The frequency and pattern of telephone calls the debt collector places to a person, including the intervals between them. The considerations relevant to this factor include whether the debt collector placed telephone calls to a person in rapid succession (

e.g.,

e.g.,

ii. The frequency and pattern of any voicemails that the debt collector leaves for a person, including the intervals between them. The considerations relevant to this factor include whether the debt collector left voicemails for a person in rapid succession (

e.g.,

e.g.,

iii. The content of a person's prior communications with the debt collector. Among the considerations relevant to this factor are whether the person previously informed the debt collector, for example, that the person did not wish to be contacted again about the particular debt, that the person was refusing to pay the particular debt, or that the person did not owe the particular debt. This factor also includes a consumer's cease communication notification described in § 1006.6(c) and a consumer's request under § 1006.14(h) that the debt collector not use telephone calls to communicate or attempt to communicate with the consumer. The amount of time elapsed since any such prior communications also may be relevant to this factor.

iv. The debt collector's conduct in prior communications or attempts to communicate with the person. Among the considerations relevant to this factor are whether, during a prior communication or attempt to communicate with a person, the debt collector, for example, used obscene, profane, or

otherwise abusive language (

see

see

see

3.

Misdirected telephone calls.

i. Assume that a debt collector first attempts to communicate with a consumer on Monday, and again on Wednesday, by placing one unanswered telephone call to a particular telephone number on each of those days. On Thursday, the debt collector learns that the telephone number belongs to someone else and that the consumer does not answer telephone calls to that number. For purposes of § 1006.14(b)(2)(i), the debt collector has not yet placed any telephone calls to that consumer during that seven-consecutive-day period.

Paragraph 14(b)(2)(ii)

1.

Presumption of a violation; examples.

i. On Wednesday, April 1, a debt collector first attempts to communicate with a consumer in connection with the collection of a mortgage debt by placing a telephone call and leaving a limited-content message. On each of the next three business days (

i.e.,

ii. On Tuesday, August 11, a debt collector first attempts to communicate with a consumer in connection with the collection of a credit card debt by placing a telephone call to the consumer that the consumer does not answer. On Friday, August 14, the debt collector again places a telephone call to the consumer and has a telephone conversation with the consumer in connection with the collection of the debt. Subject to the exclusions in § 1006.14(b)(3), the debt collector is presumed to violate § 1006.14(b)(1) and FDCPA section 806(5) if the debt collector places a telephone call to the consumer in connection with the collection of that debt again prior to Friday, August 21.

2.

Factors to rebut the presumption of a violation.

i. Whether a debt collector placed a telephone call to comply with, or as required by, applicable law. For example, assume the same facts as in comment 14(b)(2)(ii)-1.i, except assume that the debt collector placed the final telephone call of the seven-consecutive-day period to inform the consumer of available loss mitigation options in compliance with the Bureau's mortgage servicing rules under Regulation X, 12 CFR 1024.39(a). The debt collector's compliance with applicable law is a factor that may rebut the presumption of a violation.

ii. Whether a debt collector placed a telephone call that was directly related to active litigation involving the collection of a particular debt. For example, assume the same facts as in comment 14(b)(2)(ii)-1.ii, except assume that, after the debt collector and the consumer had a telephone conversation about the credit card debt on Friday, August 14, the debt collector placed another telephone call to the consumer before Friday, August 21, to complete a court-ordered communication with the consumer about the debt, or as part of negotiations to settle active debt collection litigation regarding the debt. The direct relationship between the additional telephone call and the active debt collection litigation is a factor that may rebut the presumption of a violation.

iii. Whether a debt collector placed a telephone call in response to a consumer's request for additional information when the exclusion in § 1006.14(b)(3)(i) for telephone calls made with the consumer's prior consent given directly to the debt collector did not apply. For example, assume the same facts as in comment 14(b)(2)(ii)-1.ii, except assume that, during the telephone conversation about the credit card debt on Friday, August 14, the consumer told the debt collector that the consumer would like more information about the amount of the debt but that the consumer could not talk at that moment. The consumer ended the telephone call before the debt collector could seek prior consent under § 1006.14(b)(3)(i) to call back with the requested information. The debt collector placed another telephone call to the consumer prior to Friday, August 21, to provide the requested information. The fact that the debt collector placed the additional telephone call in response to the

consumer's request is a factor that may rebut the presumption of a violation.

iv. Whether a debt collector placed a telephone call to convey information to the consumer that, as shown through evidence, would provide the consumer with an opportunity to avoid a demonstrably negative effect relating to the collection of the particular debt, where the negative effect was not in the debt collector's control, and where time was of the essence. For example, in each of the following three scenarios, assume the same facts as in comment 14(b)(2)(ii)-1.ii, and also assume that:

A. During the telephone conversation about the credit card debt on Friday, August 14, the debt collector and the consumer engaged in a lengthy conversation regarding

i.e.,

i.e.,

B. The consumer previously entered into a payment plan with the debt collector regarding the credit card debt. The conditions for the payment plan were set by the creditor, and among those conditions is that only the creditor, in its sole discretion, may approve waivers of late fees. On Monday, August 17, the debt collector learned that the consumer's payment failed to process, and the applicable grace period was set to expire on Tuesday, August 18. The debt collector placed a telephone call to the consumer on Monday to remind the consumer that a late fee would be applied by the creditor for non-payment unless the consumer made the payment by the next day. The fact that the debt collector placed the telephone call to alert the consumer to the pending penalty, giving the consumer an opportunity to avoid a demonstrably negative effect that was not in the debt collector's control and where time was of the essence, is a factor that may rebut the presumption of a violation.

C. On Monday, August 17, the debt collector placed a telephone call to the consumer to offer the consumer a one-time only discount on the payment of the credit card debt. The debt collector stated that the offer would expire the next day when, in fact, the debt collector could have offered the same or a similar discount through the end of August. Because the negative effect on the consumer was in the debt collector's control, the discount offer is not a factor that may rebut the presumption of a

violation.

14(b)(3) Certain Telephone Calls Excluded From Telephone Call Frequencies

Paragraph 14(b)(3)(i)

1.

Prior consent.

2.

Duration of prior consent.

3.

Examples.

i. On Friday, April 3, a debt collector places a telephone call to a consumer. During the ensuing telephone conversation in connection with the collection of a debt, the consumer tells the debt collector to call back on Monday. Absent an exception, under § 1006.14(b)(2)(ii), the debt collector would be presumed to violate § 1006.14(b)(1) and FDCPA section 806(5) (15 U.S.C. 1692d(5)) if the debt collector called the consumer on Monday, April 6, because the additional telephone call would exceed the frequency described in § 1006.14(b)(2)(i)(B). Under § 1006.14(b)(3)(i), however, in the scenario described (and absent any other facts), the debt collector could, pursuant to the consumer's prior consent, place telephone calls to the consumer on Monday, April 6, and not lose a presumption of compliance with § 1006.14(b)(1) and FDCPA section 806(5).

ii. Assume the same facts as in the preceding example, except that the consumer does not specify a particular day the debt collector may call back. Assume further that, on Monday, April 6, the debt collector calls the consumer back and has a telephone conversation with the consumer. The exception in § 1006.14(b)(3)(i) does not apply to subsequent telephone calls placed by the debt collector to the consumer, absent additional prior consent from the consumer. For example, if the debt collector, without additional prior consent, placed a telephone call to the consumer on Wednesday, April 8, that telephone call would count toward the telephone call frequencies described in § 1006.14(b)(2), and, pursuant to § 1006.14(b)(2)(ii), the debt collector would be

presumed to violate § 1006.14(b)(1) and FDCPA section 806(5).

iii. Between Monday, June 1, and Wednesday, June 3, a debt collector places three unanswered telephone calls to a consumer in

i.e.,

Paragraph 14(b)(3)(ii)

1.

Unconnected telephone calls.

14(b)(4) Definition

1.

Particular debt.

i.

Placing a telephone call in connection with the collection of a particular debt.

ii.

Engaging in a telephone conversation in connection with the collection of a particular debt.

2.

Examples.

i. A debt collector is attempting to collect a medical debt and two credit card debts (denominated A and B for this example) from the same consumer. Under

ii. A debt collector is attempting to collect a medical debt and a credit card debt from the same consumer. The debt collector places a telephone call to the consumer, intending to discuss both particular debts, but the consumer does not answer, and the telephone call goes to voicemail. The debt collector leaves a limited-content message, as defined in § 1006.2(j). Because the limited-content message does not specifically refer to any particular debt, under § 1006.14(b)(2)(i)(A), a debt collector may count the voicemail as one telephone call placed toward either of the particular debts, even though the debt collector intended to discuss both particular debts if the telephone call had resulted in a telephone conversation.

iii. A debt collector is attempting to collect a medical debt and a credit card debt from the same consumer. On Monday, November 9, the debt collector places a telephone call to, and engages in a telephone conversation with, the consumer solely in connection with the collection of the medical debt. The debt collector does not place any telephone calls to the consumer in connection with the collection of the credit card debt. Regarding the medical debt, under § 1006.14(b)(2)(i)(A) and (B) respectively, the debt collector has placed a telephone call to, and has and engaged in a telephone conversation with, the consumer in connection with the collection of the particular debt, unless an exclusion in § 1006.14(b)(3) applies. Regarding the credit card debt, under § 1006.14(b)(2)(i)(A) and (B) respectively, the debt collector has neither placed a telephone call to, nor engaged in a telephone conversation with, the consumer in connection with the collection of the particular debt.

iv. Assume the same facts as in the preceding example, except that on Monday, November 9, the debt collector engages in a telephone conversation with the consumer in connection with the collection of both the medical debt and the credit card debt. Under § 1006.14(b)(2)(i)(A) and (B) respectively, the debt collector has placed a telephone call to, and has engaged in a telephone conversation with, the consumer in connection with the collection of both the medical debt and the credit card debt, unless an exclusion in § 1006.14(b)(3) applies.

v. A debt collector is attempting to collect a medical debt and a credit card debt from the same consumer. Beginning on Monday, November 9, and through Wednesday, November 11, the debt collector places two unanswered telephone calls to the consumer which the debt collector counts as telephone calls in connection with the collection of the medical debt, and four unanswered telephone calls to the consumer which the debt collector counts as telephone calls in connection with the collection of the credit card debt. On Thursday, November 12, the debt collector places a telephone call to, and engages in a general telephone conversation with, the consumer, but the debt collector and the consumer do not discuss either particular debt. Under § 1006.14(b)(2)(i)(A) and (B) respectively, the debt collector may count the November 12 telephone call and ensuing conversation toward either the medical debt or the credit card debt. For example, if the debt collector

counts the November 12 telephone call and ensuing conversation toward the collection of only the medical debt, then, during this time period, the debt collector has placed three telephone calls and has had one conversation in connection with the collection of the medical debt, and has placed four telephone calls and has had no conversations in connection with the collection of the credit card debt.

vi. A debt collector is attempting to collect a medical debt and a credit card debt from the same consumer. On Monday, November 9, the debt collector places a telephone call to, and initiates a telephone conversation with, the consumer about the collection of the medical debt. The consumer states that the consumer does not want to discuss the medical debt, and instead initiates a discussion about the credit card debt. Under § 1006.14(b)(2)(i)(A) and (B) respectively, the debt collector has both placed a telephone call to, and engaged in a telephone conversation with, the consumer in connection with the collection of the medical debt, even though the consumer was unwilling to engage in the discussion initiated by the debt collector regarding the medical debt. Under § 1006.14(b)(2)(i)(A) and (B) respectively, the debt collector has not placed a

vii. A debt collector is attempting to collect three student loan debts that were serviced under a single account number at the time that they were obtained by a debt collector and that are owed or allegedly owed by the same consumer. All three debts are treated as a single debt for purposes of § 1006.14(b)(2). The debt collector is presumed to comply with § 1006.14(b)(1) and FDCPA section 806(5) if the debt collector places seven or fewer telephone calls within seven consecutive days to the consumer in connection with the collection of the three student loan debts, and the debt collector does not place a telephone call within a period of seven consecutive days after having had a telephone conversation with the consumer in connection with the collection of any one of the three student loan debts, unless an exclusion in § 1006.14(b)(3) applies.

14(h) Prohibited Communication Media

14(h)(1) In General

1.

Communication media designations.

2.

Specific address or telephone number.

3.

Examples.

i. Assume that a person tells a debt collector to stop calling the person. Based on these facts, the person has requested that the debt collector not use telephone calls to communicate with the person and, thereafter, § 1006.14(h)(1) prohibits the debt collector from communicating or attempting to communicate with the person through telephone calls.

ii. Assume that, in response to receipt of either the opt-out procedures described in § 1006.6(d)(4)(ii) or the opt-out notice in § 1006.6(e), a consumer requests to opt out of receiving electronic communications from a debt collector at a particular email address or telephone number. Based on these facts, the consumer has requested that the debt collector not use that email address or telephone number to electronically communicate with the consumer for any debt and, thereafter, § 1006.14(h)(1) prohibits the debt collector from electronically communicating or attempting to communicate with the consumer through that email address or telephone number.

14(h)(2) Exceptions

1.

Legally required communication media.

Section 1006.18 False, Deceptive, or Misleading Representations or Means

18(d) False Representations or Deceptive Means

1.

Social media.

i. Assume that a debt collector sends a private message, in connection with the collection of a debt, requesting to be added as one of the consumer's contacts on a social media platform marketed for social or professional networking purposes. A debt collector makes a false representation or

implication if the debt collector does not disclose his or her identity as a debt collector in the request.

ii. Assume that a debt collector communicates privately with a friend or coworker of a consumer on a social media platform, for the purpose of acquiring location information about the consumer.

Pursuant to

e.g.,

18(e) Disclosures Required

1.

Communication.

18(e)(1) Initial Communications

1.

Example.

18(e)(4) Translated Disclosures

1.

Example.

i. ABC debt collector is collecting a debt. ABC debt collector's initial communication with the consumer takes place in Spanish. Section 1006.18(e)(4) requires ABC debt collector to provide in Spanish the disclosure required by § 1006.18(e)(1). Thereafter, ABC debt collector has a communication with the consumer that takes place partly in English and partly in Spanish. During this communication, the debt collector must provide the disclosure required by § 1006.18(e)(2) in both English and Spanish.

18(f) Assumed Names

1.

Readily identifiable by the employer.

Section 1006.22 Unfair or Unconscionable Means

22(f) Restrictions on Use of Certain Media

Paragraph 22(f)(2)

1.

Language or symbol.

Paragraph 22(f)(3)

1.

Email addresses described in § 1006.6(d)(4).

Paragraph 22(f)(4)

1.

Social media.

Section 1006.30Other Prohibited Practices

30(a) Required actions prior to furnishing information.

30(a)(1)In general

1.

About the debt.

2.

Reasonable period of time.

3.

Notices of undeliverability.

i. Assume that, on May 1, a debt collector mails the consumer a validation notice as described in § 1006.34(a)(1)(i)(A). On May 10, the debt collector receives a notice of undeliverability and, without taking any additional action described in § 1006.30(a)(1), subsequently furnishes information about the debt to a consumer reporting agency. The debt collector has violated § 1006.30(a)(1).

ii. Assume that, on May 1, a debt collector mails the consumer a validation notice as described in § 1006.34(a)(1)(i)(A). On May 10, the debt collector receives a notice of undeliverability. On May 11, the debt collector mails the consumer another validation notice as described in § 1006.34(a)(1)(i)(A). From May 11 to May 24, the debt collector permits receipt of, monitors for, and does not receive, a notice of undeliverability and thereafter furnishes information about the debt to a consumer reporting

agency. The debt collector has not violated § 1006.30(a)(1).

iii. Assume that, on May 1, a debt collector mails the consumer a validation notice as described in § 1006.34(a)(1)(i)(A). From May 1 to May 14, the debt collector permits receipt

30(b) Prohibition on the Sale, Transfer for Consideration, or Placement for Collection of Certain Debts

30(b)(1) In General

1.

Transfer for consideration.

2.

Debt that resulted from identity theft.

30(b)(2) Exceptions

30(b)(2)(i) In General

Paragraph 30(b)(2)(i)(A)

1.

In general.

Section 1006.34 Notice for Validation of Debts

34(a) Validation information required.

34(a)(1) In general.

1.

Deceased consumers.

34(b) Definitions.

34(b)(2) Initial communication.

1.

Bankruptcy proofs of claim.

34(b)(3) Itemization date.

1.

In general.

2.

Subsequent debt collectors.

Paragraph 34(b)(3)(i).

1.

Last statement date.

Paragraph 34(b)(3)(iii).

1.

Last payment date.

Paragraph 34(b)(3)(iv).

1.

Transaction date.

34(b)(5) Validation period.

1.

Assumed receipt of validation information.

2.

Updated validation period.

34(c) Validation information.

34(c)(1) Debt collector communication disclosure.

1.

Statement required by § 1006.18(e).

i. ABC debt collector has an initial communication with the consumer by telephone. Within five days of that initial communication, ABC debt collector sends the consumer a validation notice using Model Form B-1 in appendix B to this part. ABC debt collector has complied with § 1006.34(c)(1) even though Model Form B-1 includes the disclosure described in § 1006.18(e)(1) rather than the disclosure described in § 1006.18(e)(2).

34(c)(2) Information about the debt.

Paragraph 34(c)(2)(i).

1.

Debt collector's name.

2.

Debt collector's mailing address.

Paragraph 34(c)(2)(ii).

1.

Consumer's name.

Paragraph 34(c)(2)(iii).

1.

Creditor's name.

Paragraph 34(c)(2)(iv).

1.

Account number truncation.

Paragraph 34(c)(2)(v).

1.

Creditor's name.

Paragraph 34(c)(2)(vii).

1.

Amount of the debt on the itemization date.

Paragraph 34(c)(2)(viii).

1.

Itemization of the debt.

2.

Itemization required by other applicable law.

3.

Itemization on a separate page.

4.

Debt collectors collecting multiple debts.

Paragraph 34(c)(2)(ix).

1.

Current amount of the debt.

i.e.,

2.

Debt collectors collecting multiple debts.

34(c)(3) Information about consumer protections.

Paragraph 34(c)(3)(v).

1.

Electronic communication media.

34(c)(4) Consumer-response information.

1.

Prompts.

34(c)(5) Special rule for certain residential mortgage debt.

1.

In general.

34(d) Form of validation information.

34(d)(2) Safe harbor.

1.

In general.

34(d)(2)(i) In general.

1.

Disclosure required by § 1006.18(e).

34(d)(2)(iii) Substantially similar form.

1.

Substantially similar form.

i. Modifications to remove language that could suggest liability for the debt if such language is not applicable. For example, if a debt collector sends a validation notice to a person who is authorized to act on behalf of the deceased consumer's estate (see comment 34(a)(1)-1), and that person is not liable for the debt, the debt collector may use the name of the deceased consumer instead of you;

ii. Relocating the consumer-response information required by § 1006.34(c)(4) to facilitate mailing;

iii. Adding barcodes or QR codes, as long as the inclusion of such items does not violate § 1006.38(b);

iv. Adding the date the form is generated; and

v. Embedding hyperlinks, if delivering the form electronically.

34(d)(3) Optional disclosures.

34(d)(3)(i) Telephone contact information.

1.

In general.

34(d)(3)(iv) Disclosures under applicable law.

34(d)(3)(iv)(A) Disclosures on the reverse of the validation notice.

1.

In general.

2.

Statement referring to disclosures.

34(d)(3)(iv)(B) Disclosures on the front of the validation notice.

1.

In general.

34(d)(3)(vi) Spanish-language translation disclosures.

Paragraph 34(d)(3)(vi)(A).

1.

Supplemental information in Spanish.

Paragraph 34(d)(3)(vii).

1.

Merchant brand.

2.

Affinity brand.

3.

Facility name.

34(e) Translation into other languages.

1.

Safe harbor for complete and accurate translation.

Section 1006.38 Disputes and Requests for Original-Creditor Information

1.

In writing.

i. Mails the written dispute or request to the debt collector;

ii. Returns to the debt collector the consumer-response form that § 1006.34(c)(4) requires to appear on the validation notice and indicates on the form the dispute or request;

iii. Provides the dispute or request to the debt collector using a medium of electronic communication through which the debt collector accepts electronic communications from consumers, such as an email address or a website portal; or

iv. Delivers the written dispute or request in person or by courier to the debt collector.

2.

Interpretation of the E-SIGN Act.

3.

Deceased consumers.

38(a) Definitions

38(a)(1) Duplicative Dispute

1.

Substantially the same.

2.

New and material information.

i. ABC debt collector is collecting a debt from a consumer and sends the consumer a validation notice. In response, the consumer submits a written dispute to ABC debt collector within the validation period asserting that the consumer does not owe the debt. The consumer does not include any information in support of the dispute. Pursuant to § 1006.38(d)(2)(i), ABC debt collector provides the consumer a copy of verification of the debt. The consumer then sends a cancelled check showing the consumer paid the debt. The cancelled check is new and material information.

38(d) Disputes

38(d)(2) Response to Disputes

Paragraph 38(d)(2)(ii)

1.

Duplicative dispute notice.

Section 1006.42 Sending Required Disclosures

42(a) Sending Required Disclosures

42(a)(1) In General

1.

Relevant factors.

i. Identified the purpose of the communication by including, in the subject line of an electronic

communication transmitting the disclosure, the name of the creditor to whom the debt currently is owed or allegedly is owed and one additional piece of information identifying the debt, other than the amount, such as a truncated account number; the name of the original creditor; the name of any store brand associated with the debt; the date of sale of a product or service giving rise to the debt; the physical address of service; and the billing or mailing address on the account;

ii. Permitted receipt of notifications of undeliverability from communications providers, monitored for any such notifications, and treated any such notifications as precluding a reasonable expectation of actual notice for that delivery attempt; and

iii. Identified itself as the sender of the communication by including a business name that the consumer would be likely to recognize, such as the name included in the notice described in § 1006.6(d)(4)(ii)(C), or the name that the debt collector has used in a prior limited-content message left for the consumer or in an email message sent to the consumer.

2.

Notice of undeliverability.

3.

Safe harbor for notices sent by mail.

4.

Effect of consumer opt out.

Subpart C[Reserved]

Subpart D Miscellaneous

Section 1006.100 Record Retention

1.

Three-year retention period.

100(a) In general.

1.

Records that evidence compliance.

- i. Telephone call logs as evidence of compliance or noncompliance with the prohibition against harassing telephone calls in § 1006.14(b)(1); and
- ii. Copies of documents provided to consumers as evidence that the debt collector provided the information required by §§ 1006.34 and 1006.38 and met the delivery requirements of § 1006.42.

100(b) Special Rule for Telephone Call Recordings

1.

Recorded telephone calls.

Section 1006.104 Relation to State Laws

1.

State law disclosure requirements.

[85 FR 76887, Nov. 30, 2020, as amended at 86 FR 5857, Jan. 19, 2021; 87 FR 65669, Nov. 1, 2022; 88 FR 16538, Mar. 20, 2023]

Pt. 1007

PART 1007 S.A.F.E. MORTGAGE LICENSING ACT FEDERAL REGISTRATION OF RESIDENTIAL MORTGAGE LOAN ORIGINATORS (REGULATION G)

Sec.

1007.101

Authority, purpose, and scope of this part.

1007.102

Definitions applicable to this part.

1007.103

Registration of mortgage loan originators.

1007.104

Policies and procedures.

1007.105

Use of Unique Identifier.

Appendix A to Part 1007 Examples of Mortgage Loan Originator Activities

Authority:

12 U.S.C. 5101-5116; 15 U.S.C. 1604(a), 1639b; Pub. L. 111-203, 124 Stat. 1376.

Source:

76 FR 78487, Dec. 19, 2011, unless otherwise noted.

§ 1007.101

Authority, purpose, and scope.

(a)

Authority.

et seq.,

(b)

Purpose.

(c)

Scope

In general.

(i) National banks, Federal branches and agencies of foreign banks, their operating subsidiaries (collectively referred to in this part as national banks), and their employees who act as mortgage loan originators;

(ii) Member banks of the Federal Reserve System; their respective subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act, as amended (12 U.S.C. 1844(c)(5)); branches and agencies of foreign banks; commercial lending companies owned or controlled by foreign banks (collectively referred to in this part as member banks); and their employees who act as mortgage loan originators;

(iii) Insured state nonmember banks (including state-licensed insured branches of foreign banks), their subsidiaries (except brokers, dealers, persons providing insurance, investment companies, and investment advisers) (collectively referred to in this part as insured state nonmember banks), and

employees of such banks or subsidiaries who act as mortgage loan originators;

(iv) Savings associations, their operating subsidiaries (collectively referred to in this part as savings associations), and their employees who act as mortgage loan originators;

(v) Farm Credit System lending institutions that actually originate residential mortgage loans pursuant to sections 1.9(3), 1.11 or 2.4(a) and (b) of the Farm Credit Act of 1971 (collectively referred to in this part as Farm Credit System institutions), and their employees who act as mortgage loan originators; and

(vi) Any federally insured credit union and its employees, including volunteers, who act as mortgage loan originators. This part also applies to non-federally insured credit unions and their employees, including volunteers, who act as mortgage loan originators, subject to the conditions in paragraph (c)(3) of this section.

(2)

De minimis exception.

(ii) Prior to engaging in mortgage loan origination activity that exceeds the exception limit in paragraph (c)(2)(i) of this section, an employee must register with the Registry pursuant to this part.

(iii)

Evasion.

de minimis

(3)

For non-federally insured credit unions.

§ 1007.102

Definitions.

For purposes of this part, the following definitions apply:

Administrative or clerical tasks

Annual renewal period

Bureau

Covered financial institution

Mortgage loan originator

(1) An individual who:

(i) Takes a residential mortgage loan application; and

(ii) Offers or negotiates terms of a residential mortgage loan for compensation or gain.

(2)(i) The term

mortgage loan originator

(A) An individual who performs purely administrative or clerical tasks on behalf of an individual who is described as a mortgage loan originator in this section;

(B) An individual who only performs real estate brokerage activities (as defined in 12 U.S.C. 5102(4)(D)) and is licensed or registered as a real estate broker in accordance with applicable state law, unless the individual is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, and meets the definition of mortgage loan originator in this section; or

(C) An individual or entity solely involved in extensions of credit related to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).

(ii) Examples of activities that would, and would not, result in an employee meeting the definition of mortgage loan originator are provided in appendix A to this part.

Nationwide Mortgage Licensing System and Registry

Registry

Registered mortgage loan originator

registrant

(1) Meets the definition of mortgage loan originator and is an employee of a covered financial institution; and

(2) Is registered pursuant to this part with, and maintains a unique identifier through, the Registry.

Residential mortgage loan

Unique identifier

(1) Permanently identifies a registered mortgage loan originator;

(2) Is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Bureau to facilitate:

(i) Electronic tracking of mortgage loan originators; and

(ii) Uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against mortgage loan originators; and

(3) Must not be used for purposes other than those set forth under the S.A.F.E. Act.

§ 1007.103

Registration of mortgage loan originators.

(a)

Registration requirement

Employee registration.

(2)

Covered financial institution requirement

In general.

(ii)

Prohibition.

(3) [Reserved]

(4)

Employees previously registered or licensed through the Registry

In general.

(A) The employment information in paragraphs (d)(1)(i)(C) and (d)(1)(ii) of this section is updated and the requirements of paragraph (d)(2) of this section are met;

(B) New fingerprints of the employee are submitted to the Registry for a background check, as required by paragraph (d)(1)(ix) of this section, unless the employee has fingerprints on file with the

Registry that are less than 3 years old;

(C) The covered financial institution information required in paragraphs (e)(1)(i) (to the extent the covered financial institution has not previously met these requirements) and (e)(2)(i) of this section is submitted to the Registry; and

(D) The registration is maintained pursuant to paragraphs (b) and (e)(1)(ii) of this section, as of the date that the employee becomes subject to this part.

(ii)

Rule for certain acquisitions, mergers, or reorganizations.

(b)

Maintaining registration.

(i) Except as provided in paragraph (b)(3) of this section, renew the registration during the annual renewal period, confirming the responses set forth in paragraphs (d)(1)(i) through (viii) of this section remain accurate and complete, and updating this information, as appropriate; and

(ii) Update the registration within 30 days of any of the following events:

(A) A change in the name of the registrant;

(B) The registrant ceases to be an employee of the covered financial institution; or

(C) The information required under paragraphs (d)(1)(iii) through (viii) of this section becomes inaccurate, incomplete, or out-of-date.

(2) A registered mortgage loan originator must maintain his or her registration, unless the individual is no longer engaged in the activity of a mortgage loan originator.

(3) The annual registration renewal requirement set forth in paragraph (b)(1) of this section does not apply to a registered mortgage loan originator who has completed his or her registration with the Registry pursuant to paragraph (a)(1) of this section less than 6 months prior to the end of the annual renewal period.

(c)

Effective dates

Registration.

(2)

Renewals or updates.

(d)

Required employee information

In general.

(i) Identifying information, including the employee's:

(A) Name and any other names used;

(B) Home address and contact information;

(C) Principal business location address and business contact information;

(D) Social security number;

(E) Gender; and

(F) Date and place of birth;

(ii) Financial services-related employment history for the 10 years prior to the date of registration or renewal, including the date the employee became an employee of the covered financial institution;

(iii) Convictions of any criminal offense involving dishonesty, breach of trust, or money laundering against the employee or organizations controlled by the employee, or agreements to enter into a pretrial diversion or similar program in connection with the prosecution for such offense(s);

(iv) Civil judicial actions against the employee in connection with financial services-related activities, dismissals with settlements, or judicial findings that the employee violated financial services-related statutes or regulations, except for actions dismissed without a settlement agreement;

(v) Actions or orders by a state or Federal regulatory agency or foreign financial regulatory authority that:

(A) Found the employee to have made a false statement or omission or been dishonest, unfair or unethical; to have been involved in a violation of a financial services-related regulation or statute; or to have been a cause of a financial services-related business having its authorization to do business

denied, suspended, revoked, or restricted;

(B) Are entered against the employee in connection with a financial services-related activity;

(C) Denied, suspended, or revoked the employee's registration or license to engage in a financial services-related activity; disciplined the employee or otherwise by order prevented the employee from associating with a financial services-related business or restricted the employee's activities; or

(D) Barred the employee from association with an entity or its officers regulated by the agency or authority or from engaging in a financial services-related business;

(vi) Final orders issued by a state or Federal regulatory agency or foreign financial regulatory authority based on violations of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct;

(vii) Revocation or suspension of the employee's authorization to act as an

(viii) Customer-initiated financial services-related arbitration or civil action against the employee that required action, including settlements, or which resulted in a judgment; and

(ix) Fingerprints of the employee, in digital form if practicable, and any appropriate identifying information for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information in connection with a state and national criminal history background check; however, fingerprints provided to the Registry that are less than 3 years old may be used to satisfy this requirement.

(2)

Employee authorizations and attestation.

(i) Authorize the Registry and the employing institution to obtain information related to sanctions or findings in any administrative, civil, or criminal action, to which the employee is a party, made by any governmental jurisdiction;

(ii) Attest to the correctness of all information required by paragraph (d) of this section, whether submitted by the employee or on behalf of the employee by the employing covered financial institution; and

(iii) Authorize the Registry to make available to the public information required by paragraphs (d)(1)(i)(A) and (C), and (d)(1)(ii) through (viii) of this section.

(3)

Submission of information.

(e)

Required covered financial institution information.

(1)

Covered financial institution record.

(A) Name, main office address, and business contact information;

(B) Internal Revenue Service Employer Tax Identification Number (EIN);

(C) Research Statistics Supervision and Discount (RSSD) number, as issued by the Board of Governors of the Federal Reserve System;

(D) Identification of its primary Federal regulator;

(E) Name(s) and contact information of the individual(s) with authority to act as the covered financial institution's primary point of contact for the Registry;

(F) Name(s) and contact information of the individual(s) with authority to enter the information required by paragraphs (d)(1) and (e) of this section to the Registry and who may delegate this authority to other individuals. For the purpose of providing information required by paragraph (e) of this section, this individual and their delegates must not act as mortgage loan originators unless the covered financial institution has 10 or fewer full time or equivalent employees and is not a subsidiary; and

(G) If a subsidiary of a national bank, member bank, savings association, or insured state nonmember bank, indication that it is a subsidiary and the RSSD number of the parent institution; if an operating subsidiary of an agricultural credit association, indication that it is a subsidiary, and the RSSD number of the parent agricultural credit association.

(ii)

Attestation.

(iii) A covered financial institution must update the information required by this paragraph (e) of this section within 30 days of the date that this information becomes inaccurate.

(iv) A covered financial institution must renew the information required by paragraph (e) of this section on an annual basis.

(2)

Employee information.

(i) After the information required by paragraph (d) of this section has been submitted to the Registry, confirmation that it employs the registrant; and

(ii) Within 30 days of the date the registrant ceases to be an employee of the covered financial institution, notification that it no longer employs the registrant and the date the registrant ceased being an employee.

§ 1007.104

Policies and procedures.

A covered financial institution that employs one or more mortgage loan originators must adopt and follow written policies and procedures designed to assure compliance with this part. These policies and procedures must be appropriate to the nature, size, complexity, and scope of the mortgage lending activities of the covered financial institution, and apply only to those employees acting within the scope of their employment at the covered financial institution. At a minimum, these policies and procedures must:

(a) Establish a process for identifying which employees of the covered financial institution are required to be registered mortgage loan originators;

(b) Require that all employees of the covered financial institution who are mortgage loan originators be informed of the registration requirements of the S.A.F.E. Act and this part and be instructed on how to comply with such requirements and procedures;

(c) Establish procedures to comply with the unique identifier requirements in § 1007.105;

- (d) Establish reasonable procedures for confirming the adequacy and accuracy of employee registrations, including updates and renewals, by comparisons with its own records;
- (e) Establish reasonable procedures and tracking systems for monitoring compliance with registration and renewal requirements and procedures;
- (f) Provide for independent testing for compliance with this part to be conducted at least annually by covered financial institution personnel or by an outside party;
- (g) Provide for appropriate action in the case of any employee who fails to comply with the registration requirements of the S.A.F.E. Act, this part, or the covered financial institution's related policies and procedures, including prohibiting such employees from acting as mortgage loan originators or other appropriate disciplinary actions;
- (h) Establish a process for reviewing employee criminal history background reports received pursuant to this part, taking appropriate action consistent with applicable Federal law, including section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829), section 206 of the Federal Credit Union Act (12 U.S.C. 1786(i)), and section 5.65(d) of the Farm Credit Act of 1971, as amended (12 U.S.C. 2277a-14(d)), and implementing regulations with respect to these reports, and maintaining records of these reports and actions taken with respect to applicable employees; and
- (i) Establish procedures designed to ensure that any third party with which the covered financial institution has arrangements related to mortgage loan origination has policies and procedures to comply with the S.A.F.E. Act, including appropriate licensing and/or registration of individuals acting as mortgage loan originators.

§ 1007.105

Use of unique identifier.

- (a) The covered financial institution shall make the unique identifier(s) of
- (b) A registered mortgage loan originator shall provide his or her unique identifier to a consumer:
 - (1) Upon request;
 - (2) Before acting as a mortgage loan originator; and

(3) Through the originator's initial written communication with a consumer, if any, whether on paper or electronically.

Pt. 1007, App. A

Appendix A to Part 1007 Examples of Mortgage Loan Originator Activities

This appendix provides examples to aid in the understanding of activities that would cause an employee of a covered financial institution to fall within or outside the definition of mortgage loan originator. The examples in this appendix are not all-inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under this part. For purposes of the examples below, the term loan refers to a residential mortgage loan.

(a)

Taking a loan application.

(1) Taking an application includes: receiving information provided in connection with a request for a loan to be used to determine whether the consumer qualifies for a loan, even if the employee:

(i) Has received the consumer's information indirectly in order to make an offer or negotiate a loan;

(ii) Is not responsible for verifying information;

(iii) Is inputting information into an online application or other automated system on behalf of the consumer; or

(iv) Is not engaged in approval of the loan, including determining whether the consumer qualifies for the loan.

(2) Taking an application does not include any of the following activities performed solely or in combination:

(i) Contacting a consumer to verify the information in the loan application by obtaining documentation, such as tax returns or payroll receipts;

(ii) Receiving a loan application through the mail and forwarding it, without review, to loan approval personnel;

(iii) Assisting a consumer who is filling out an application by clarifying what type of information is

necessary for the application or otherwise explaining the qualifications or criteria necessary to obtain a loan product;

(iv) Describing the steps that a consumer would need to take to provide information to be used to determine whether the consumer qualifies for a loan or otherwise explaining the loan application process;

(v) In response to an inquiry regarding a prequalified offer that a consumer has received from a covered financial institution, collecting only basic identifying information about the consumer and forwarding the consumer to a mortgage loan originator; or

(vi) Receiving information in connection with a modification to the terms of an existing loan to a borrower as part of the covered financial institution's loss mitigation efforts when the borrower is reasonably likely to default.

(b)

Offering or negotiating terms of a loan.

(1) Offering or negotiating the terms of a loan includes:

(i) Presenting a loan offer to a consumer for acceptance, either verbally or in writing, including, but not limited to, providing a disclosure of the loan terms after application under the Truth in Lending Act, even if:

(A) Further verification of information is necessary;

(B) The offer is conditional;

(C) Other individuals must complete the loan process; or

(D) Only the rate approved by the covered financial institution's loan approval mechanism function for a specific loan product is communicated without authority to negotiate the rate.

(ii) Responding to a consumer's request for a lower rate or lower points on a pending loan application by presenting to the consumer a revised loan offer, either verbally or in writing, that includes a lower interest rate or lower points than the original offer.

(2) Offering or negotiating terms of a loan does not include solely or in combination:

(i) Providing general explanations or descriptions in response to consumer queries regarding qualification for a specific loan product, such as explaining loan terminology (

e.g.,

e.g.,

(ii) In response to a consumer's request, informing a consumer of the loan rates that are publicly available, such as on the covered financial institution's Web site, for specific types of loan products without communicating to the consumer whether qualifications are met for that loan product;

(iii) Collecting information about a consumer in order to provide the consumer with information on loan products for which the consumer generally may qualify, without

(iv) Arranging the loan closing or other aspects of the loan process, including communicating with a consumer about those arrangements, provided that communication with the consumer only verifies loan terms already offered or negotiated;

(v) Providing a consumer with information unrelated to loan terms, such as the best days of the month for scheduling loan closings at the covered financial institution;

(vi) Making an underwriting decision about whether the consumer qualifies for a loan;

(vii) Explaining or describing the steps or process that a consumer would need to take in order to obtain a loan offer, including qualifications or criteria that would need to be met without providing guidance specific to that consumer's circumstances; or

(viii) Communicating on behalf of a mortgage loan originator that a written offer, including disclosures provided pursuant to the Truth in Lending Act, has been sent to a consumer without providing any details of that offer.

(c)

Offering or negotiating a loan for compensation or gain.

(1) Offering or negotiating terms of a loan for compensation or gain includes engaging in any of the activities in paragraph (b)(1) of this appendix in the course of carrying out employment duties, even if the employee does not receive a referral fee or commission or other special compensation for the

loan.

(2) Offering or negotiating terms of a loan for compensation or gain does not include engaging in a seller-financed transaction for the employee's personal property that does not involve the covered financial institution.

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[Reserved]

Appendix A to Part 1008 Examples of Mortgage Loan Originator Activities

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Appendix C to Part 1008 Independent Contractors and Loan Processor and Underwriter Activities That Require a State Mortgage Loan Originator License

Appendix D to Part 1008 Attorneys: Circumstances that Require a State Mortgage Loan Originator License

Authority:

12 U.S.C. 5101-5116; Pub. L. 111-203, 124 Stat. 1376.

Source:

76 FR 78487, Dec. 19, 2011, unless otherwise noted.

§ 1008.1

Purpose.

(a)

Authority.

et seq.

(b)

Purpose.

(c)

Organization.

- (1) Subpart A establishes the definitions applicable to this part.
- (2) Subpart B provides the minimum standards that a state must meet in licensing loan originators, including standards for whom a state must require to be licensed, and sets forth the Bureau's procedure for determining a state's compliance with the minimum standards.
- (3) Subpart C provides the requirements that the Bureau will apply in any state that the Bureau determines has not established a licensing and registration system in compliance with the minimum standards of the S.A.F.E. Act.
- (4) Subpart D provides minimum requirements for the administration of the Nationwide Mortgage Licensing System and Registry.
- (5) Subpart E clarifies the Bureau's enforcement authority in states in which it operates a state licensing system.
- (6) Appendices A through D set forth examples to aid in the understanding and application of the regulations.

§ 1008.3

Confidentiality of information.

- (a) Except as otherwise provided in this part, any requirement under Federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry or a system established by the Director under this part, and any privilege arising under Federal or state law (including the rules of any Federal or state court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all state and Federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal and state laws.
- (b) Information or material that is subject to a privilege or confidentiality under paragraph (a) of this section shall not be subject to:

(1) Disclosure under any Federal or state law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective state; or

(2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry or by the Director with respect to such information or material, the person to whom such information or material pertains, waives, in whole or in part, in the discretion of such person, that privilege.

(c) Any state law, including any state open record law, relating to the disclosure of confidential supervisory information or any information or material described in paragraph (a) of this section that is inconsistent with paragraph (a), shall be superseded by the requirements of such provision to the extent that state law provides less confidentiality or a weaker privilege.

(d) This section shall not apply with respect to the information or material relating to the employment history of, and any publicly adjudicated disciplinary and enforcement action against, any loan originator that is included in

Subpart A General

§ 1008.20

Scope of this subpart.

This subpart provides the definitions applicable to this part, and other general requirements applicable to this part.

§ 1008.23

Definitions.

Terms that are defined in the S.A.F.E. Act and used in this part have the same meaning as in the S.A.F.E. Act, unless otherwise provided in this section.

Administrative or clerical tasks

American Association of Residential Mortgage Regulators (AARMR)

www.aarmr.org.

Application

Bureau

Clerical or support duties:

(1) Include:

(i) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms; and

(2) Does not include:

(i) Taking a residential mortgage loan application; or

(ii) Offering or negotiating terms of a residential mortgage loan.

Conference of State Bank Supervisors (CSBS)

www.csbs.org.

Director

Employee

(1) Whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and

(2) Whose compensation for Federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.

Farm Credit Administration

For compensation or gain.

Independent contractor

Loan originator.

Loan processor or underwriter,

(1) A state-licensed loan originator; or

(2) A registered loan originator.

Nationwide Mortgage Licensing System and Registry or NMLSR

Nontraditional mortgage product

Origination of a residential mortgage loan, for purposes of the definition of loan processor or underwriter,

Real estate brokerage activities

(1) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(2) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(3) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(4) Engaging in any activity for which a person engaged in the activity is required to be registered as a real estate agent or real estate broker under any applicable law; and

(5) Offering to engage in any activity, or act in any capacity, described in paragraphs (1), (2), (3), or (4) of this definition.

Residential mortgage loan

State

Unique identifier

(1) Permanently identifies a loan originator;

(2) Is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Bureau to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and

(3) Shall not be used for purposes other than those set forth under the S.A.F.E. Act.

Subpart BDetermination of State Compliance With the S.A.F.E. Act

§ 1008.101

Scope of this subpart.

This subpart describes the minimum standards of the S.A.F.E. Act that apply to a state's licensing and registering of loan originators. This subpart also provides the procedures that the Bureau follows to determine that a state does not have in place a system for licensing and registering mortgage loan originators that complies with the minimum standards. Upon making such a determination, the Bureau will impose the requirements and exercise the enforcement authorities described in subparts C and E of this part.

§ 1008.103

Individuals required to be licensed by states.

(a) Except as provided in paragraph (e) of this section, in order to operate a S.A.F.E.-compliant program, a state must prohibit an individual from engaging in the business of a loan originator with respect to any dwelling or residential real estate in the state, unless the individual first:

- (1) Registers as a loan originator through and obtains a unique identifier from the NMLSR, and
- (2) Obtains and maintains a valid loan originator license from the state.

(b) An individual engages in the business of a loan originator if the individual, in a commercial context and habitually or repeatedly:

- (1)(i) Takes a residential mortgage loan application; and
- (ii) Offers or negotiates terms of a residential mortgage loan for compensation or gain; or
- (2) Represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such individual can or will perform the activities described in paragraph (b)(1) of this section.

(c)(1) An individual takes a residential mortgage loan application if the individual receives a

residential mortgage loan application for the purpose of facilitating a decision whether to extend an offer of residential mortgage loan terms to a borrower or prospective borrower (or to accept the terms offered by a borrower or prospective borrower in response to a solicitation), whether the application is received directly or indirectly from the borrower or prospective borrower.

(2) An individual offers or negotiates terms of a residential mortgage loan for compensation or gain if the individual:

(i)(A) Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms;

(B) Communicates directly or indirectly with a borrower, or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms; or

(C) Recommends, refers, or steers a borrower or prospective borrower to a particular lender or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the borrower or prospective borrower; and

(ii) Receives or expects to receive payment of money or anything of value in connection with the activities described in paragraph (c)(2)(i) of this section or as a result of any residential mortgage loan terms entered into as a result of such activities.

(d)(1) Except as provided in paragraph (e) of this section, a state must prohibit an individual who is an independent contractor from engaging in residential mortgage loan origination activities as a loan processor or underwriter with respect to any dwelling or residential real estate in the state, unless the individual first:

(i) Registers as a loan originator through and obtains a unique identifier from the NMLSR, and

(ii) Obtains and maintains a valid loan originator license from the state.

(2) An individual engage[s] in residential mortgage loan origination activities as a loan processor or underwriter if, with respect to a residential mortgage loan application, the individual performs clerical or support duties.

(e) A state is not required to impose the prohibitions required under paragraphs (a) and (d) of this

section on the following individuals:

(1) An individual who performs only real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the individual is compensated directly or indirectly by a lender, mortgage broker, or other loan originator or by an agent of such lender, mortgage broker, or other loan originator;

(2) An individual who is involved only in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D);

(3) An individual who performs only clerical or support duties and:

(i) Who does so at the direction of and subject to the supervision and instruction of an individual who:

(A) Is licensed and registered in accordance with paragraph (a) of this section, or

(B) Is not required to be licensed in accordance with paragraph (e)(5); or

(ii) Who performs such duties solely with respect to transactions for which the individual who acts as a loan originator is not required to be licensed, in accordance with paragraph (e)(2), (6), or (7) of this section;

(4) An individual who performs only purely administrative or clerical tasks on behalf of a loan originator;

(5) An individual who is lawfully registered with, and maintains a unique identifier through, the Nationwide

(6)(i) An individual who is an employee of a Federal, state, or local government agency or housing finance agency and who acts as a loan originator only pursuant to his or her official duties as an employee of the Federal, state, or local government agency or housing finance agency.

(ii) For purposes of this paragraph (e)(6), the term
employee

(iii) For purposes of this paragraph (e)(6), the term
housing finance agency

- (A) That is chartered by a state to help meet the affordable housing needs of the residents of the state;
- (B) That is supervised directly or indirectly by the state government;
- (C) That is subject to audit and review by the state in which it operates; and
- (D) Whose activities make it eligible to be a member of the National Council of State Housing Agencies.

(7)(i) An employee of a bona fide nonprofit organization who acts as a loan originator only with respect to his or her work duties to the bona fide nonprofit organization, and who acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower.

(ii) For an organization to be considered a bona fide nonprofit organization under this paragraph, a state supervisory authority that opts not to require licensing of the employee must determine, under criteria and pursuant to processes established by the state, that the organization:

- (A) Has the status of a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986;
- (B) Promotes affordable housing or provides homeownership education, or similar services;
- (C) Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;
- (D) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;
- (E) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients;
- (F) Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs; and
- (G) Meets other standards that the state determines are appropriate.

(iii) A state must periodically examine the books and activities of an organization it determines is a bona fide nonprofit organization and revoke its status as a bona fide nonprofit organization if it does not continue to meet the criteria under paragraph (e)(7)(ii) of this section;

(iv) For residential mortgage loans to have terms that are favorable to the borrower, a state must determine that the terms are consistent with loan origination in a public or charitable context, rather than a commercial context.

(f) A state must require an individual licensed in accordance with paragraphs (a) or (d) of this section to renew the loan originator license no less often than annually.

§ 1008.105

Minimum loan originator license requirements.

For an individual to be eligible for a loan originator license required under § 1008.103(a) and (d), a state must require and find, at a minimum, that an individual:

(a) Has never had a loan originator license revoked in any governmental jurisdiction, except that a formally vacated revocation shall not be deemed a revocation;

(b)(1) Has never been convicted of, or pled guilty or
nolo contendere

(i) During the 7-year period preceding the date of the application for licensing; or

(ii) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.

(2) For purposes of this paragraph (b):

(i) Expunged convictions and pardoned convictions do not, in themselves, affect the eligibility of the individual; and

(ii) Whether a particular crime is classified as a felony is determined by the law of the jurisdiction in which an individual is convicted.

(c) Has demonstrated financial responsibility, character, and general fitness, such as to command the confidence of the community and to warrant a determination that the loan originator will operate

honestly, fairly, and efficiently, under reasonable standards established by the individual state.

(d) Completed at least 20 hours of pre-licensing education that has been reviewed and approved by the Nationwide Mortgage Licensing System and Registry. The pre-licensing education completed by the individual must include at least:

(1) 3 hours of Federal law and regulations;

(2) 3 hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; and

(3) 2 hours of training on lending standards for the nontraditional mortgage product marketplace.

(e)(1) Achieved a test score of not less than 75 percent correct answers on a written test developed by the NMLSR in accordance with 12 U.S.C. 5105(d).

(2) To satisfy the requirement under paragraph (e)(1) of this section, an individual may take a test three consecutive times, with each retest occurring at least 30 days after the preceding test. If an individual fails three consecutive tests, the individual must wait at least 6 months before taking the test again.

(3) If a formerly state-licensed loan originator fails to maintain a valid license for 5 years or longer, not taking into account any time during which such individual is a registered loan originator, the individual must retake the test and achieve a test score of not less than 75 percent correct answers.

(f) Be covered by either a net worth or surety bond requirement, or pays into a state fund, as required by the state loan originator supervisory authority.

(g) Has submitted to the NMLSR fingerprints for submission to the Federal Bureau of Investigation and to any government agency for a state and national criminal history background check; and

(h) Has submitted to the NMLSR personal history and experience, which must include authorization for the NMLSR to obtain:

(1) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction; and

(2) An independent credit report.

§ 1008.107

Minimum annual license renewal requirements.

(a) For an individual to be eligible to renew a loan originator license as required under § 1008.103(f), a state must require the individual:

(1) To continue to meet the minimum standards for license issuance provided in § 1008.105; and
(2) To satisfy annual continuing education requirements, which must include at least 8 hours of education approved by the NMLSR. The 8 hours of annual continuing education must include at least:

(i) 3 hours of Federal law and regulations;

(ii) 2 hours of ethics (including instruction on fraud, consumer protection, and fair lending issues);
and

(iii) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) A state must provide that a state-licensed loan originator may only receive credit for a continuing education course in the year in which the course is taken, and that a state-licensed loan originator may not apply credits for education courses taken in one year to meet the continuing education requirements of subsequent years. A state must provide that an individual may not meet the annual requirements for continuing education by taking an approved course more than one time in the same year or in successive years.

(c) An individual who is an instructor of an approved continuing education

§ 1008.109

Effective date of state requirements imposed on individuals.

(a) Except as provided in paragraphs (b) and (c) of this section, a state must provide that the effective date for requirements it imposes in accordance with §§ 1008.103, 1008.105, and 1008.107 is no later than August 29, 2011.

(b) For an individual who was permitted to perform residential mortgage loan originations under

state legislation or regulations enacted or promulgated prior to the state's enactment or promulgation of a licensing system that complies with this subpart, a state may delay the effective date for requirements it imposes in accordance with §§ 1008.103, 1008.105, and 1008.107 to no later than August 29, 2011. For purposes of this paragraph (b), an individual was permitted to perform residential mortgage loan originations only if prior state law required the individual to be licensed, authorized, registered, or otherwise granted a form of affirmative and revocable government permission for individuals as a condition of performing residential mortgage loan originations.

(c) The Bureau may approve a later effective date only upon a state's demonstration that substantial numbers of loan originators (or of a class of loan originators) who require a state license face unusual hardship, through no fault of their own or of the state government, in complying with the standards required by the S.A.F.E. Act and in obtaining state licenses within one year.

§ 1008.111

Other minimum requirements for state licensing systems.

(a)

General.

(b)

Authorities.

(1) To examine any books, papers, records, or other data of any loan originator operating in the state;

(2) To summon any loan originator operating in the state, or any person having possession, custody, or care of the reports and records relating to such a loan originator, to appear before the supervisory authority at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for compliance with the requirements of the S.A.F.E. Act;

(3) To administer oaths and affirmations and examine and take and preserve testimony under oath

as to any matter in respect to the affairs of any such loan originator;

(4) To enter an order requiring any individual or person that is, was, or would be a cause of a violation of the S.A.F.E. Act as implemented by the state, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same requirement;

(5) To suspend, terminate, and refuse renewal of a loan originator license for violation of state or Federal law; and

(6) To impose civil money penalties for individuals acting as loan originators, or representing themselves to the public as loan originators, in the state without a valid license or registration.

(c) A supervisory authority must have established processes in place to verify that individuals subject to the requirement described in § 1008.103(a)(1) and (d)(1) are registered with the NMLSR.

(d) The supervisory authority must be required under state law to regularly report violations of such law, as well as enforcement actions and other relevant information, to the NMLSR.

(e) The supervisory authority must have a process in place for challenging information contained in the NMLSR.

(f) The supervisory authority must require a loan originator to ensure that all residential mortgage loans that close as a result of the loan originator engaging in activities described in § 1008.103(b)(1) are included in reports of

§ 1008.113

Performance standards.

(a) For the Bureau to determine that a state is providing effective supervision and enforcement, a supervisory authority must meet the following performance standards:

(1) The supervisory authority must participate in the NMLSR;

(2) The supervisory authority must approve or deny loan originator license applications and must renew or refuse to renew existing loan originator licenses for violations of state or Federal law;

(3) The supervisory authority must discipline loan originator licensees with appropriate enforcement

actions, such as license suspensions or revocations, cease-and-desist orders, civil money penalties, and consumer refunds for violations of state or Federal law;

(4) The supervisory authority must examine or investigate loan originator licensees in a systematic manner based on identified risk factors or on a periodic schedule.

(b) A supervisory authority that is accredited under the Conference of State Bank Supervisors-American Association of Residential Mortgage Regulators Mortgage Accreditation Program will be presumed by the Bureau to be compliant with the requirements of this section.

§ 1008.115

Determination of noncompliance.

(a)

Evidence of compliance.

(b)

Initial determination of noncompliance.

Federal Register,

(c)

Final determination of noncompliance.

Federal Register.

(d)

Good-faith effort to comply.

(e)

Effective date of subparts C and E.

(1) The effective date of the Bureau's final determination with respect to the state, pursuant to paragraph (c) of this section, unless an extension had been granted to the state in accordance with paragraph (d) of this section; or

(2) If an extension had been granted to the state in accordance with paragraph (d) of this section, the effective

Subpart C The Bureau's Loan Originator Licensing System and Nationwide Mortgage Licensing and Registry System

§ 1008.201

Scope of this subpart.

The S.A.F.E. Act provides the Bureau with backup authority to establish a loan originator licensing system for any state that is determined by the Bureau not to be in compliance with the minimum standards of the S.A.F.E. Act. The provisions of this subpart become applicable to individuals in a state as provided in § 1008.115(e). The S.A.F.E. Act also authorizes the Bureau to establish and maintain a nationwide mortgage licensing system and registry if the Bureau determines that the NMLSR is failing to meet the purposes and requirements of the S.A.F.E. Act for a comprehensive licensing, supervisory, and tracking system for loan originators.

§ 1008.203

The Bureau's establishment of loan originator licensing system.

If the Bureau determines, in accordance with § 1008.115(e), that a state has not established a licensing and registration system in compliance with the minimum standards of the S.A.F.E. Act, the Bureau shall apply to individuals in that state the minimum standards of the S.A.F.E. Act, as specified in subpart B, which provides the minimum requirements that a state must meet to be in compliance with the S.A.F.E. Act, and as may be further specified in this part.

§ 1008.205

The Bureau's establishment of nationwide mortgage licensing system and registry.

If the Bureau determines that the NMLSR established by CSBS and AARMR does not meet the minimum requirements of subpart D of this part, the Bureau will establish and maintain a nationwide mortgage licensing system and registry.

Subpart D Minimum Requirements for Administration of the NMLSR

§ 1008.301

Scope of this subpart.

This subpart establishes minimum requirements that apply to administration of the NMLSR by the Conference of State Bank Supervisors or by the Bureau. The NMLSR must accomplish the following objectives:

- (a) Provide uniform license applications and reporting requirements for state-licensed loan originators.
- (b) Provide a comprehensive licensing and supervisory database.
- (c) Aggregate and improve the flow of information to and between regulators.
- (d) Provide increased accountability and tracking of loan originators.
- (e) Streamline the licensing process and reduce the regulatory burden.
- (f) Enhance consumer protections and support anti-fraud measures.
- (g) Provide consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.
- (h) Establish a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer.
- (i) Facilitate responsible behavior in the mortgage marketplace and provide comprehensive training and examination requirements related to mortgage lending.
- (j) Facilitate the collection and disbursement of consumer complaints on behalf of state and Federal mortgage regulators.

§ 1008.303

Financial reporting.

To the extent that CSBS maintains the NMLSR, CSBS must annually provide to the Bureau, and the Bureau will annually collect and make available to the public, NMLSR financial statements, audited in accordance with Generally Accepted Accounting Principles (GAAP) promulgated by the Federal Accounting Standards Advisory Board, and other data. These financial statements and other data shall include, but

§ 1008.305

Data security.

(a) To the extent that CSBS, AARMR, or their successors maintain the NMLSR, CSBS, AARMR, and their successors, as applicable, must complete a background check on their employees, contractors, or other persons who have access to loan originators' Social Security Numbers, fingerprints, or any credit reports collected by the system.

(b) To the extent that CSBS, AARMR, or their successors maintain the NMLSR, CSBS, AARMR, and their successors as applicable, must keep and adhere to an appropriate information security and privacy policy. If the NMLSR forms a reasonable belief that a security breach has occurred, it shall notify affected parties, as soon as practicable, including the Bureau, any loan originator or registrant whose data may have been compromised, and the employer of the loan originator or registrant, if such employer is also licensed through the system.

§ 1008.307

Fees.

CSBS, AARMR, or the Bureau, as applicable, may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry. Fees shall not be charged to consumers for access to such system and registry. If the Bureau determines to charge fees, the fees to be charged shall be issued by notice with the opportunity for comment prior to any fees being charged.

§ 1008.309

Absence of liability for good-faith administration.

The Bureau or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Bureau under 12 U.S.C. 5108 and in accordance with subpart C, or any officer or employee of the Bureau or the Bureau's designee, shall not be subject to any civil action or proceeding for monetary damages by reason of the good-faith action or omission of any officer or employee of any such entity, while acting within the scope of

office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.

Subpart E Enforcement of the Bureau's Licensing System

§ 1008.401

The Bureau's authority to examine loan originator records.

(a)

Summons authority.

(1) Examine any books, papers, records, or other data of any loan originator operating in any state which is subject to a licensing system established by the Bureau under subpart C of this part; and

(2) Summon any loan originator referred to in paragraph (a)(1) of this section or any person having possession, custody, or care of the reports and records relating to such loan originator, to appear before the Bureau at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for compliance with the requirements of the S.A.F.E. Act.

(b)

Examination authority

In general.

(2)

Power to examine.

(3)

Report of examination.

(4)

Administration of oaths and affirmations; evidence.

(5)

Assessments.

[Reserved]

Pt. 1008, App. A

Appendix A to Part 1008 Examples of Mortgage Loan Originator Activities

This appendix provides examples to aid in the understanding of activities that would cause an individual to fall within or outside the definition of a mortgage loan originator under part 1008. The examples in this appendix are not all-inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise. For purposes of the examples below, the term loan refers to a residential mortgage loan as defined in § 1008.23 of this part.

(a)

Taking a Loan Application.

(1) The following are examples to illustrate when an individual takes, or does not take, a loan application:

(i) An individual takes a residential mortgage loan application even if the individual:

(A) Has received the borrower or prospective borrower's request or information indirectly. Section 1008.103(c)(1) provides that an individual takes an application, whether he or she receives it directly or indirectly from the borrower or prospective borrower. This means that an individual who offers or negotiates residential mortgage loan terms for compensation or gain cannot avoid licensing requirements simply by having another person physically receive the application from the prospective borrower and then pass the application to the individual;

(B) Is not responsible for verifying information. The fact that an individual who takes application information from a borrower or prospective borrower is not responsible for verifying that information—for example, the individual is a mortgage broker who collects and sends that information to a lender—does not mean that the individual is not taking an application;

(C) Only inputs the information into an online application or other automated system; or

(D) Is not involved in approval of the loan, including determining whether the consumer qualifies for

the loan. Similar to an individual who is not responsible for verification, an individual can still take a residential mortgage loan application even if he or she is not ultimately responsible for approving the loan. A mortgage broker, for example, can take a residential mortgage loan application even though it is passed on to a lender for a decision on whether the borrower qualifies for the loan and for the ultimate loan approval.

(ii) An individual does not take a loan application merely because the individual performs any of the following actions:

(A) Receives a loan application through the mail and forwards it, without review, to loan approval personnel. The Bureau interprets the term takes a residential mortgage loan application to exclude an individual

(B) Assists a borrower or prospective borrower who is filling out an application by explaining the contents of the application and where particular borrower information is to be provided on the application;

(C) Generally describes for a borrower or prospective borrower the loan application process without a discussion of particular loan products; or

(D) In response to an inquiry regarding a prequalified offer that a borrower or prospective borrower has received from a lender, collects only basic identifying information about the borrower or prospective borrower on behalf of that lender.

(b)

Offering or Negotiating Terms of a Loan.

(1) Offering or negotiating the terms of a loan includes:

(i) Presenting for consideration by a borrower or prospective borrower particular loan terms, whether verbally, in writing, or otherwise, even if:

(A) Further verification of information is necessary;

(B) The offer is conditional;

(C) Other individuals must complete the loan process;

(D) The individual lacks authority to negotiate the interest rate or other loan terms; or

(E) The individual lacks authority to bind the person that is the source of the prospective financing.

(ii) Communicating directly or indirectly with a borrower or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms, including responding to a borrower or prospective borrower's request for a different rate or different fees on a pending loan application by presenting to the borrower or prospective borrower a revised loan offer, even if a mutual understanding is not subsequently achieved.

(2) Offering or negotiating terms of a loan does not include any of the following activities:

(i) Providing general explanations or descriptions in response to consumer queries, such as explaining loan terminology (

e.g.,

e.g.,

(ii) Arranging the loan closing or other aspects of the loan process, including by communicating with a borrower or prospective borrower about those arrangements, provided that any communication that includes a discussion about loan terms only verifies terms already agreed to by the borrower or prospective borrower;

(iii) Providing a borrower or prospective borrower with information unrelated to loan terms, such as the best days of the month for scheduling loan closings at the bank;

(iv) Making an underwriting decision about whether the borrower or prospective borrower qualifies for a loan;

(v) Explaining or describing the steps that a borrower or prospective borrower would need to take in order to obtain a loan offer, including providing general guidance about qualifications or criteria that would need to be met that is not specific to that borrower or prospective borrower's circumstances;

(vi) Communicating on behalf of a mortgage loan originator that a written offer has been sent to a borrower or prospective borrower without providing any details of that offer; or

(vii) Offering or negotiating loan terms solely through a third-party licensed loan originator, so long

as the nonlicensed individual does not represent to the public that he or she can or will perform covered activities and does not communicate with the borrower or potential borrower. For example:

(A) A seller who provides financing to a purchaser of a dwelling owned by that seller in which the offer and negotiation of loan terms with the borrower or prospective borrower is conducted exclusively by a third-party licensed loan originator;

(B) An individual who works solely for a lender, when the individual offers loan terms exclusively to third-party licensed loan originators and not to borrowers or potential borrowers.

(c)

For Compensation or Gain.

(2) An individual does not act for compensation or gain if the individual acts as a volunteer without receiving or expecting to receive anything of value in connection with the individual's activities.

Pt. 1008, App. B

Appendix B to Part 1008 Engaging in the Business of a Loan Originator: Commercial Context and Habitualness

An individual who acts (or holds himself or herself out as acting) as a loan originator in a commercial context and with some degree of habitualness or repetition is considered to be engage[d] in the business of a loan originator[.] An individual who acts as a loan originator does so in a commercial context if the individual acts for the purpose of obtaining anything of value for himself or herself, or for an entity or individual for which the individual acts, rather than exclusively for public, charitable, or family purposes. The habitualness or repetition of the origination activities that is needed to engage in the business of a loan originator may be met either if the individual who acts as a loan originator does so with a degree of habitualness or repetition, or if the source of the prospective financing provides mortgage financing or performs other origination activities with a degree of habitualness or repetition. This appendix provides examples to aid in the understanding of activities that would not constitute engaging in the business of a loan originator, such that an individual is not required to obtain and maintain a state mortgage loan originator license. The examples in this

appendix are not all-inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under part 1008. For purposes of the examples below, the term loan refers to a residential mortgage loan as defined in § 1008.23 of this part.

(a)

Not Engaged in the Business of a Mortgage Loan Originator.

(1) An individual who acts as a loan originator in providing financing for the sale of that individual's own residence, provided that the individual does not act as a loan originator or provide financing for such sales so frequently and under such circumstances that it constitutes a habitual and commercial activity.

(2) An individual who acts as a loan originator in providing financing for the sale of a property owned by that individual, provided that such individual does not engage in such activity with habitualness.

(3) A parent who acts as a loan originator in providing loan financing to his or her child.

(4) An employee of a government entity who acts as a loan originator only pursuant to his or her official duties as an employee of that government entity, if all applicable conditions in § 1008.103(e)(6) of this part are met.

(5) If all applicable conditions in § 1008.103(e)(7) of this part are met, an employee of a nonprofit organization that has been determined to be a bona fide nonprofit organization by the state supervisory authority, when the employee acts as a loan originator pursuant to his or her duties as an employee of that organization.

(6) An individual who does not act as a loan originator habitually or repeatedly, provided that the source of prospective financing does not provide mortgage financing or perform other loan origination activities habitually or repeatedly.

Pt. 1008, App. C

Appendix C to Part 1008 Independent Contractors and Loan Processor and Underwriter Activities That Require a State Mortgage Loan Originator License

The examples below are designed to aid in the understanding of loan processing or underwriting

activities for which an individual is required to obtain a S.A.F.E. Act-compliant mortgage loan originator license. The examples in this appendix are not all-inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under part 1008. For purposes of the examples below, the term loan refers to a residential mortgage loan as defined in § 1008.23 of this part.

(a) An individual who is a loan processor or underwriter who must obtain and maintain a state loan originator license includes:

(1) Any individual who engages in the business of a loan originator, as defined in § 1008.103 of this part;

(2) Any individual who performs clerical or support duties and who is an independent contractor, as those terms are defined in § 1008.23;

(3) Any individual who collects, receives, distributes, or analyzes information in connection with the making of a credit decision and who is an independent contractor, as that term is defined in § 1008.23; and

(4) Any individual who communicates with a consumer to obtain information necessary for making a credit decision and who is an independent contractor, as that term is defined in § 1008.23.

(b) A state is not required to impose S.A.F.E. Act licensing requirements on any individual loan processor or underwriter who, for example:

(1) Performs only clerical or support duties (i.e., the loan processor's or underwriter's activities do not include, e.g., offering or negotiating loan rates or terms, or counseling borrowers or prospective borrowers about loan rates or terms), and who performs those clerical or support duties at the direction of and subject to the supervision and instruction of an individual who either: Is licensed and registered in accordance with

(2) Performs only clerical or support duties as an employee of a mortgage lender or mortgage brokerage firm, and who performs those duties at the direction of and subject to the supervision and instruction of an individual who is employed by the same employer and who is licensed in

accordance with § 1008.103(a) (state licensing of loan originators).

(3) Is an employee of a loan processing or underwriting company that provides loan processing or underwriting services to one or more mortgage lenders or mortgage brokerage firms under a contract between the loan processing or underwriting company and the mortgage lenders or mortgage brokerage firms, provided the employee performs only clerical or support duties and performs those duties only at the direction of and subject to the supervision and instruction of a licensed loan originator employee of the same loan processing and underwriting company.

(4) Is an individual who does not otherwise perform the activities of a loan originator and is not

(c) In order to conclude that an individual who performs clerical or support duties is doing so at the direction of and subject to the supervision and instruction of a loan originator who is licensed or registered in accordance with § 1008.103 (or, as applicable, an individual who is excluded from the licensing and registration requirements under § 1008.103(e)(2), (e)(6), or (e)(7)), there must be an actual nexus between the licensed or registered loan originator's (or excluded individual's) direction, supervision, and instruction and the loan processor or underwriter's activities. This actual nexus must be more than a nominal relationship on an organizational chart. For example, there is an actual nexus when:

(1) The supervisory licensed or registered loan originator assigns, authorizes, and monitors the loan processor or underwriter employee's performance of clerical and support duties.

(2) The supervisory licensed or registered loan originator exercises traditional supervisory responsibilities, including, but not limited to, the training, mentoring, and evaluation of the loan processor or underwriter employee.

Pt. 1008, App. D

Appendix D to Part 1008 Attorneys: Circumstances That Require a State Mortgage Loan Originator License

This appendix D clarifies the circumstances in which the S.A.F.E. Act requires a licensed attorney

who engages in loan origination activities to obtain a state loan originator license and registration. This special category recognizes limited, heavily regulated activities that meet strict criteria that are different from the criteria for specific exemptions from the S.A.F.E. Act requirements and the exclusions set forth in the regulations and illustrated in other appendices of part 1008.

(a)

S.A.F.E. Act-compliant licensing required.

(1) Considered by the state's court of last resort (or other state governing body responsible for regulating the practice of law) to be part of the authorized practice of law within the state;

(2) Carried out within an attorney-client relationship; and

(3) Accomplished by the attorney in compliance with all applicable laws, rules, ethics, and standards.

(b)

S.A.F.E. Act-compliant licensing not required.

(1) Considered by the state's court of last resort (or other state governing body responsible for regulating the practice of law) to be part of the authorized practice of law within the state;

(2) Carried out within an attorney-client relationship; and

(3) Accomplished by the attorney in compliance with all applicable laws, rules, ethics, and standards.

Pt. 1009

PART 1009DISCLOSURE REQUIREMENTS FOR DEPOSITORY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE (REGULATION I)

Sec.

1009.1

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Disclosures in periodic statements and account records.

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1009.5

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1009.7

Enforcement.

Authority:

12 U.S.C. 1831t, 5512, 5581.

Source:

76 FR 78129, Dec. 16, 2011, unless otherwise noted.

§ 1009.1

Scope.

This part, known as Regulation I, is issued by the Bureau of Consumer Financial Protection. This part applies to all depository institutions lacking Federal deposit insurance. It requires the disclosure of certain insurance-related information in periodic statements, account records, locations where deposits are normally received, and advertising. This part also requires such depository institutions to obtain a written acknowledgment from depositors regarding the institution's lack of Federal deposit insurance.

§ 1009.2

Definitions.

For purposes of this part:

Depository institution

Lacking Federal deposit insurance

Standard maximum deposit insurance amount

§ 1009.3

Disclosures in periodic statements and account records.

Depository institutions lacking Federal deposit insurance must include a notice disclosing clearly and conspicuously that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money, in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or share certificate. For example, a notice would comply with the requirement if it conspicuously stated: [Institution's name] is not federally insured. If it fails, the Federal Government does not guarantee that you will get your money back. The disclosures required by this section must be clear and conspicuous and presented in a simple and easy to understand format, type size, and manner.

§ 1009.4

Disclosures in advertising and on the premises.

(a)

Required disclosures.

(1) At each station or window where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main internet page; and

(2) In all advertisements except as provided in paragraph (c) of this section.

(b)

Format and type size.

(c)

Exceptions.

(1) Any sign, document, or other item that contains the name of the depository institution, its logo, or its contact information, but only if the sign, document, or item does not include any information about

the institution's products or services or information otherwise promoting the institution; and

(2) Small utilitarian items that do not mention deposit products or insurance, if inclusion of the notice would be impractical.

§ 1009.5

Disclosure acknowledgment.

(a)

New depositors obtained other than through a conversion or merger.

(1) The institution is not federally insured; and

(2) If the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor's money.

(b)

New depositors obtained through a conversion or merger.

(1) The institution has obtained the depositor's signed written acknowledgement described in paragraph (a) of this section; or

(2) The institution makes an attempt, sent by mail no later than 45 days after the effective date of the conversion or merger, to obtain the acknowledgment. In making such an attempt, the institution must transmit to each depositor who has not signed and returned a written acknowledgement described in paragraph (a) of this section:

(i) A conspicuous card containing the information described in paragraphs (a)(1) and (2) of this section, and a line for the signature of the depositor; and

(ii) Accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

(c)

Depositors obtained on or before October 13, 2006.

(i) The depositor has signed a written acknowledgement described in paragraph (a) of this section; or

(ii) The institution has transmitted to the depositor:

(A) A conspicuous card containing the information described in paragraphs (a)(1) and (2) of this section, and a line for the signature of the depositor; and

(B) Accompanying materials requesting that the depositor sign the card, and return the signed card to the institution.

(2) An institution described in paragraph (c)(1) of this section must have made the transmission described in paragraph (c)(1)(ii) of this section via mail not later than three months after October 13, 2006. The institution must have made a second identical transmission via mail not less than 30 days, and not more than three months, after the first transmission to the depositor in accordance with paragraph (c)(1)(ii) of this section, if the institution has not, by the date of such mailing, received from the depositor a card referred to in paragraph (c)(1)(i) of this section which has been signed by the depositor.

(d)

Format and type size.

§ 1009.6

Exception for certain depository institutions.

The requirements of this part do not apply to any depository institution lacking Federal deposit insurance and located within the United States that does not receive initial deposits of less than an amount equal to the standard maximum deposit insurance amount from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

§ 1009.7

Enforcement.

Compliance with the requirements of this part shall be enforced under the Consumer Financial Protection Act of 2010, Public Law 111-203, title X, 124 Stat. 1955, by the Bureau of Consumer Financial Protection, subject to subtitle B of the Consumer Financial Protection Act of 2010, and

under the Federal Trade Commission Act, 15 U.S.C. 41

et seq,

Pt. 1010

PART 1010LAND REGISTRATION (REGULATION J)

Subpart AGeneral Requirements

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Utilities.

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[Reserved]

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Title and land use.

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Roads.

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Financial information.

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Recreational facilities.

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Subdivision characteristics and climate.

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Previously accepted state filingsnotice of revocation rights in contracts and agreements.

Appendix A to Part 1010Standard and Model Forms and Clauses

Authority:

12 U.S.C. 5512, 5581; 15 U.S.C. 1718.

Source:

76 FR 79489, Dec. 21, 2011, unless otherwise noted.

Subpart AGeneral Requirements

§ 1010.1

Definitions.

(a)

Statutory terms.

(b)

Other terms.

Act

Advisory opinion

Available for use

Beneficial property restrictions

Date of filing

Good faith estimate

ILSRP

Lot

Owner

Parent corporation

Principal

Rules

Sale

Senior Executive Officer

Site

Start of construction

[76 FR 79489, Dec. 21, 2011, as amended at 81 FR 29115, May 11, 2016]

§ 1010.2

[Reserved]

§ 1010.3

General applicability.

Except in the case of an exempt transaction, a developer may not sell or lease lots in a subdivision,

making use of any means or instruments of transportation or communication in interstate commerce, or of the mails, unless a Statement of Record is in effect in accordance with the provisions of this part. In non-exempt transactions, the developer must give each purchaser a printed Property Report, meeting the requirements of this part, in advance of the purchaser's signing of any contract or agreement for sale or lease. Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 et seq.

§ 1010.4

Exemptionsgeneral.

(a) The exemptions available under §§ 1010.5 through 1010.16 are not applicable when the method of sale, lease or other disposition of land or an interest in land is adopted for the purpose of evasion of the Act.

(b) With the exception of the sales or leases which are exempt under § 1010.5, the anti-fraud provisions of the Act (15 U.S.C. 1703(a)(2)) apply to exempt transactions. The anti-fraud provisions

(1) Defraud;

(2) To obtain money or property by means of any untrue statement of a material fact, or

(3) To omit to state a material fact necessary in order to make the statements made not misleading, with respect to any information pertinent to the lot or subdivision; or

(4) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser.

(c) The anti-fraud provisions of the Act require that certain representations be included in the contract in transactions which are not exempt under § 1010.5. Specifically, the Act requires that if a developer or agent represents that roads, sewers, water, gas or electric service or recreational amenities will be provided or completed by the developer, the contract must stipulate that the services or amenities will be provided or completed.

(d) Eligibility for exemptions available under §§ 1010.5 through 1010.14 is self-determining. With the

exception of the exemptions available under §§ 1010.15 and 1010.16, a developer is not required to file notice with or obtain the approval of the Director in order to take advantage of an exemption. If a developer elects to take advantage of an exemption, the developer is responsible for maintaining records to demonstrate that the requirements of the exemption have been met.

(e) A developer may present evidence, or otherwise discuss, in an informal hearing before the Office of Supervision Examinations, the Bureau's position on the jurisdiction or non-exempt status of a particular subdivision.

[76 FR 79489, Dec. 21, 2011, as amended at 81 FR 29115, May 11, 2016]

§ 1010.5

Statutory exemptions.

A listing of the statutory exemptions is contained in 15 U.S.C. 1702. In accordance with 15 U.S.C. 1702(a)(2), if the sale involves a condominium or multi-unit construction, a presale clause conditioning the sale of a unit on a certain percentage of sales of other units is permissible if it is legally binding on the parties and is for a period not to exceed 180 days. However, the 180-day provision cannot extend the 2-year period for performance. The permissible 180 days is calculated from the date the first purchaser signs a sales contract in the project or, if a phased project, from the date the first purchaser signs the first sales contract in each phase.

[81 FR 29116, May 11, 2016]

§ 1010.6

One hundred lot exemption.

The sale of lots in a subdivision is exempt from the registration requirements of the Act if, since April 28, 1969, the subdivision has contained fewer than 100 lots, exclusive of lots which are exempt from jurisdiction under § 1010.5. In the sale of lots in the subdivision that are not exempt under § 1010.5, the developer must comply with the Act's anti-fraud provisions, set forth in § 1010.4(b) and (c).

§ 1010.7

Twelve lot exemption.

(a) The sale of lots is exempt from the registration requirements of the Act if, beginning with the first sale after June 20, 1980, no more than twelve lots in the subdivision are sold in the subsequent twelve-month period. Thereafter, the sale of the first twelve lots is exempt from the registration requirements if no more than twelve lots were sold in each previous twelve month period which began with the anniversary date of the first sale after June 20, 1980.

(b) A developer may apply to the Director to establish a different twelve month period for use in determining eligibility for the exemption and the Director may allow the change if it is for good cause and consistent with the purpose of this section.

(c) In determining eligibility for this exemption, all lots sold or leased in the subdivision after June 20, 1980, are counted, whether or not the transactions are otherwise exempt. Sales or leases made prior to June 21, 1980, are not considered in determining eligibility for the exemption.

(d) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c) of this part.

§ 1010.8

Scattered site subdivisions.

(a) The sale of lots in a subdivision consisting of noncontiguous parts is exempt from the registration requirements of the Act if:

(1) Each noncontiguous part of the subdivision contains twenty or fewer lots; and

(2) Each purchaser or purchaser's spouse makes a personal, on-the-lot inspection of the lot purchased prior to signing a contract.

(b) For purposes of this exemption, interruptions such as roads, parks, small bodies of water or recreational facilities do not serve to break the contiguity of parts of a subdivision.

(c) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c) of this part.

§ 1010.9

Twenty acre lots.

(a) The sale of lots in a subdivision is exempt from the registration requirements of the Act if, since April 28, 1969, each lot in the subdivision has contained at least twenty acres. In determining

eligibility for the exemption, easements for ingress and egress or public utilities are considered part of the total acreage of the lot if the purchaser retains ownership of the property affected by the easement.

(b) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c) of this part.

§ 1010.10

Single-family residence exemption.

(a)

General.

(b)

Subdivision requirements.

(2) In the promotion of the subdivision there must be no offers, by direct mail or telephone solicitation, of gifts, trips, dinners or use of similar promotional techniques to induce prospective purchasers to visit the subdivision or to purchase a lot.

(c)

Lot requirements.

(i) Lot dimensions.

(ii) Plat approval and recordation.

(iii) Roads and access.

(iv) Drainage.

(v) Flooding.

(vi) Water supply.

(vii) Sewage disposal.

(2) Each lot sold under the exemption must be either zoned for single-family residences or, in the absence of a zoning ordinance, limited exclusively by enforceable covenants or restrictions to single-family residences. Manufactured homes, townhouses, and residences for one-to-four family use are considered single-family residences for purposes of this exemption provision.

(3) The lot must be situated on a paved street or highway which has been built to standards established by the state or the unit of local government in which the subdivision is located. If the roads are to be public roads they must be acceptable to the unit of local government that will be responsible for maintenance. If the street or highway is not complete, the developer must post a bond or other surety acceptable to the municipality or county in the full amount of the cost of completing the street or highway to assure completion to local standards. For purposes of this exemption,

paved

(4) The unit of local government or a homeowners association must have accepted or be obligated to accept the responsibility for maintaining the street or highway upon which the lot is situated. In any case in which a homeowners association has accepted or is obligated to accept maintenance responsibility, the developer must, prior to signing of a contract or agreement to purchase, provide the purchaser with a good faith written estimate of the cost of carrying out the responsibility over the first ten years of ownership.

(5) At the time of closing, potable water, sanitary sewage disposal, and electricity must be extended to the lot or the unit of local government must

(6) The contract of sale must require delivery within 180 days after the signing of the sales contract of a warranty deed, which at the time of delivery is free from monetary liens and encumbrances. If a warranty deed is not commonly used in the jurisdiction where the lot is located, a deed or grant which warrants that the seller has not conveyed the lot to another person may be delivered in lieu of a warranty deed. The deed or grant used must warrant that the lot is free from encumbrances made by the seller or any other person claiming by, through, or under the seller.

(7) At the time of closing, a title insurance binder or title opinion reflecting the condition of title must be in existence and issued or presented to the purchaser showing that, subject only to exceptions which are approved in writing by the purchaser at the time of closing, marketable title to the lot is vested in the seller.

(8) The purchaser or purchaser's spouse must make a personal, on-the-lot inspection of the lot purchased prior to signing a contract or agreement to purchase.

(d) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c) of this part.

§ 1010.11

Manufactured home exemption.

(a) The sale of a lot is exempt from the registration requirements of the Act when the following eligibility requirements are met:

(1) The lot is sold as a homesite by one party and a manufactured home is sold by another party and the contracts of sale:

(i) Obligate the sellers to perform, contingent upon the other seller carrying out its obligations so that a completed manufactured home will be erected on a completed homesite within two years after the date the purchaser signed the contract to purchase the lot;

(ii) Provide that all funds received by the sellers are to be deposited in escrow accounts independent of the sellers until the transactions are completed;

(iii) Provide that funds received by the sellers will be released to the buyer upon demand if the lot on which the manufactured home has been erected is not conveyed within two years; and

(iv) Contain no provisions which restrict the purchaser's remedy of bringing suit for specific performance.

(2) The homesite is developed in conformance with all local codes and standards, if any, for manufactured home subdivisions.

(3) At the time of closing:

(i) Potable water and sanitary sewage disposal are available to the homesite and electricity has been extended to the lot line;

(ii) The homesite is accessible by roads;

(iii) The purchaser receives marketable title to the lot; and

(iv) Other common facilities represented in any manner by the developer or agent to be provided are

completed or there are letters of credit, cash escrows or surety bonds in the form acceptable to the local government in an amount equal to 100 percent of the estimated cost of completion. Corporate bonds are not acceptable for purposes of the exemption.

(4) For purposes of this section, a manufactured home is a unit receiving a label in conformance with U.S. Department of Housing and Urban Development (HUD) regulations implementing the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401).

(b) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c) of this part.

§ 1010.12

Intrastate exemption.

(a)

Eligibility requirements.

(1) The sale of lots in the subdivision after December 20, 1979, is restricted solely to residents of the state in which the subdivision is located unless the

(2) The purchaser or purchaser's spouse makes a personal on-the-lot inspection of the lot to be purchased before signing a contract.

(3) Each contract:

(i) Specifies the developer's and purchaser's responsibilities for providing and maintaining roads, water and sewer facilities and any existing or promised amenities;

(ii) Contains a good faith estimate of the year in which the roads, water and sewer facilities and promised amenities will be completed; and

(iii) Contains a non-waivable provision giving the purchaser the opportunity to revoke the contract until at least midnight of the seventh calendar day following the date the purchaser signed the contract. If the purchaser is entitled to a longer revocation period by operation of state law, that period becomes the Federal revocation period and the contract must reflect the requirements of the longer period.

(4) The lot being sold is free and clear of all liens, encumbrances and adverse claims except the

following:

(i) Mortgages or deeds of trust which contain release provisions for the individual lot purchased if:

(A) The contract of sale obligates the developer to deliver, within 180 days, a warranty deed (or its equivalent under local law), which at the time of delivery is free from any monetary liens or encumbrances; and

(B) The purchaser's payments are deposited in an escrow account independent of the developer until a deed is delivered.

(ii) Liens which are subordinate to the leasehold interest and do not affect the lessee's right to use or enjoy the lot.

(iii) Property reservations which are for the purpose of bringing public services to the land being developed, such as easements for water and sewer lines.

(iv) Taxes or assessments which constitute liens before they are due and payable if imposed by a state or other public body having authority to assess and tax property or by a property owners' association.

(v) Beneficial property restrictions that are mutually enforceable by the lot owners in the subdivision. Restrictions, whether separately recorded or incorporated into individual deeds, must be applied uniformly to every lot or group of lots. To be considered beneficial and enforceable, any restriction or covenant that imposes an assessment on lot owners must apply to the developer on the same basis as other lot owners. Developers who maintain control of a subdivision through a Property Owners' Association, Architectural Control Committee, restrictive covenant or otherwise, shall transfer such control to the lot owners no later than when the developer ceases to own a majority of total lots in, or planned for, the subdivision. Relinquishment of developer control shall require affirmative action, usually in the form of an election based upon one vote per lot.

(vi) Reservations contained in United States land patents and similar Federal grants or reservations.

(5) Prior to the sale the developer discloses in a written statement to the purchaser all qualifying liens, reservations, taxes, assessments and restrictions applicable to the lot purchased. The

developer must obtain a written receipt from the purchaser acknowledging that the statement required by this subparagraph was delivered to the purchaser.

(6) Prior to the sale the developer provides in a written statement good faith estimates of the cost to the purchaser of providing electric, water, sewer, gas and telephone service to the lot. The estimates for unsold lots must be updated every two years or more frequently if the developer has reason to believe that significant cost increases have occurred. The dates on which the estimates were made must be included in the statement. The developer must obtain a written receipt from the purchaser acknowledging that the statement required by this subparagraph was delivered to the purchaser.

(b)

Intrastate Exemption Statement.

(c) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c) of this part.

§ 1010.13

Metropolitan Statistical Area (MSA) exemption.

(a)

Eligibility requirements.

(1) The lot is in a subdivision which contains fewer than 300 lots and has contained fewer than 300 lots since April 28, 1969.

(2) The lot is located within a Metropolitan Statistical Area (MSA) as defined by the Office of Management and Budget and characterized in paragraph (b) of this section.

(3) The principal residence of the purchaser is within the same MSA as the subdivision.

(4) The purchaser or purchaser's spouse makes a personal on-the-lot inspection of the lot to be purchased prior to signing a contract or agreement.

(5) Each contract:

(i) Specifies the developer's and purchaser's responsibilities for providing and maintaining roads, water and sewer facilities and any existing or promised amenities;

(ii) Contains a good faith estimate of the year in which the roads, water and sewer facilities and

promised amenities will be completed;

(iii) Contains a nonwaivable provision giving the purchaser the opportunity to revoke the contract until at least midnight of the seventh calendar day following the date the purchaser signed the contract, or, if the purchaser is entitled to a longer revocation period by operation of state law, that period becomes the Federal revocation period and the contract must reflect the requirements of the longer period.

(6) The lot being sold must be free and clear of liens such as mortgages, deeds of trust, tax liens, mechanics' liens, or judgments. For purposes of this exemption, the term
liens

(i) Mortgages or deeds of trust which contain release provisions for the individual lot purchased if:

(A) The contract of sale obligates the developer to deliver, within 180 days, a warranty deed (or its equivalent under local law), which at the time of delivery is free from any monetary liens or encumbrances; and

(B) The purchaser's payments are deposited in an escrow account independent of the developer until a deed is delivered.

(ii) Liens which are subordinate to the leasehold interest and do not affect the lessee's right to use or enjoy the lot.

(iii) Property reservations which are for the purpose of bringing public services to the land being developed, such as easements for water and sewer lines.

(iv) Taxes or assessments which constitute liens before they are due and payable if imposed by a state or other public body having authority to assess and tax property or by a property owners' association.

(v) Beneficial property restrictions that are mutually enforceable by the lot owners in the subdivision. Restrictions, whether separately recorded or incorporated into individual deeds, must be applied uniformly to every lot or group of lots. To be considered beneficial and enforceable, any restriction or covenant that imposes an assessment on lot owners must apply to the developer on the same basis

as other lot owners. Developers who maintain control of a subdivision through a Property Owners' Association, Architectural Control Committee, restrictive covenants, or otherwise, shall transfer such control to the lot owners no later than when the developer

(vi) Reservations contained in United States land patents and similar Federal grants or reservations.

(7) Before the sale the developer gives a written MSA Exemption Statement to the purchaser and obtains a written receipt acknowledging that the statement was received. A sample MSA Exemption Statement is included in the exemption guidelines. A State-approved disclosure document may be used to satisfy this requirement if all of the information required by this section is included. The statement(s) given to purchasers must contain neither advertising nor promotion on behalf of the developer or the subdivision nor references to the Bureau of Consumer Financial Protection or the Consumer Financial Protection Bureau. In descriptive and concise terms, the statement that the developer must give the purchaser shall disclose the following:

(i) All liens, reservations, taxes, assessments, beneficial property restrictions which are enforceable by other lot owners in the subdivision, and adverse claims which are applicable to the lot to be purchased.

(ii) Good faith estimates of the cost to the purchaser of providing electric, water, sewer, gas and telephone service to the lot. The estimates for unsold lots must be updated every two years, or more frequently if the developer has reason to believe that significant cost increases have occurred. The dates on which the estimates were made must be included in the statement.

(8) The developer executes and gives to the purchaser a written instrument designating a person within the state of residence of the purchaser as the developer's agent for service of process. The developer must also acknowledge in writing that it submits to the legal jurisdiction of the state in which the purchaser or lessee resides.

(9) The developer executes a written affirmation for each sale made under this exemption. By January 31 of each year, the developer submits to the Director a copy of the executed affirmation for each sale made during the preceding calendar year or a master affirmation in which are listed all

purchasers' names and addresses and the identity of the lots purchased. Individual affirmations must be available for the Director's review at all times during the year. The affirmation must be in the form provided in section I of the appendix to this part: Form for Developer's Affirmation for Land Sale.

(b)

Metropolitan Statistical Area.

(c) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c).

§ 1010.14

Regulatory exemptions.

(a)

Eligibility requirements.

(1) The sale of lots, each of which will be sold for less than \$100, including closing costs, if the purchaser will not be required to purchase more than one lot.

(2) The lease of lots for a term not to exceed five years if the terms of the lease do not obligate the lessee to renew.

(3) The sale of lots to a person who is engaged in a bona fide land sales business.

(4) The sale of a lot to a person who owns the contiguous lot which has a residential, commercial or industrial building on it.

(5) The sale of real estate to a government or government agency.

(6) The sale of a lot to a person who has leased and resided primarily on the lot for at least the year preceding the sale.

(b)

Termination.

(c) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c) of this part.

§ 1010.15

Regulatory exemptionmultiple site subdivisiondetermination required.

(a)

General.

(2) For purposes of this exemption, the sale of lots in an individual site that exceeds 99 lots is not exempt from registration. Likewise, the sale of lots in a site containing fewer than 100 lots, where the developer either owns contiguous land or holds an option or other evidence of intent to acquire contiguous land which, when taken cumulatively, would or could result in one site of 100 or more lots, is not exempt from registration. Furthermore, the sale of lots that are within a subdivision established by a separate developer is not exempt from registration by this provision.

(b)

Eligibility requirements.

(1) The lot is sold as is with all advertised improvements and amenities completed and in the condition advertised.

(2) The lot is in conformance with all local codes and standards.

(3) The lot is accessible, both legally and physically. For lots which are advertised or otherwise represented as residential, either primary or secondary, with any inference that a permanent or temporary dwelling unit of any description (excluding collapsible tents) can be built or installed, physical access must be available by automobile, pick-up truck or equivalent on-road vehicle.

(4) At the time of closing, a title insurance binder or title opinion reflecting the condition of title must be issued to the purchaser showing that, subject only to exceptions approved in writing by the purchaser at the time of closing, marketable title is vested in the seller.

(5) Each contract or agreement and any promissory notes:

(i) Contain the non-waivable provision found in section II of the appendix to this part: Language Notifying Buyer of Option to Cancel Contract in bold face type (which must be distinguished from the type used for the rest of the document) on the face or signature page above all signatures. If the purchaser is entitled to a longer revocation period by operation of state or local law, that period becomes the Federal revocation period and the contract must reflect the requirement of the longer

period rather than the seven days. The revocation provisions may not be limited or qualified in the contract or other document by requiring a specific type of notice or by requiring that notice be given at a specified place.

(ii) Obligate the developer to deliver, within 180 days, a warranty deed (or its equivalent under local law) for the lot which at the time of delivery is free from any monetary liens or encumbrances.

(6) The purchaser or purchaser's spouse makes a personal on-the-lot inspection of the lot to be purchased before signing a contract.

(7) The purchaser's payments are deposited in an escrow account independent of the developer until a deed is delivered.

(8) Prior to the purchaser signing a contract or agreement of sale, the developer discloses in a written Lot Information Statement all liens, reservations, taxes, assessments, easements and restrictions applicable to the lot

(9) Prior to the purchaser signing a contract or agreement of sale, the developer discloses in a written Lot Information Statement the name, address and telephone number of the local governmental agency or agencies from which information on permits or other requirements for water, sewer and electrical installations can be obtained. This Statement will also contain the name, address and telephone number of the suppliers which would or could provide the foregoing services.

(10) The lot sale must comply with the anti-fraud provisions of 12 CFR 1010.4(b) and (c) and the sales practices and standards in §§ 1011.10 through 1011.28.

(11) A written Lot Information Statement must be delivered to, and acknowledged by, each purchaser prior to his or her signing a contract or agreement of sale, and must contain the information shown in the format below. The Statement must be typed or printed in at least 10 point font. A copy of the acknowledgement will be maintained by the developer for three years and will be made available to ILSRP upon request. If the Statement is not delivered as required, the contract or agreement of sale may be revoked and a full refund paid, at the option of the purchaser, within two years of the signing date and the contract or agreement of sale will clearly provide this right. A

sample format for the Statement is provided in section III of the appendix to this part: Sample Lot Information Statement and Sample Receipt.

(c)

Request for Multiple Site Subdivision Exemption.

(2) This exemption will become effective upon issuance of an Exemption Order by the Director.

(d)

Annual Report.

(2) The Annual Report must be accompanied by a filing fee of \$100.

(3) The Annual Report must be signed and dated by the developer, attesting to its completeness and accuracy.

(4) Failure to submit the Annual Report within ten days after the receipt of notice from the Director will automatically terminate eligibility for the exemption as of the Report due date.

(e)

Termination.

§ 1010.16

Regulatory exemptiondetermination required.

(a)

General.

(b)

Eligibility requirements.

(1) The subdivision or sales substantially meet the requirements of one of the exemptions available under this chapter.

(2) Each contract:

(i) Specifies the developer's and purchaser's responsibilities for providing and maintaining roads, water and sewer facilities and any existing or promised amenities;

(ii) Contains a good faith estimate of the year in which the roads, water and sewer facilities and

promised amenities will be completed;

(iii) Contains a non-waivable provision giving the purchaser the opportunity to revoke the contract until at least midnight of the seventh calendar day following the date the purchaser signed the contract. If the purchaser is entitled to a longer revocation period by operation of state law, that period becomes the Federal revocation period and the contract must reflect the requirements of the longer period.

(iv) Contains a provision that obligates the developer to deliver to the purchaser within 180 days of the date the purchaser signed the sales contract, a warranty deed, or its equivalent under local law, which at the time of delivery is free from any monetary liens or encumbrances.

(3) The purchaser or purchaser's spouse makes a personal on-the-lot inspection of the lot to be purchased before signing a contract.

(4) The developer files a request for an exemption order and supporting documentation in accordance with paragraphs (c) and (d) of this section and submits a filing fee of \$500.00 in accordance with § 1010.35(a) of this part. This fee is not refundable.

(c)

Request.

(d)

Supporting documentation.

(1) A plat of the entire subdivision with the lots subject to the exemption request delineated thereon.

(2) A copy of the contract to be used.

(3) A clear and specific statement detailing how the proposed sales of lots subject to the exemption request substantially complies with one of the available exemption provisions.

(4) A description of the method by which the lots have been and will be promoted and to which population centers the promotion has been and will be directed.

(e) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c) of this part.

(f)

Termination.

§ 1010.17

Advisory opinion.

(a)

General.

(b)

Requirements.

(1) A \$500.00 filing fee submitted in accordance with § 1010.35(a). This fee is not refundable.

(2) A comprehensive description of the conditions and operations of the offering. There is no prescribed format for submitting this information, but the developer should at least cite the applicable statutory or regulatory basis for the exemption or lack of jurisdiction and thoroughly explain how the offering either satisfies the requirements for exemption or falls outside the purview of the Act.

(3) An affirmation as set forth in section VI of the appendix to this part:

§ 1010.18

No Action Letter.

(a) If the sale of lots is subject to the registration requirements of the Act but the circumstances of the sale are such that no affirmative action to enforce the registration requirements is needed to protect the public interest or prospective purchasers, the Director may issue a No Action Letter.

(b) To obtain a No Action Letter a developer must submit a request which includes a thorough description of the proposed transaction, the property involved, and the circumstances surrounding the sale.

(c) The issuance of a No Action Letter will not affect any right which a purchaser has under the Act, and it will not limit future action by the Director if there is evidence to show that affirmative action is necessary to protect the public interest or prospective purchasers. In no event will a No Action Letter be issued after the sale has occurred.

§ 1010.19

[Reserved]

§ 1010.20

Requirements for registering a subdivision Statement of Record filing and form.

(a)

Filing.

(i) U.S. Mail, to the following official address: Consumer Financial Protection Bureau, Interstate Land Sales Registration Program, 1700 G Street NW., Washington, DC 20552; or

(ii) Electronic means designated on the ILSA program page on the Bureau's Web site at www.consumerfinance.gov/.

(2) When the Statement of Record is filed, a fee in the amount set out in § 1010.35(b) must be paid in accordance with § 1010.35(a).

(b)

Form.

(2) The requirements relating to paper type, tabs, folding, and ordering for filings with the Bureau in § 1010.102(a), (g), and (h) do not apply if a Statement of Record is filed with the Bureau via electronic means designated on the Bureau's Web site pursuant to § 1010.20(a).

(c)

State filings.

[76 FR 79489, Dec. 21, 2011, as amended at 81 FR 29116, May 11, 2016]

§ 1010.21

Effective dates.

(a)

General.

(1) The effective date has been suspended in accordance with § 1010.45(a), or

(2) An earlier effective date has been determined.

(b)

Suspension of effective date by developer.

(2) Upon acceptance by the Director, the effectiveness of the Statement of Record shall be suspended as of the date the request was executed by the developer or owner.

(3) The suspension shall continue until the developer, or owner, submits all amendments necessary to bring the registration into full compliance with the Regulations which are in effect on the date of the amendments and the Director allows those amendments to become effective.

[76 FR 79489, Dec. 21, 2011, as amended at 81 FR 29116, May 11, 2016]

§ 1010.22

Statement of record initial or consolidated.

(a)

Initial Statement of Record.

(2) If a developer buys from another developer 100 or more lots from an existing registration, the new developer, or owner, may have to submit a new initial Statement of Record and receive an effective date covering the acquired lots prior to selling or leasing any of those lots.

(3) Changes in principals due to a sale of stock in a corporation or changes in partners or joint venturers which are accomplished in accordance with the partnership or joint venture agreement but which do not cause a change in the title to the land in the subdivision may be submitted as an amendment.

(4) Any initial Statement of Record must be accompanied by a fee, as specified in § 1010.35(b), based upon the number of lots sought to be registered.

(b)

Consolidated Statement of Record.

(2) If the additional lots are simply the result of a replatting of lots previously registered and enumerated in the Property Report and do not include any additional land, the change may be made by an amendment. However, the amendment must be accompanied by a fee, as specified in § 1010.35(b), based on the number of additional lots.

(c)

Consolidated Statement of Record Form.

(1) Those pages of the Property Report portion and Additional Information and Documentation portion which contain changes which have occurred since the last effective submission, and

(2) A recapitulation or listing of each of the section headings, and subheadings if necessary, of the Additional Information and Documentation portion. Each item of the listing shall contain a statement as to whether or not any change is made in the section; whether any new or additional information is being submitted and, if documentation is added by cross reference, the previous submission in which that documentation may be found, and

(3) Documentation to support the additional lots (

e.g.,

(4) The affirmation required by § 1010.219.

(d)

Consolidated Statement of Record amends prior Statement of Record.

(e)

Initial Statement of Record when prior approval to submit is required.

(f)

Lots which have been deleted from registration.

(g)

Lots sold to individual purchasers.

§ 1010.23

Amendment filing and form.

(a)

Filing.

(b)

Form.

(1) A letter from the developer giving a clear and concise description of the purpose and significance of the amendment and referring to the section and page of the Statement of Record which is being amended, and

(2) All pages of the Statement of Record, which have been amended, retyped in the required format to reflect the changes. The ILSRP number of the Statement of Record shall appear at the top of each page of the material submitted.

(c)

Amendments to suspended filings.

(1) Any amendments necessary to bring the filing into compliance, submitted in accordance with paragraphs (a) and (b) of this section;

(2) An activity report in the form prescribed by § 1010.310; and

(3) An amendment fee, if required under § 1010.35(d)(2).

[76 FR 79489, Dec. 21, 2011, as amended at 81 FR 29116, May 11, 2016]

§§ 1010.24-1010.28

[Reserved]

§ 1010.29

Use of property report misstatements, omissions, or representation of Bureau approval prohibited.

Nothing in these regulations shall be construed to authorize or approve the use of a property report containing any untrue statement of a material fact or omitting to state a material fact required to be stated therein. Nor shall anything in these regulations be construed to authorize or permit any representation that the Property Report is prepared or approved by the Director, ILSRP or the Bureau of Consumer Financial Protection.

§ 1010.35

Payment of fees.

(a)

Method of payment.

(i) Certified check, cashier's check, or postal money order made payable to the Treasurer of the United States, with the registration number, when known, and the name, of the subdivision on the face of the check, and mailed to an address specified by the Director; or

(ii) Electronic payment in a manner specified by the Director.

(2) Information regarding the current mailing address or electronic payment procedures is available from: Consumer Financial Protection Bureau, Interstate Land Sales Registration Program, 1700 G Street NW., Washington,
www.consumerfinance.gov.

(b)

Fees for registration.

(c)

Fee for Exemption Order or Advisory Opinion.

(d)

Amendment fee.

(2) A fee of \$800 is charged for an amendment to reactivate a Statement of Record subsequent to its suspension, unless the developer has 100 or fewer unsold lots included in the Statement of Record.

[76 FR 79489, Dec. 21, 2011, as amended at 81 FR 29116, May 11, 2016]

§ 1010.45

Suspensions.

(a)

Suspension notice prior to effective date.

(2) A suspension notice issued pursuant to this subsection shall suspend the effective date of the Statement of Record or the amendment. It shall continue in effect until 30 days, or such earlier date as the Director may determine, after the necessary amendments are submitted which correct all deficiencies cited in the notice.

(3) Upon receipt of a suspension notice, the developer has 15 days in which to request a hearing. If a hearing is requested, it shall be held within 20 days of the receipt of the request by the Director.

(b)

Suspension orders subsequent to effective date.

(2) If the Director undertakes an examination of a developer or its records to determine whether a suspension order should be issued, and the developer fails to cooperate with the Director or obstructs, or refuses to permit the Director to make such examination, the Director may issue an order suspending the Statement of Record. Such order shall remain in effect until the developer has complied with the requirements of the order. When the developer has complied with the requirements of the order, the Director shall so declare and thereupon the suspension order shall cease to be effective. In accordance with the procedure described in § 1012.235, a hearing may be requested.

(3) Upon receipt of an amendment to an effective Statement of Record, the Director may issue an order suspending the Statement of Record until the amendment becomes effective if the Director has reasonable grounds to believe that such action is necessary or appropriate in the public interest or for the protection of purchasers. In accordance with the procedure described in § 1012.235, a hearing may be requested.

(4) Suspension orders issued pursuant to this subsection shall operate to suspend the Statement of Record as of the date the order is either served on the developer or its registered agent or is delivered by certified or registered mail to the address of the developer or its authorized agent.

Subpart B Reporting Requirements

§ 1010.100

Statement of Record format.

(a) The Statement of Record consists of two portions; the Property Report portion and the Additional Information and Documentation portion.

(b) General format. The Statement of Record shall be prepared in accordance with the format set

forth in section VIII of the appendix to this part: Property Report:

§ 1010.101

[Reserved]

§ 1010.102

General instructions for completing the Statement of Record.

(a)

Paper and type.

1/2

1/2

1/2

1/2

(b)

Numbering and dating.

(c)

Signing.

(d)

Printing.

(e)

Headings, subheadings, captions, introductory paragraphs, warnings.

e.g.

(f)

Language style.

(g)

Format of the Additional Information and Documentation portion of the Statement of Record.

1/2

(h)

Ordering.

(i)

Advertising and promotional material.

(j)

Additional information.

(2) The instructions are not all inclusive. The developer shall include any other facts which would have a bearing upon the use by the purchaser of any of the facilities, services or amenities; which would cause or result in additional expenses to the purchaser; which would have an effect upon the use and enjoyment of the lot by the purchaser for the purpose for which it is sold or which would adversely affect the value of the lot.

(k)

Modification of format or content.

(l)

Required documentation.

(m)

Final version of Property Report.

[76 FR 79489, Dec. 21, 2011, as amended at 81 FR 29116, May 11, 2016]

§ 1010.103

Developer obligated improvements.

(a) If the developer represents either orally or in writing that it will provide or complete roads or facilities for water, sewer, gas, electricity or recreational amenities, it must be contractually obligated to do so, and the obligation shall be clearly stated in the Property Report. While the developer may disclose relevant facts about completion, the obligation to complete cannot be conditioned, other than as permitted by 15 U.S.C. 1703(a)(2), and an estimated completion date (month and year) must be stated in the Property Report. However, a developer that has only tentative plans to complete may so state in the Property Report, provided that the statement clearly identifies

conditions to which the completion of the facilities are subject and states that there are no guarantees the facilities will be completed.

(b) If a party other than the developer is responsible for providing or completing roads or facilities for water, sewer, gas, electricity or recreational amenities, that entity shall be clearly identified in the Property Report under the categories described in § 1010.110, § 1010.111 or § 1010.114, as applicable. A statement shall be included in the proper section of the Property Report that the developer is not responsible for providing or completing the facility or amenity and can give no

[76 FR 79489, Dec. 21, 2011, as amended at 81 FR 29117, May 11, 2016]

§ 1010.104

[Reserved]

§ 1010.105

Cover page.

The cover page of the Property Report shall be prepared in accordance with the following directions:

(a) The margins shall be at least 1 inch.

(b) The next 3 inches shall contain a warning, centered, in

1/2

1/4

(c) The remainder of the page shall contain the language set forth in section X of the appendix to this part: Language for Warning on Cover Page of Property Report beginning

1/4

(d)(1) If the purchaser is entitled to a longer revocation period by operation of state law, that period becomes the Federal revocation period and the Cover Page must reflect the requirements of the longer period, rather than the seven days.

(2)(i) If a deed is not delivered within 180 days of the signing of the contract or agreement of sale or unless certain provisions are included in the contract or agreement, the purchaser is entitled to cancel the contract within two years from the date of signing the contract or agreement.

(ii) The deed must be a warranty deed, or where such a deed is not commonly used, a similar deed legally acceptable in the jurisdiction where the lot is located. The deed must be free and clear of liens and encumbrances.

(iii) The contract provisions are:

(A) A legally sufficient and recordable lot description; and

(B) A provision that the seller will give the purchaser written notification of purchaser's default or breach of contract and the opportunity to have at least 20 days from the receipt of notice to correct the default or breach; and

(C) A provision that, if the purchaser loses rights and interest in the lot because of the purchaser's default or breach of contract after 15% of the purchase price, exclusive of interest, has been paid, the seller shall refund to the purchaser any amount which remains from the payments made after subtracting 15% of the purchase price, exclusive of interest, or the amount of the seller's actual damages, whichever is the greater.

(iv) If a deed is not delivered within 180 days of the signing of the contract or if the necessary provisions are not included in the contract, the following statement shall be used in place of any other rescission language: Under Federal law you may cancel your contract or agreement of sale any time within two years from the date of signing.

(e) At the time of submission, the developer may indicate its intention to comply with the red printing by an illustration or by a statement to that effect.

(f) The Date of This Report shall be the date on which the Director allows the Statement of Record to become effective and shall not be entered until the submission has become effective.

§ 1010.106

Table of contents.

(a) The second page(s) shall consist of a Table of Contents which lists the headings in the Property Report, the major subheadings, if any, and the page on which they appear. An example is set forth in section XI of the appendix to this part: Sample Entry in Table of Contents for Statement of

Record.

(b)

Use of You and We.

§ 1010.107

Risks of buying land.

(a) The next page shall be headed Risks of Buying Land and shall contain the paragraphs listed in section XII of the appendix to this part: Required Paragraphs for Risks of Buying Land.

(b) Warnings. If the instructions of the Director require any warnings to be included in the Property Report portion, the following statement shall be added beneath the Risks of Buying Land under a heading Warnings:

§ 1010.108

General information.

Insert and complete the format set forth in section XIII of the appendix to this part: Format for General Information.

§ 1010.109

Title to the property and land use.

(a)

General instructions.

(2)

Information to be provided.

(b)

Method of sale:

(1)

Sales contract and delivery of deed.

(ii) If an installment contract is used, include the following, or substantially the same, language in the disclosure narrative under Method of Sale: If you fail to make your payments required by the

contract, you may lose your lot and all monies paid.

(iii) If, at the time of a credit sale, the developer gives the buyer a deed to the lot, what type of security must the buyer give the seller?

(iv) If the lots are to be sold on the basis of an installment contract, can the developer or the owner of the subdivision or their creditors encumber the lots under contract? If so, include the following warning in the disclosure narrative under the caption Sales contract and delivery of deed: The (indicate subdivision developer, owner, or their creditors) can place a mortgage on or encumber the lots in this subdivision after they are under contract. This may cause you to lose your lot and any monies paid on it.

(2)

Type of deed.

(3)

Quitclaim deeds.

(4)

Oil, gas, and mineral rights.

(c)

Encumbrances, mortgages and liens

In general.

e.g.,

(2)

Release provisions.

(A) If the release clauses are not included in a recorded instrument, insert the statement set forth in section XV of the appendix to this part: Statement on Release Provisions, or one substantially the same in the disclosure narrative below under the caption Release Provisions.

(B) If the developer or subdivision owner states that the release provisions are recorded and that the lot purchaser may pay the release price of the mortgage, the statement shall be supported by

documentation supplied in § 1010.209. If the purchaser may pay the release fee, state the amount of the release fee and inform the purchaser that the amount may be in addition to the contract payments unless there is a bona fide trust or escrow arrangement in which the purchaser's payments are set aside to pay the release price before any payments are made to the developer.

(C)(

1

(

2

(d)

Recording the contract and deed

Method or purpose of recording.

(ii) If the sales contract or deed may be recorded, so state. Also state whose responsibility it is to record the contract or deed.

(iii) If the developer or subdivision owner will not have the sales contract officially acknowledged or if the applicable jurisdiction will not record sales contracts, state that sales contracts will not be recorded and why they will not be recorded.

(iv) If at, or immediately after, the signing of a contract, the contract or a deed transfer to the buyer is not recorded by the developer or owner or if title to the lot is not otherwise transferred of record to a trust, or if other sufficient notice of transfer or sale is not placed of record, then the developer shall include the warning set forth in section XVII of the appendix to this part: Method and Purpose of Recording Warning, or substantially the same warning in the disclosure narrative under the caption Method and Purpose of Recording. The reference to contracts shall be deleted from the above warning if the answer to paragraph (d)(1)(i) of this section indicates that recording of a contract in the subject jurisdiction does not protect the purchaser from claims of later purchasers or creditors of anyone having an interest in the land.

(2)

Title insurance.

(e)

Payments

Escrow.

(2)

Prepayments.

(3)

Default.

(f)

Restrictions on the use of your lot

Restrictive covenants.

e.g.,

(ii) If any restrictive covenants are to be used and if they have not been recorded, how will they be imposed? Include a statement to the effect that the restrictive covenants have not been recorded; that there is no assurance they will be applied uniformly; that they may be changed and that they may be difficult to enforce. If no restrictive covenants will be imposed, include a statement to the effect that, since there are no restrictive covenants on the use of the lots, they may be used for purposes which could adversely affect the use and enjoyment of surrounding lots.

(iii) If there are restrictive covenants, whether recorded or unrecorded, the following statement shall be made: A complete copy of these restrictions is available upon request.

(2)

Easements.

e.g.,

(ii) Is the subdivision subject to any type of flood control or flowage easements?

(iii) If the answer to either (2)(i) or (2)(ii) is in the affirmative, identify the affected lots and state the effect upon the use of the lots.

(g)

Plats, zoning, surveying, permits and environment

Plats.

(ii) Have plats covering the lots in this Report been recorded? If so, where are they recorded? If they have not been recorded, is the description of the lots given in this Report legally adequate for the conveyance of land in the jurisdiction where the subdivision is located? If it is not, include a statement to the effect that the description of the lots is not legally adequate for the conveyance of the lots and that it will not be until the plat is recorded.

(2)

Zoning.

e.g.,

(3)

Surveying.

(4)

Permits.

(5)

Environment.

§ 1010.110

Roads.

(a)

Access to the subdivision.

(2) Who is responsible for their maintenance? What is the cost to the purchaser, if any? Are any improvements contemplated? If so, when will they begin and when will they be completed? At whose expense?

(b)

Access within the subdivision.

e.g.,

(2) Who is responsible for the road construction? Is there any construction cost to the purchaser? Is there any financial assurance of completion? If there is no financial assurance of completion, enter a warning to the effect that no funds have been set aside in an escrow or trust account and there are no other financial arrangements to assure completion of the roads.

(3) How many lanes do the interior roads have? What is the estimated starting date of construction (month and year); the present percentage of construction now complete; the present surface; the estimated completion date (month and year) and what is the final surface to be? If there are separate units or sections in the subdivision which will have different completion dates or different surfaces, the chart in section XIX of the appendix to this part: Road Chart shall be used rather than a narrative paragraph.

(4) Who is responsible for road maintenance? If the roads are to be maintained by a public authority, a property owners' association or some other entity at some time in the future, who is responsible for their maintenance during the interim period? What is the cost to the purchaser during the interim period and after acceptance for permanent maintenance? Will they be maintained so as to provide access to the lots on a year round basis? If not, include a warning which informs the purchaser that access may not be available year round. Identify the months when access may not be available to lots. If there are no arrangements for maintenance, include a warning to the effect that purchasers are responsible for maintaining the roads and that, if maintenance is not performed, the roads may soon deteriorate and access may become difficult or impossible.

(5) If estimated completion dates given in prior Statements of Record have not been met, state that previous dates have not been met and give the previous dates. Underline the answer. If the roads are 100 percent completed, no dates are needed.

(6) Complete the chart in section XX of the appendix to this part: Nearby Communities Chart by listing the county seat (identify) and at least two nearby communities. Include at least one community of significant size which offers general services.

(7) If the purchasers will be individually responsible for providing access to their lots and for maintaining that access, what is the estimated cost of construction and maintenance?

§ 1010.111

Utilities.

(a)

Water.

e.g.,

(i)

Individual system.

(B) If individual cisterns or similar storage tanks are to be used, state where water to fill them can be secured; the cost of the water, and its delivery costs for a supply sufficient to serve the monthly needs of a family of four living in a house on a year-round basis. Include a statement to the effect that water stored for extended periods tends to become stale and may acquire an unpleasant taste or odor.

(C) If individual wells are to be used and if the sales contract contains no

(D) If individual wells or individual cisterns are to be used, include a brief statement to the effect that the purity and chemical content of the water cannot be determined until each individual well or source of water is completed and tested.

(E) If there have been no hydrological surveys in connection with the use of individual wells or sources of hauled water for cisterns, include a warning to the effect that there is no assurance of a sufficient supply of water for the anticipated population.

(F) Is a permit required to install the individual system to be used? If so, from whom and where is the permit secured? State the cost of a permit.

(ii)

Central system.

(B) Will the water mains be extended in front of, or adjacent to, each lot? When will construction

begin? What is the present percentage of completion of the water mains and central supply plant? When will service be available to the individual lots? If the central system is not complete and there are separate units or sections of the subdivision included in the Statement of Record which have different completion dates, then the starting date for construction (month and year), the percentage of construction now complete and the estimated service availability date (month and year) shall be set forth in the chart in section XXI of the appendix to this part: Water Chart Form rather than in a narrative paragraph.

(C) What is the present capacity of the central plant (i.e.,

(D) Have there been any hydrological surveys to determine that a sufficient source of water is available to serve the anticipated population of the subdivision? Has the water in the central system been tested for purity and chemical content? If so, did the results show that the water meets all standards for a public water supply? If there have been no hydrological surveys showing a sufficient supply of water or no tests for purity and chemical content for the central system, include a warning to the effect that there is no assurance of a sufficient supply or that the water is drinkable.

(E) Is there any financial assurance of completion of the central system and any future expansion? If not, include a warning to the effect that no funds have been set aside in an escrow or trust account nor have any other financial arrangements been made to assure completion of the water system.

(F) If the developer or an affiliate or subsidiary of the developer operates the central system, have all permits been obtained from the proper agencies for the construction, use and operation of the central system? If not, include a warning to the effect that the required permits, approvals or licenses for construction, operation or use of the water system have not been obtained, therefore there is no assurance the system can be constructed or used.

(G) If previous completion dates given in prior Statements of Record have not been met, state that previous completion dates have not been met and give the previous dates. Underline

(H) Is the purchaser to pay any construction costs, one-time connection fees, availability fees,

special assessments or deposits for the central system? If so, what are the amounts? If not, state that there are no charges other than use fees. If the purchaser will be responsible for construction costs of the water mains, state the cost to install the mains to the most remote lot covered by this report.

(I) If a purchaser wishes to use a lot prior to the date central water is available to it, may the purchaser install an individual system? If so, include the information required for individual systems in § 1010.111(a)(1)(i). Will the purchaser be required to discontinue use of any individual system and connect to the central system when service is available to the lot? If the purchaser is not required to connect to the central system, must any construction costs, connection fees, availability fees, special assessments or deposits in connection with the central system still be paid? If an individual system may not be installed, so state and indicate water will not be available until the central system is extended to the lot.

(J) If connection to the system is voluntary and not all purchasers elect to use the system, will the cost to those who do use the system be increased? If so, include a statement to the effect that connection to the central system is voluntary and those who use the system may have to pay a disproportionate share of the cost of the system and its operation.

(K) If the developer is to construct the system and will later turn it over to a property owners' association for operation and maintenance, state the estimated date and conditions of the conveyance and if it will be conveyed free and clear of any encumbrance. If there is a charge or if the association must assume an encumbrance, state the estimated amount of either and the terms for retirement of either obligation.

(L) If the supplier of water is other than a governmental agency or an entity which is regulated and supervised by a governmental agency, state that neither the operation of the water system nor the rates are regulated by a public authority.

(M) The warning We do not own or operate the central water system so we cannot assure its continued availability for your use shall be included unless:

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(b)

Sewer.

e.g.,

(i)

Individual systems.

(B) If holding tanks are to be used, state whether pumping and hauling service is available and the estimated monthly costs of that service for a family of four living in a house on a year-round basis.

(C) If each and every lot has not been approved for the use of an individual on-site system, include a warning to the effect that there is no assurance permits can be obtained for the installation and use of individual on-site systems. If the sales contract contains no provisions for refund or exchange in the event a permit cannot be obtained, include a statement to the effect that there is no assurance an individual on-site system can be installed and, if it cannot, no refund of the purchase price of the lot will be made.

(D) If no permit is required for the installation and use of individual on-site

(E) If the developer has knowledge that permits for the installation of individual on-site systems have been denied; that there have been unsatisfactory percolation tests or that systems have not operated satisfactory in the subdivision, state the number of these rejections, unsatisfactory tests or operations.

(ii)

Comfort stations.

(B) Who is to construct the comfort stations? Is there any financial assurance of their completion? If not, include a warning to the effect that no funds have been set aside in an escrow or trust account

nor have any other financial arrangements been made to assure completion of the comfort stations and there is no assurance the facilities will be completed.

(C) Who will be responsible for maintenance of the comfort stations? Is there any cost to the purchaser for construction, use or maintenance?

(iii)

Central system.

(B) What is the present percentage of completion and the present capacity of the system (i.e.,

(C) If the developer or an affiliate or subsidiary of the developer operates the central system, have all necessary permits been obtained for the construction, operation and use of the central system? Do these permits limit the number of connections or homes which the system may serve? If the permits have not been obtained, enter a warning to the effect that the necessary permits, approvals or licenses have not been obtained for the central sewage system; therefore there is no assurance that the system can be completed, operated or used.

(D) If the system cannot now serve all lots included in the Statement of Record, either because the supplier of the service has not stated it can and will serve all lots or if construction has not reached a stage where all lots can be served or permits to serve all lots have not been obtained, include a warning which states that all lots cannot now be served; the number which

(E) Will the purchaser pay any construction costs, special assessments, one time connection fees or availability fees? What are the amounts of these charges? If the purchaser is to pay construction costs of the sewer mains, state the cost of installation of the mains to the most remote lot in this Report.

(F) If the purchaser wishes to use the lot prior to the date central sewer service is available, may the purchaser install an individual system? If so, include the information on individual systems required by § 1010.111(b)(1)(i). Will the purchaser be required to discontinue use of the individual system and connect to the central system when service is available? If the purchaser is not required to

connect to the central system, must the purchaser still pay any construction costs, connection fees, availability fees, or special assessments? If the purchaser may not install an individual system, so state and indicate service will not be available until the central system reaches the lot.

(G) If connection to the system is voluntary and not all purchasers elect to use the system, will the cost to those who do use the system be increased? If so, include a statement to the effect that connection to the central system is voluntary and those who use the system may have to pay a disproportionate share of the cost of the system and its operation.

(H) Is there any financial assurance of completion of the central system and any future expansion? If not, include a warning that no funds have been set aside in an escrow or trust account nor have any other financial arrangements been made to assure the completion of the central system; therefore there is no assurance that it will be completed.

(I) If previous completion dates given in prior Statements of Record have not been met, state that previous dates have not been met and give the previous dates. Underline the answer. If the central sewage treatment and collection system are 100 percent completed, no dates are needed.

(J) If the developer is to construct the system and will later turn it over to a property owners' association for operation and maintenance, state the date of the transfer and whether there will be any charge for the conveyance and if it will be conveyed free and clear of any encumbrance. If there is a charge or if the association must assume an encumbrance, state the estimated amount of either and the terms for retirement of either obligation.

(K) If the owner or operator of the central sewer system is other than a governmental agency or an entity which is regulated and supervised by a governmental agency, state that neither the operation of the sewer system nor the rates are regulated by a public authority.

(L) The warning We do not own or operate the central sewer system so we cannot assure its continued availability for your use. shall be included unless:

(

(

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(c)

Electricity.

(2) Have primary electrical service lines been extended in front of, or adjacent to, all of the lots? If not, when (month and year) or under what conditions will construction begin and when will service be available? If they have not been installed, who is responsible for their construction? If electrical service lines have not been extended in front of, or adjacent to, all lots and there are separate units or sections having different service availability dates, the chart found in section XXIV of the appendix to this part: Electric Service Chart shall be used rather than a narrative paragraph.

(3) If construction of the lines or service to the ultimate consumer is provided by an entity other than a publicly regulated utility, who provides, or will provide, the service? Who will be responsible for maintenance? What is the assurance of completion? If service

(4) If the primary service lines have not been extended in front of, or adjacent to each lot, will the purchaser be responsible for any construction costs? If so, what is the utility company's policy and charges for extension of primary lines? Based on that policy, what would be the cost to the purchaser for extending primary service to the most remote lot in this Report?

(5) If electrical service will not be provided, what is an alternate source (

e.g.,

(6) If the lines are to be installed by some entity other than a publicly regulated utility and if there is no financial assurance of completion, include a warning to the effect that no funds have been set aside in an escrow or trust account nor have any other financial arrangements been made to assure construction of the electric lines.

(d)

Telephone.

(2) Have the service lines been extended in front of, or adjacent to, each of the lots? If not, when,

and under what conditions, will construction be started and when will service be available (month and year)?

(3) If the service lines have not been extended in front of, or adjacent to, each lot, will the purchaser be responsible for any construction costs? If so, what is the utility company's policy and charges for extension of service lines? Based on that policy, what would be the cost to the purchaser of extending service lines to the most remote lot in this Report?

(e)

Fuel or other energy source.

(2) [Reserved]

§ 1010.112

Financial information.

(a) The information required by paragraphs (b) and (c) of this section need appear only if the answer to the question is an affirmative one.

(b) Has the developer had a deficit in retained earnings or experienced an operating loss during the last fiscal year or, if less than a year old, since its formation? If so, include a statement to the effect that this may affect the developer's ability to complete promised facilities and to discharge financial obligations. This statement may be omitted if:

(1) All facilities, utilities and amenities proposed to be completed by the developer in the Property Report and sales contract have been completed so that the lots included in the Statement of Record are immediately usable for the purpose for which they are sold, or if:

(2) The developer is contractually obligated to the purchaser to complete all facilities, utilities and amenities promised by it in the Statement of Record, and:

(i) The developer has made financial arrangements, such as the posting of surety bonds (corporate or individual notes or bonds are not acceptable), irrevocable letters of credit, escrow or trust accounts, to assure that the facilities, utilities and amenities will be completed by the dates set out in the Property Report or contract;

(ii) The sales contract provides for delivery of a deed within 180 days of the signing of the contract which conveys title free of any mortgage or lien, or the developer has filed an assurance of title agreement with ILSRP as outlined in § 1010.212(e); and

(iii) Any down payments or deposits are held in an escrow or trust account.

(c) If the developer's financial statements have been audited, did the accountant qualify the opinion or decline to give an opinion? If so, why was the opinion qualified or declined?

(d) The following statement shall appear: A copy of our financial statements for the period ending _____ is available from us upon request.

(e) The information furnished in § 1010.212(b) may necessitate a warning

§ 1010.113

Local services.

(a)

Fire protection.

(b)

Police protection.

(c)

Schools.

(d)

Hospital.

(e)

Physicians and dentists.

(f)

Shopping facilities.

(g)

Mail service.

(h)

Public transportation.

§ 1010.114

Recreational facilities.

(a)

Recreational facilities to be covered.

(1) The developer is contractually responsible to provide or complete and which are:

(i) Within, adjacent or contiguous to the subdivision, and

(ii) Maintained substantially for the use of lot owners; or

(2) For which a third party is responsible and which are:

(i) Within, adjacent or contiguous to the subdivision, and

(ii) Maintained substantially for the use of lot owners.

(b)

Recreational facility chart.

(1)

Facility.

e.g.,

(2)

Percent complete.

(3)

Estimated date of start of construction.

(4)

Estimated date available for use.

(5)

Financial assurance of completion.

i.e.,

(6)

Buyer's annual cost or assessments.

(c) Information to be provided below the recreational facility chart and related warnings.

(1)

Constructing the facilities.

(2)

Maintaining the facilities.

(3)

Facilities which will be leased to lot purchasers.

(4)

Transfer of the facilities.

(5)

Permits.

(6)

Who may use the facilities.

e.g.,

§ 1010.115

Subdivision characteristics and climate.

(a)

General topography.

(b)

Water coverage.

(c)

Drainage and fill.

(d)

Flood plain.

(e)

Flooding and soil erosion.

(2) If there is a program, describe it. Include in the description information as to whether the program has been approved by the appropriate government officials; when it is to start; when it is to be completed (month and year); whether the developer is obligated to comply with the program and whether there is any financial assurance of completion.

(3) If there is no program or if the program has not been approved by the appropriate officials or if the program does not provide minimum protection, include a statement to the effect that the measures being taken may not be sufficient to prevent property damage or health and safety hazards. A minimum program will usually provide for:

(i) Temporary measures such as mulching and seeding of exposed areas and silt basins to trap sediments in runoff water, and

(ii) Permanent measures such as sodding and seeding in areas of heavy grading or cut and fill along with the construction of diversion channels, ditches, outlet channels, waterway stabilizers and sediment control basins.

(f)

Nuisances.

e.g.,

(g)

Hazards.

e.g.,

(2) Is the area subject to natural hazards or has it been formally identified by any Federal, state or local agency as an area subject to the frequent occurrence of natural hazards (

e.g.,

(h)

Climate.

i.e.,

(i)

Occupancy.

§ 1010.116

Additional information.

(a)

Property Owners' Association.

(2) Does the developer exercise, or have the right to exercise, any control over the Association because of voting rights or placement of officers or directors? For how long will this control last?

(3) Is membership in the association voluntary? Will non-member lot owners be subject to the payment of dues or assessments? What are the association dues? Can they be increased? Are members subject to special assessments? For what purpose? If membership in the association is voluntary and if the association is responsible for operating or maintaining facilities which serve all lot owners, include the following statement: Since membership in the association is voluntary, you may be required to pay a disproportionate share of the association costs or it may not be able to carry out its responsibilities.

(4) What are the functions and responsibilities of the association? Will the association hold architectural control over the subdivision?

(5) Are there any functions or services that the developer now provides at no charge for which the association may be required to assume responsibility in the future? If so, will an increase in assessments or fees be necessary to continue these functions or services?

(6) Does the current level of assessments, fees, charges or other income provide the capability for the association to meet its present, or planned, financial obligations including operating costs, maintenance and repair costs and reserves for replacement? If not, how will any deficit be made up?

(b)

Taxes.

(2) If the subdivision is encompassed within a special improvement district or if a special district is

proposed, describe the purpose of the district and state the amount of assessments. Describe the purchaser's obligation to retire the debt.

(c)

Violations and litigations.

(1) With respect to activities relating to or in violation of a Federal, state or local law concerned with the environment, land sales, securities sales, construction or sale of homes or home improvements, consumer fraud or similar activity, has the developer, the owner of the land or any of their principals, officers, directors, parent corporation, subsidiaries or an entity in which any of them hold a 10% or more financial interest, been:

(i) Disciplined, debarred or suspended by any governmental agency, or is there now pending against them an action which could result in their being disciplined, debarred or suspended or,

(ii) Convicted by any court, or is there now pending against them any criminal proceedings in any court? ILSRP suspension notices on pre-effective Statements of Record and amendments need not be listed.

(2) Has the developer, the owner of the land, any principal, any person holding a 10% or more financial or ownership interest in either, or any officer or director of either, filed a petition in bankruptcy? Has an involuntary petition in bankruptcy been filed against it or them or have they been an officer or director of a company which became insolvent or was involved, as a debtor, in any proceedings under the Bankruptcy Act during the last 13 years?

(3) Is the developer or any of its principals, any parent corporation or subsidiary, any officer or director a party to any litigation which may have a material adverse impact upon its financial condition or its ability to transfer title to a purchaser or to complete promised facilities? If so, include a warning which describes the possible effects which the action may have upon the subdivision.

(d)

Resale or exchange program.

e.g.,

(2) Does the developer have an active resale program? If the answer is no, include the following statement: We have no program to assist you in the sale of your lot.

(3) Does the developer have a lot exchange program? If the answer is yes, describe the program; state any conditions and indicate if the program reserves a sufficient number of lots to accommodate all those wishing to participate. If there is no program or if sufficient lots are not reserved, include one of the following statements as applicable: We do not have any provision to allow you to exchange one lot for another or We do not have a program which assures that you will be able to exchange your lot for another.

(e)

Unusual situations.

(1)

Leases.

(2)

Foreign subdivision.

(iii) Must an alien obtain a permit or license to own land, build a home, live, work or do business in the country where the subdivision is located? If so, where is such permit or license secured; for how long is it valid and what is its cost?

(3)

Time sharing.

(ii) Is conveyance of any portion of the lot contingent upon the sale of the remaining portions? Is the initial buyer responsible for any greater portion of the expense than his normal share until the remaining interests are sold? If the purchase of any of the portions is financed, will the default of one owner have any effect upon the remaining owners?

(4)

Memberships.

(ii) If the member does not receive any interest in the title to the land, include a warning to the effect

that you receive no interest in the title to the land but only the right to use it for a certain period of time.

(f)

Equal opportunity in lot sales.

(1) Refusing to sell or lease lots after the making of a bona fide offer or to negotiate for the sale or lease of lots or is otherwise making unavailable or denying a lot to any person, or

(2) Discriminating against any person in the terms, conditions or privileges in the sale or leasing of lots or in providing services or facilities in connection therewith, or

(3) Making, printing, publishing or causing to be made, printed or published any notice, statement or advertisement with respect to the sale or leasing of lots that indicates any preference, limitation or discrimination against any person, or

(4) Representing to any person that any lot is not available for inspection, sale or lease when such lot is in fact available, or

(5) For profit, inducing or attempting to induce any person to sell or lease any lot by representations regarding the entry or non-entry into the neighborhood of a person or persons of a particular race, color, religion, sex, national origin, familial status, or handicap.

(g)

Listing of lots.

§ 1010.117

Cost sheet, signature of Senior Executive Officer.

(a)

Cost sheetFormat.

(2)

Cost sheet instructions.

(ii) If a central water or sewer system will be used in all or part of the subdivision and a private system in all or other parts, then the portion that does not apply to the purchaser's lot shall be

crossed out.

(iii) If individual private systems may be used prior to the availability of service from any central system and the purchaser is not required to connect to any central system, both figures may be entered or only the highest cost figures may be used with a parenthetical explanation or footnote. If the purchaser is required to connect to any central system and discontinue the use of his private system when central service is available, both cost figures shall be given, together with an explanation or footnote.

(iv) If there is a one time, lump sum availability fee which is assessed to the purchaser in connection with a central utility, include under other and identify.

(v) Dues and assessments need be included only if they are involuntary regardless of use.

(vi) At the discretion of the Director, where there is extreme diversity in the figures for different areas of the subdivision, variations may be permitted as to whether the figures will be printed, entered manually, or a range of costs used or any combination of these features.

(vii) The estimated annual taxes shall be based upon the projected valuation of the lot after sale to a purchaser.

(b)

Signature of the Senior Executive Officer.

§ 1010.118

Receipt, agent certification, and cancellation page.

(a)

Format.

(b) The original and one copy of this executed page shall be attached to the Property Report delivered to prospective purchasers. After the purchaser

(c) If the transaction takes place through the mails, the cost figures shall be entered and the person most active in dealing with the prospective purchaser shall sign the certification prior to mailing the Property Report to the purchaser. Otherwise, the certification shall be executed in the presence of

the purchaser.

(d) The date of Report appearing on the receipt shall be the same as that appearing on the cover sheet of the Property Report.

(e) Notification of cancellation by mail shall be considered given at the time post-marked.

§ 1010.200

Instructions for Statement of Record, Additional Information and Documentation.

The Additional Information and Documentation portion of the Statement of Record shall contain the statements and documents required in §§ 1010.208 through 1010.219. Each section number and its associated heading and each paragraph letter or number and their associated subheadings or captions must appear in this portion. Following each heading, subheading, or caption printed in this portion, the registrant shall insert an appropriate response. If a heading, subheading, or caption does not apply to the subdivision, it shall be followed by the words not applicable. Immediately after the page(s) on which the section number and answers for that section appear, insert the information or documents which support that section. In addition to the statements and documentation expressly required there shall be added any further material, information, documentation and certifications as may be necessary in the public interest and for the protection of purchasers or to cause the statements made to be not misleading in the light of the circumstances under which they are made.

§§ 1010.201-1010.207

[Reserved]

§ 1010.208

General information.

(a)

Administrative information.

(2) Has the developer submitted a request for an exemption for the subdivision?

(3) List the states in which registration has been made by the developer for the sale of lots in the subdivision.

(4) If any state listed in paragraph (a)(3) of this section has not permitted a registration to become effective or has suspended the registration or prohibited sales, name the state involved and give the reasons cited by the state for their action.

(5) State whether the developer has made, or intends to make, a filing with the U.S. Securities and Exchange Commission (SEC) which is related in any way to the subdivision. If a filing has been made with the SEC, give the SEC identification number; identify the prospectus by name; date of filing and state the page number of the prospectus upon which specific reference to the subdivision is made. Any disciplinary action taken against the developer by the SEC should be disclosed in §§ 1010.116 and 1010.216.

(b)

Subdivision information.

(2) State the number of acres represented by the lots in this Statement of Record. If this is a consolidated Statement of Record, state the number

(3) State whether any lots have been sold in this subdivision since April 28, 1969, and prior to registration with ILSRP. If they were sold pursuant to an exemption, identify the exemption provision and state whether an advisory opinion, exemption order or exemption determination was obtained with respect to those lots sales. Give the ILSRP number assigned to the exemption, if any.

(c)

Developer information.

(2) If the developer is not the owner of the land, state the developer's name, address, Internal Revenue Service number and telephone number. If the developer is other than an individual, name the type of legal entity and list the interest, and the extent thereof, of each principal. Identify the officers and directors.

(3) If you wish to appoint an authorized agent, state the agent's name, address and telephone number and scope of responsibility. This shall be the party designated by the developer to receive correspondence, service of process and notice of any action taken by ILSRP. In all Statements of

Record, including those for foreign subdivisions, the authorized agent shall be a resident of the United States. A change of the authorized agent will require an appropriate amendment.

(4) State whether the owner of the land, the developer, its parent, subsidiaries or any of the principals, officers or directors of any of them are directly or indirectly involved in any other subdivision containing 100 or more lots. If so, identify the subdivision by name, location, and ILSRP number, if any.

(5) State whether the owner or developer is a subsidiary corporation. If either the owner or developer is a subsidiary corporation or if any of the principals of the owner or developer are corporate entities, name the parent and/or corporate entity and state the principals of each to the ultimate parent entity.

(d)

Documentation.

(2) Submit a copy of a general plan of the subdivision. This general plan must consist of a map, prepared to scale, and it must identify the various proposed sections or blocks within the subdivision, the existing or proposed roads or streets, and the location of the existing or proposed recreational and/or common facilities. In an initial filing, this map must at least show the area included in the Statement of Record. In a consolidated Statement of Record, show areas being added, as well as the areas previously registered. If a map of the entire subdivision is submitted with the initial Statement of Record, and if no substantial changes are made when material for a consolidated Statement of Record is submitted, the original map may be included by reference.

(3)(i) If the developer is a corporation, submit a copy of the articles of incorporation, with all amendments; a copy of the certificate of incorporation or a certificate of a corporation in good standing and, if the subdivision is located in a state other than the one in which the original certificate of corporation was issued, a certificate of registration as a foreign corporation with the state where the subdivision is located.

(ii) If the developer is a partnership, unincorporated association, joint stock company, joint venture or

other form of organization, submit a copy of the articles of partnership or association and all other documents relating to its organization.

(iii) If the developer is not the owner of the land, submit copies of the above documents for the owner.

§ 1010.209

Title and land use.

(a)

General information.

e.g.,

(2) State whether there is a provision giving purchasers an option to exchange lots. If yes, indicate this and make reference to the applicable paragraph in the sales contract or other document.

(3) State whether the developer knows of any instruments not of record which, if recorded, would affect title to the subdivision. If yes, copies of these instruments shall be submitted, except that copies of unrecorded contracts for sales of lots in the subdivision need not be submitted.

(4)(i) Identify the Federal, State, and local agencies or similar organizations which have the authority to regulate or issue permits, approvals or licenses which may have a material effect on the developer's plans with respect to the proposed division of the land, and any existing or proposed facilities, common areas or improvements to the subdivision.

(ii) Describe or identify the land or facilities affected; the permit, approval or license required; and indicate whether the permit, approval or license has been obtained by the developer.

(iii) If no agency regulates the division of the land or issues any permits, approvals or licenses with respect to improvements, so state.

(iv) Answers must specifically cover the areas of environmental protection; environmental impact statements; and construction, dredging, bulkheading, etc. that affect bodies of water within or around the subdivision. Also include licenses or permits required by water resources boards, pollution control boards, river basin commissions, conservation agencies or similar organizations.

(5) State whether it is unlawful to sell lots prior to the final approval and recording of a plat map in the jurisdiction where the subdivision is located.

(b)

Title evidence.

(2) Acceptable title evidence shall be dated no earlier than 20 business days preceding the date of the filing of the Statement of Record with the Director. Previously issued title evidence may be updated to the date referred to in the preceding sentence by endorsements or attorneys' opinions of title.

(3) The developer shall amend the title evidence to reflect the change in status of title of any previously registered, reacquired lots unless their status is at least as marketable as they were when first offered for sale by the developer as registered lots.

(c)

Forms of acceptable title evidence.

(2) A legal opinion stating the condition of title, prepared and signed by an attorney at law experienced in the examination of titles and a member of the Bar in the state in which the property is located. The title opinion may be based on a Torrens land registration system certificate of title, or similar instrument, provided it meets all general title evidence requirements of this section and a copy of the registration certificate of title is submitted. Title opinions that limit negligence liability to amounts less than the market value of the subject land at the time of its acquisition by the subdivision owner are not acceptable.

(d)

Title searches.

(1) The records of the recorder of deeds or similar authority;

(2) U.S. Internal Revenue Liens;

(3) The records of the circuit, probate, or other courts including Federal courts and bankruptcy or reorganization proceedings which have jurisdiction to affect the title to the land;

(4) The tax records;

(5) Financing statements filed pursuant to the Uniform Commercial Code or similar law. If it is held that the financing statements do not affect the title of the land, include a statement of the legal authority for that opinion.

(e)

Items to be included in the title evidence.

(1) A legal description of the land on which the lots, common areas, and facilities covered by the title evidence are located. This legal description shall be adequate for conveying land in the jurisdiction in which the subdivision is located. If this legal description is based on a recorded plat, the lot numbers, recording place, book name, book number, and page number shall be stated in the description. If this legal description is given by metes and bounds, the title evidence shall include or be accompanied by a certified statement of the preparer of the title evidence, a licensed attorney, or an engineer or surveyor, indicating that all subject lots, common areas, and common facilities are encompassed within the metes and bounds description in the evidence. If at any time after the submission of the legal description required above, the description of the subject land is changed or found to be in error, a correcting amendment shall be made to the Statement of Record.

(2) The name of the person(s) or other legal entity(ies) holding fee title to the property described.

(3) The name of any person(s) or other legal entity(ies) holding a leasehold estate or other interest of record in the property described.

(4) A listing of any and all exceptions or objections to the title, estate or interest of the person(s) or legal entity(ies) referred to in paragraph (e)(2) or (3) of this section, including any encumbrances, easements, covenants, conditions, reservations, limitations or restrictions of record. Any reference to exceptions or objections to title shall include specific references to the instruments in the public records upon which they are based. When an objection or exception to title affects less than all of the property covered by this Statement of Record, the title evidence shall specifically note what portion of the property is so affected.

(5) Copies of all instruments in the public records specifically referred to in paragraph (e)(4) of this section. Abstracts of such instruments are acceptable if prepared by an attorney or professional or official abstractor qualified and authorized by law to prepare and certify such abstracts and if the abstracts contain a material portion of the recorded instruments sufficient to determine the nature and effect of such instruments. Also include copies of any release provisions, relating to encumbrances on the property described, which are not included in the documents otherwise required by this section.

(6) If an attorney's title opinion has been submitted pursuant to this section which has been based on a Torrens land registration certificate of title, submit a copy of such certificate.

(f)

Supplemental title information.

(2) Submit copies of any trust deeds, deeds in trust, escrow agreements or other instruments which purport to protect the purchaser in the event of default or bankruptcy by the developer on any instrument or instruments which create a blanket encumbrance upon the property unless they have been previously provided as part of title evidence submitted pursuant to paragraph (e) of this section.

(3)(i) Submit copies of all forms of contracts or agreements and notes to be used in selling or leasing lots. The contracts or agreements, including promissory notes, must contain the following language in boldface type (which must be distinguished from the type used for the rest of the contract) on the face or signature page above all signatures: You have the option to cancel your contract or agreement of sale by notice to the seller until midnight of the seventh day following the signing of the contract or agreement. If you did not receive a Property Report prepared pursuant to the rules and regulations of the Bureau of Consumer Financial Protection, in advance of your signing the contract or agreement, the contract or agreement of sale may be cancelled at your option for two years from the date of signing.

(ii) If the purchaser is entitled to a longer revocation period by operation of state law or the Act, that

period becomes the Federal revocation period and the contract or agreement must reflect the requirements of the longer period, rather than the seven days. This language shall be consistent with that shown on the cover page (see § 1010.105).

(iii) The revocation provisions may not be limited or qualified in the contract or other document by requiring a specific type of notice or by requiring that notice be given at a specified place.

(iv) If it is represented that the developer will provide or complete roads or facilities for waters, sewer, gas, electric service or recreational amenities, the contract must contain a provision that the developer is obligated to provide or complete such roads, facilities and amenities.

(4) Submit copies of deeds and leases by which the developer will lease or convey title to the lots to purchasers or lessees.

(g)

Plat maps, environmental studies and restrictions

Plat maps.

(ii) If the plat has not been approved by the local authorities nor recorded, and if it is not unlawful to sell lots prior to final approval and recording, submit a map which has been prepared to scale and which shows the proposed division of the land, the lot dimensions and their relation to proposed or existing streets and roads. The map shall contain sufficient engineering data to enable a surveyor to locate the lots.

(iii) Whether recorded or unrecorded, the plat or map should show:

(A) The dimensions of each lot, stated in the standard unit of measure acceptable for such purposes in the political subdivision where the land is located.

(B) A clear delineation of each of the lots and any common areas or facilities.

(C) Any encroachments or rights-of-way on, over, or under the land, or a notation of these items together with the identity of the lots affected.

(D) The courses, distances and monuments, natural or otherwise, of the land's boundaries; contiguous boundaries and identification or ownership of adjoining land and names of abutting

streets, ways, etc.

(E) The location of the section or unit encompassing the lots in relationship to the larger tract, or tracts, in the subdivision.

(F) The delineation of any flood plains or flood control easements affecting any of the lots.

(iv) The plat, or map shall be prepared by a licensed surveyor or engineer.

(v) If all lots on each page of the plat are not included in the Statement of Record with which the plat or map is submitted, then the lots which are to be included in the Statement of Record shall be identified on the plat or map; a legend describing the method of identification shall be entered on the face of the plat or map and the number of lots so identified entered in the lower right hand corner of the plat map. The Director must be able to reconcile the totals of these numbers with the information given in §§ 1010.108 and 1010.208 of the Statement of Record and the title evidence.

(2)

Environmental impact study.

(3)

Restrictions or covenants.

[76 FR 79489, Dec. 21, 2011, as amended at 81 FR 29117, May 11, 2016]

§ 1010.210

Roads.

(a) State the estimated cost to the developer of the proposed road system.

(b) If the developer is to complete any roads providing access to the subdivision, submit copies of any bonds or escrow agreements which have been posted to guarantee completion thereof.

(c) Submit copies of any bonds or escrow agreements which have been posted to assure completion of the roads within the subdivision.

(d) If the interior roads are to be maintained by a public authority, submit a copy of a letter from that authority which states that the roads have been, or the conditions upon which they will be, accepted for maintenance and when.

Utilities.

(a)

Water.

(2) If water is to be supplied by a central system, furnish a letter from the supplier that it will supply the water. If the system is operated by a governmental division or by an entity whose operations are regulated by a governmental agency but which is not affiliated with or under the control of the developer, the letter shall include a statement that the supply of water will be sufficient to serve the anticipated population of the subdivision or how many homes or connections it can and will serve and that the water is tested at regular intervals and has been found to meet all standards for a public water supply.

(3) If the water is to be supplied by individual wells, by an entity which is not regulated by a governmental agency, by the developer or by an entity which is affiliated with or controlled by the developer, submit a copy of any engineers' reports or hydrological surveys which indicate there is a sufficient supply of water to serve the anticipated population of the subdivision.

(4) If the supplier of water is not in one of the categories in paragraph (a)(2) of this section, submit a copy of a letter or report from a cognizant health officer, or from a private laboratory licensed by the state to perform tests and issue reports on water, to the effect that the water was found to meet all drinking water standards required by the state for a public water system.

(5) If any bond, escrow agreement or other financial assurance of the completion of the central system, including any phases which are to be constructed in the future, has been posted by the developer or an entity not regulated by a government agency, furnish a copy of the document.

(6) Furnish a copy of any permits which have been obtained by the developer or any entity affiliated with or under the control of the developer in connection with the construction and operation of the central system. If a permit is required to install individual wells, submit a letter from the proper authority which states the requirements for obtaining the permit and that there is no objection to the

use of individual wells in the subdivision.

(7) Furnish a copy of any membership agreement or contract which allows or requires lot owners to use the central water system. If this document is furnished elsewhere in the Statement of Record, reference to it may be made here.

(b)

Sewer.

(2) If sewage disposal is to be by individual on-site systems, furnish a letter from the local health authorities giving general approval to the use of these systems in the subdivision or giving specific approval for each and every lot.

(3) If sewage disposal is to be through a central system which is owned and operated by a governmental division, or by an entity whose operations are regulated by a governmental agency but which is not affiliated with, or under the control of, the developer, furnish a letter from the entity that it will provide this service and that its treatment facilities have the capacity to serve the anticipated population of the subdivision or how many homes or connections it can and will serve.

(4) Furnish a copy of any permits obtained by the developer or any entity affiliated with or under the control of the developer, for the construction and operation of the central sewer system or construction and use of any other method of sewage disposal contemplated for the subdivision except those to be obtained by individual lot owners at a later date.

(5) If any bond, escrow agreement or other financial assurance of the completion of the central system or other system for which the developer is responsible, and any future expansion, has been posted, furnish a copy of the document.

(6) Furnish a copy of any membership agreement or contract which allows, or requires, the lot owners to use the central system. If this document is furnished elsewhere in the Statement of Record, it may be included here by reference.

(c)

Electricity.

(d)

Telephone.

§ 1010.212

Financial information.

(a)

Financing of improvements.

(b) Complete the following format (If the subdivision or common promotional plan contains, or will contain, 1000 or more lots, furnish this information in its entirety. If the subdivision or common promotional plan contains, or will contain, less than 1,000 lots, only paragraphs (b)(3)(iii) and (iv) of this section need be completed.)

(1) Estimated date for full completion of amenities

(2) Projected date for complete sell out of subdivision

(3) Cost and expense recap for lots included in this Statement of Record:

(i) Land acquisition cost or current fair market value of land.

(ii) Development and improvement costs (include the estimated cost of such items as roads, utilities, and amenities which the developer will incur).

(iii) Estimated marketing and advertising costs.

(iv) Estimated sales commission.

(v) Interest (include cost in financing the land purchase, improvements, or other borrowings).

(vi) Estimated other expenses (include general costs, administrative costs, profit, etc.).

(vii) Total.

(4) Total land sales revenue:

(i) Estimated total land sales income.

(ii) Estimated other income.

(iii) Total income.

(c)

Financial statements.

(2) If the audited statements are more than six months old at the date of submission of the Statement of Record, or if the last full fiscal year has ended within the last 90 days and audited Statements are not yet available, the developer may submit a copy of the audited statements for the previous full fiscal year and supplement them with unaudited, interim statements so that the financial information is no more than six months old on the date that the Statement of Record is submitted. The interim statements may be prepared by company personnel but must contain a balance sheet, a statement of profit and loss and a statement of changes in financial condition and be prepared in accordance with generally accepted accounting principles.

(d)

Annual report.

(2) If a developer has submitted its latest statements with a consolidated filing since the close of its fiscal year and prior to the end of the 120 day period, a second submission of the statements to comply with this section is not necessary.

(3) If the developer no longer has an active sales program on the date this report is due, the information set forth in § 1010.310(c)(7)(iii) may be furnished in lieu of this report.

(e)

Exceptions.

(2) The term conveys title free of any mortgage or lien in these exceptions is not intended to prohibit the taking of an instrument as security for the lot purchase price after title is conveyed. For the purposes of these exceptions, these definitions shall apply:

(i)

Deed

(ii)

Assurance of Title Agreement

e.g.

(iii)

Date of contract

(iv)

Escrow or trust account as to down payments and deposits

(3) The exceptions are:

(i) The aggregate sales price of all lots offered pursuant to a common promotional plan equals \$500,000.00 or less; or

(ii) Each of the following conditions of paragraphs (e)(3)(ii)(A) and (B) of

(A) Down payments and deposits are held in an escrow or trust account.

(B) The contract provides for delivery of a deed which conveys title free of any mortgage or lien within 180 days of the signing of the contract. (In lieu of delivery of a deed, the developer may submit to ILSRP an Assurance of Title Agreement.)

(C) The aggregate sales prices of all lots offered pursuant to a common promotional plan is at least \$500,000 but less than \$1,500,000.

(D) All facilities, utilities and amenities proposed by the developer in the Property Report or sales contract have been completed so that the lots in the Statement of Record are immediately usable for the purpose for which they are sold.

(E) (

1

(

2

(f)

Newly-formed entity.

(g)

Use of parent company statements.

Provided,

(i) The audited and certified financial statements of the parent company, together with interim statements if necessary, which comply with § 1010.212(c).

(ii) A properly executed guaranty in a form acceptable to the Director.

(2) In cases described in paragraph (g)(1) of this section, the disclosure information required in § 1010.112 shall be appropriately amended to reference the parent company and not the developer and must include a statement to the effect that the developer's parent company (insert name) has entered into an unconditional guaranty to perform and fulfill the obligations of the developer.

(h)

Opinions.

(i)

Copies for prospective purchasers.

(j)

Change from audited to unaudited statements.

(i) The aggregate sales prices of the lots yet to be sold in the subdivision has been reduced to less than \$1,500,000.00, and that it will not exceed this amount through further additions to the subdivision, or through the reacquisition of lots already sold, and;

(ii) The sales contract provides for delivery of a deed within 120 days of the date of the contract which conveys title free and clear of any mortgage or lien or the developer files an Assurance of Title Agreement with ILSRP, and;

(iii) Any down payments or deposits are held in an escrow or trust account, or;

(iv) The developer then qualifies for exception (e)(3)(iii) or (iv) of this section.

(2) The Director may allow a developer, who has made sales prior to registration, to submit unaudited statements under the provisions of paragraph (j)(1)(i) of this section. The developer must demonstrate to the satisfaction of the Director that the acceptance of unaudited statements would not be a detriment to the public interest or to the protection of purchasers.

§ 1010.214

Recreational facilities.

(a) Submit a synopsis of the proposed plans and estimated cost of any proposed or partially constructed recreational facility disclosed in § 1010.114. This item should include the general dimensions and a brief description of the facility but it should not include blueprints or similar technical materials.

(b) Submit a copy of any bond or escrow arrangements to assure completion of the recreational facilities disclosed in § 1010.114 which are not structurally complete.

(c) Submit a copy of the lease for any leased recreational facility.

§ 1010.215

Subdivision characteristics and climate.

(a) Submit a copy of a current geological survey topographic map, or maps, of the largest scale available from the U.S. Geological Survey with an outline of the entire subdivision and the area included in this Statement of Record clearly indicated. Do not shade the areas on the maps which have been outlined.

(b) If drainage facilities are proposed but not yet completed, submit a synopsis of the developer's proposed plans that includes a description of the system of collecting surface waters; a description of the steps to be taken to control erosion and sedimentation and the estimated cost of the drainage facilities.

(c) Submit copies of any bonds, escrow or trust accounts or other financial assurance of completion of the drainage facilities.

(d) State whether the jurisdiction in which the subdivision is located has a system for rating the land for fire hazards.

[76 FR 79489, Dec. 21, 2011, as amended at 81 FR 29117, May 11, 2016]

§ 1010.216

Additional information.

(a)

Property Owners' Association.

(2) If the developer exercises any control over the association, state whether any contracts have been executed between the association and the developer or any affiliate or principal of the developer. If there have been, briefly summarize the terms of the contracts, their purpose, their duration and the method and rate of payment required by the contract. State whether the association may modify or terminate the contracts after the owners assume control of the association.

(3) State whether there is any agreement which would require the association to reimburse the developer, its affiliates or successors for any attorney's fees or costs arising from an action brought against them by the association or individual property owners regardless of the outcome of the action.

(4) If the answer to paragraph (a)(2) or (a)(3) of this section is in the affirmative, disclosure may be required in § 1010.116(a) at the discretion of the Director.

(5) Submit a copy of any membership agreement or similar document.

(b)

Price range, type of sales and marketing.

(2) State the type of sales to be made,

i.e.,

(3) Describe the methods of advertising and marketing to be used for the subdivision. The description should include, but need not be limited to, information on such matters as to:

(i) Whether the developer will employ his own sales force or will contract with an outside group;

(ii) Whether wide area telephone solicitation will be employed;

(iii) Whether presentations will be made away from the immediate vicinity of the subdivision and/or if prospective purchasers will be furnished transportation from distant cities to the subdivision;

(iv) Whether mass mailing techniques will be used and gifts offered to those who respond.

(4) For any subdivision that meets any of the criteria in paragraphs (b)(4)(i) through (iii) of this

section, submit a copy of any advertising or promotional material that is, or has been, used for the subdivision. Amendments to reflect changes in advertising or promotional material need be filed only when there is a material change related to one of the above factors. Depending upon the content of the material submitted, the Director may require additional warnings in the Property Report portion. This requirement applies to any subdivision that:

- (i) Mentions or refers to recreational facilities which are not disclosed in § 1010.114, or;
 - (ii) Promotes the sale of lots based on the investment potential or expected profits, or;
 - (iii) Contains information which is in conflict with that disclosed in this Statement of Record.
- (c)

Violations and litigation.

(2) If it is indicated in § 1010.116(c) that the developer or any of the parties involved in the subdivision are, or have been, the subject of any bankruptcy proceedings, furnish a copy of the schedules of liabilities and assets (or a recap of those schedules); the petition number; the date of the filing of the petition; names and addresses of the petitioners, trustee and counsel; the name and location of the court where the proceedings took place and the status or disposition of the petition. Explain, briefly, the cause of the action.

- (3) Furnish a copy of any orders issued in connection with any violations listed in § 1010.116(c).
- (d)

Resale or exchange program.

(e)

Unusual situations

Foreign subdivisions.

§ 1010.219

Affirmation.

The affirmation set forth in section XXVIII of the appendix to this part: Affirmation of Senior Executive Officer shall be executed by the senior executive officer or a duly authorized agent:

§ 1010.310

Annual report of activity.

(a) As an integral part of the Statement of Record, the developer shall file with the Director an Annual Report of Activity on any initial or consolidated registration not under suspension. For this purpose, only one Annual Report of Activity will be expected for subdivisions on which developers have filed consolidations. For registrations certified by a state as provided for in § 1010.500, a developer need file only one Annual Report of Activity for any registration for which the ILSRP number is the same (alphabetic designators indicate that the registration has been treated as a consolidation).

(b) The report shall be submitted within 30 days of the annual anniversary of the effective date of the initial Statement of Record. The report may be submitted via the electronic means described in § 1010.20(a).

(c) The report shall contain the following information:

(1) Subdivision name and address.

(2) Developer's name, address and telephone number.

(3) Agent's name, address and telephone number.

(4) Interstate Land Sales Registration number.

(5) The date on which the initial filing first became effective.

(6) The number of registered lots, parcels or units which are unsold as of the date on which the report is due.

(7) One of the following:

(i) A statement that the developer is still engaged in land sales activity at the subject subdivision and that there have been no changes in material fact since the last effective date was issued which would require an amendment to the Statement of Record; or

(ii) A statement that the developer is still engaged in land sales activity at the subject subdivision, that material changes have occurred since the last effective date, and that corrected pages to the

Property Report portion or Additional Information and Documentation portion of the Statement accompany the report; or

(iii) A statement that the developer is no longer engaged in land sales activity at the subject subdivision, together with the reason the developer is no longer selling (

e.g.,

(8) The report shall be dated and shall be signed by the senior executive officer of the developer on a signature line above his typed name and title. The senior executive officer's acknowledgement shall be attested to or certified by a notary public or similar public official authorized to attest or certify acknowledgements in the jurisdiction in which the report is executed.

(d) If the report indicates that there are 101 or more registered lots, parcels or units remaining for sale, the report shall be accompanied by an amendment fee in the amount and form prescribed in § 1010.35.

(e) Failure to submit the report when due shall be grounds for an action to suspend the effective Statement of Record.

[76 FR 79489, Dec. 21, 2011, as amended at 81 FR 29117, May 11, 2016]

Subpart CCertification of Substantially Equivalent State Law

§ 1010.500

General.

(a) This subpart establishes procedures and criteria for certifying state land sale or lease disclosure programs and state land development standards programs. The purpose of State Certification is to lessen the administrative burden on the individual developer, arising where there are duplicative state and Federal registration and disclosure requirements, without affecting the level of protection given to the individual purchaser or lessee. If the Director determines that a state has adopted and is effectively administering a program that gives purchasers and lessees the same level of protection given to them by the Interstate Land Sales Registration Program, then the Director shall certify that state. Developers who accomplish an effective registration with a state in which the land is located

after the Director has certified the state may satisfy the registration requirements of the Director by filing with the Director materials designated by agreement with certified states in lieu of the Federal Statement of Record and Property Report.

(b) A state that is certified by the Director shall be known as the situs certified state for all land located within its borders.

(c) After a developer is effectively registered with the Director through a certified state, the Director has the

(d) The prohibitions against the use of the Property Report contained in § 1010.29 apply to state disclosure materials and substantive development standards. In addition, for purposes of this paragraph, references made to the Director, ILSRP and the Bureau in § 1010.29 will include a reference to the equivalent state officer or agency.

(e) The Purchaser's Revocation Rights, Sales Practices and Standards rules contained in part 1011 of these regulations apply to developers who register with the Director through certified States. All of the rules in part 1011 apply, excepting the disclaimer statement in § 1011.50(a) which is modified to read as follows: Obtain the Property Report or its equivalent, required by Federal and State law and read it before signing anything. No Federal or State agency has judged the merits or value, if any, of this property.

(f) Developers are obliged to pay filing fees as set forth in § 1010.35 of this part.

[76 FR 79489, Dec. 21, 2011, as amended at 81 FR 29117, May 11, 2016]

§ 1010.503

Notice of certification.

(a) If the Director determines that a state qualifies for certification under this subpart, the Director shall so notify the state in writing. The state will be effectively certified under the section and as of the date specified in the notice.

(b) If the Director determines that a state does not meet the standards for certification, the Director shall so notify the state in writing. The notice will specify particular changes in state law, regulations

or administration that are needed to obtain certification. The Director shall not be bound in advance to certify a state that makes the suggested changes if other deficiencies become apparent at a later time.

(c) The Director's final determination to accept or reject a State's Application for Certification of Land Sales Program shall be published in the Federal Register.

(d) A state's certification will remain in effect until it is voluntarily suspended by the state or withdrawn by the Director. A state can voluntarily suspend its certification by notifying the Director in writing. The suspension will take effect as of the date and time specified in the notice to the Director, or upon receipt by the Director if no date is specified. The Director may withdraw certification as provided in § 1010.505.

[76 FR 79489, Dec. 21, 2011, as amended at 81 FR 29118, May 11, 2016]

§ 1010.504

Cooperation among certified states and between certified states and the Director.

(a) By filing an Application for Certification of State Land Sales Program pursuant to this subpart, a state agrees that, if it is certified by the Director, it will:

(1) Accept for filing and allow to be distributed as the sole disclosure document, a disclosure document currently in effect in the situs certified state. Only those documents filed with the situs state after certification by the Director must automatically be accepted by other certified states;

(2) Certify copies of all disclosure documents, amendments and consolidations filed with it by developers of land located within its borders for and as needed by developers required to submit certified copies to the Director and all other certified states. The certification shall indicate whether the documents are currently in effect. The certification should be in the format set forth in section XXIX of the appendix to this part: Form for Certification for Disclosure Documents.

(3) Assist and cooperate with the Director and other certified states by requiring that developers of land within its borders amend disclosure documents if any change occurs in any representation of

material fact required to be stated in the disclosure documents, including a change resulting from the

(4) Continue to effectively operate its Land Sales Program as that Program is described in the Application for Certification and as it was certified by the Director.

(5) Assist and cooperate with the Director by monitoring the sales practices of developers registered with it directly or through another certified state, and by reporting to the Director any violations of the Act, including but not limited to the required contract provisions, revocation rights and anti-fraud provisions of 15 U.S.C. 1703, or the regulations.

(b) A state required to accept the disclosure documents of another situs certified state pursuant to paragraph (a)(1) of this section, may, in its discretion, require the developer to furnish it with copies certified pursuant to paragraph (a)(2) of this section.

(c) No state shall be prevented from establishing substantive or disclosure requirements which exceed the Federal standard provided that such requirements are not in conflict with the Act or these regulations. For example, a certified state may impose additional disclosure requirements on developers of land located within its borders but may not impose additional disclosure requirements on developers whose disclosure documents it is required to accept pursuant to paragraph (a)(1) of this section. However, a certified state may impose additional nondisclosure requirements on out of state developers even though the developer is registered in the certified state in which the land is located.

(d) After a developer is effectively registered with a certified state through a situs certified state, either or both certified states may exercise full enforcement authorities and powers over that developer according to applicable law and regulations.

(e) The Director shall cooperate with the certified states by offering a forum for nonbinding arbitration of disputes between two or more certified States arising out of the State Certification Program.

[76 FR 79489, Dec. 21, 2011, as amended at 81 FR 29118, May 11, 2016]

§ 1010.505

Withdrawal of state certification.

(a) The Director shall periodically review the laws, regulations and administration thereof, of a certified state. If the Director finds that, taken as a whole, the laws, regulations or administration thereof, no longer meet the requirements of subpart C, then the Director may issue a notice to withdraw the certification of that state.

(b) The notice of proceedings to withdraw a state's certification will be issued to the state by the Director pursuant to § 1012.236. The Director may, after notice and after an opportunity for a hearing, pursuant to § 1012.237, issue an order withdrawing certification. In the event that a withdrawal order is issued, the order shall remain in effect until the state has amended its laws, regulations or the administration thereof or has otherwise complied with the requirements of the order. When the state has complied with the requirements of the order, the Director shall so declare and the withdrawal order shall cease to be effective.

(c) Withdrawal orders issued pursuant to this subsection will be effective as of the date the order is received by the state. The withdrawal order shall be published in the Federal Register.

(d) The rules of 12 CFR part 1080, unless otherwise specified in 12 CFR part 1012, subpart D, will generally apply to hearings on withdrawal of a state's certification.

§ 1010.506

State/Federal filing requirements.

(a)(1) If the Director has certified a state under this subpart, the Director shall accept for filing disclosure materials or other acceptable documents which have been approved by the certified state within which the subdivision is located. Only those filings made by the developer with the state after the state was certified by the Director shall be automatically accepted by the Director.

(2) Retroactive application of the effectiveness of state's certification to a specified date may be granted on a state-by-state basis, where the Director determines that retroactive application will not

result in automatic Federal registration of any state filing that has not met the requirements of the certified state laws.

(b) For a developer to be registered with the Director, the developer shall file with the Director a state certified copy of the Property Report or its equivalent, and any other documentation as stipulated in the Director's Notice of Certification to the state.

(c) The documents and materials filed under paragraph (b) of this section will be automatically effective as the Federal Statement of Record and Property Report after these materials and the proper filing fee have been received by the Director.

(d) The Director has authority pursuant to § 1010.45(b)(1) and (b)(2) to suspend individual filings which fail to meet the requirements of the certified state's law or regulations or the standards in the certification agreement whether or not the state agency has initiated a similar action.

(e)(1) State accepted materials filed with the Director pursuant to this section must be amended to reflect any amendment to such materials made effective by the state. All amendments to such materials must be submitted to the Director within 15 days after becoming effective under the applicable state laws. Amendments are automatically effective upon their receipt by the Director and the provisions of § 1010.45(b)(1) and (2) apply to amendments filed under this section.

(2) Amendments shall include or be accompanied by:

(i) A letter from the developer giving a narrative statement fully explaining the purpose and significance of the amendment and referring to that section and page of the material which is being amended, and;

(ii) A signed state acceptance certification substantially the same as that required by § 1010.504(a)(2).

(f) If a certified state suspends the registration of a particular subdivision for any reason, the subdivision's Federal registration with the Director shall be automatically suspended as a result of the state action. No action need be taken by the Director to effect the suspension.

(g) A state is certified only with regard to land located within the state borders. The Director is not

required to accept filings which have been accepted by a certified state if the land which is the subject of the filing is not located within that certified state. For example, if State A is certified by the Director and State B is not, the Director is not required to accept filings from State B simply because State A accepts filings from State B.

[76 FR 79489, Dec. 21, 2011, as amended at 81 FR 29118, May 11, 2016]

§ 1010.507

Effect of suspension or withdrawal of certification granted under 15 U.S.C. 1708(a)(1): Full disclosure requirement.

(a) If a state certified under 15 U.S.C. 1708(a)(1) suspends its own certification or has its certification withdrawn under § 1010.505, the Federal disclosure materials accepted and made effective by the Director, pursuant to § 1010.506, prior to the suspension or withdrawal shall remain in effect unless otherwise suspended by the Director.

(b) In the event that there is a change in a material fact with regard to a subdivision that remains registered under the provisions of paragraph (a) of this section, the developer shall file a new registration with the Director meeting the requirements of the then applicable Federal registration regulations. Modifications of the Federal format may be used as specified by the Director.

[76 FR 79489, Dec. 21, 2011, as amended at 81 FR 29118, May 11, 2016]

§ 1010.508

Effect of suspension of certification granted under 15 U.S.C. 1708(a)(2): Sufficient protection requirement.

(a) If a state certified under 15 U.S.C 1708(a)(2) suspends its own certification or has its certification withdrawn under § 1010.505, the effectiveness of the Federal disclosure materials accepted and made effective by the Director, pursuant to § 1010.506, prior to the suspension or withdrawal shall terminate ninety (90) days after the notice of withdrawal order is published in the Federal Register

(b) At the end of the ninety day period, or during the ninety day period in the event that there is a

change in material fact with regard to a subdivision that remains registered under the provisions of paragraph (a) of this section, the developer shall file a new registration with the Director meeting the requirements of the then applicable Federal registration regulations. Modifications of the Federal format may be used as specified by the Director.

[76 FR 79489, Dec. 21, 2011, as amended at 81 FR 29118, May 11, 2016]

§ 1010.552

Previously accepted state filings.

(a) Materials filed with a state and accepted by the HUD Secretary as a Statement of Record prior to January 1, 1981, pursuant to 24 CFR 1010.52 through 1010.59 (as published in the Federal Register

(b) If any such filing becomes inactive or suspended under the laws of the state, the registration with the Director shall be ineffective from that time.

(c) Such Statement of Record may be suspended pursuant to § 1010.45.

(d) The Director may refuse to accept any particular filing under this section when it is determined that acceptance is not in the public interest.

(e) The Director may require such changes, additional information, documents or certification as the Director determines to be reasonably necessary or appropriate in the public interest.

[76 FR 79489, Dec. 21, 2011, as amended at 81 FR 29118, May 11, 2016]

§ 1010.556

Previously accepted state filingsamendments and consolidations.

(a)

Amendments

General requirements.

(2) Amendments shall include or be accompanied by:

(i) A letter from the developer giving a narrative statement fully explaining the purpose and significance of the amendment and referring to that section and page of the Statement of Record

which is being amended, and;

(ii) All amended pages of the state accepted materials filed with the Director. These pages shall be copied together with their amendments. Each such page shall have its date of preparation in the lower right hand corner, and;

(iii) A signed state acceptance certification, and;

(iv) The appropriate fees as indicated in § 1010.35.

(b)

Consolidations

When consolidations allowed.

(2) Consolidated Statements of Record shall include or be accompanied by:

(i) State accepted consolidation materials which are also acceptable to the Director as a Statement of Record (state property report inclusive). These state accepted consolidation materials shall cover all lots previously registered in the common promotional plan except those deleted pursuant to other provisions in these regulations. These materials shall also include information and items required for state accepted materials filed as an initial registration Statement of Record, except that, supporting documentation in materials previously made effective by the Director for other lots in the subject common promotional plan may be included incorporated by reference into the new consolidation materials submitted as a Statement of Record. However, such documentation may be incorporated by reference included only if it is applicable to the new consolidated lots as well as to the previously registered lots.

(ii) A signed state acceptance certification.

(iii) The appropriate fees as indicated in § 1010.35.

(c)

Effective date; state filing.

§ 1010.558

Previously accepted state filingsnotice of revocation rights on property report cover page.

(a)(1) The cover page on Property Reports for filings made with the Director pursuant to § 1010.552 shall be prepared in accordance with § 1010.105 and shall include the paragraphs set forth in section XXX of the appendix to this part: Language to be Included on Property Report Cover Page.

(2) If the purchaser is entitled to a longer revocation period by operation of State law, that period becomes the Federal revocation period and the cover page must reflect the longer period, rather than the seven days.

(b)(1) If a deed is not delivered within 180 days of the signing of the contract or agreement of sale or unless certain provisions are included in the contract or agreement, the purchaser is entitled to cancel the contract within two years from the date of signing the contract or agreement.

(2) The deed must be a warranty deed, or where such a deed is not commonly used, a similar deed legally acceptable in the jurisdiction where the lot is located. The deed must be free and clear of liens and encumbrances.

(3) The contract provisions are:

(i) A legally sufficient and recordable lot description, and;

(ii) A provision that the seller will give the purchaser written notification of purchaser's default or breach of contract and the opportunity to remedy the default or breach within 20 days of the notice; and

(iii) A provision that, if the purchaser loses rights and interest in the lot because of the purchaser's default or breach of contract after 15 percent of the purchase price, exclusive of interest, has been paid, the seller shall refund to the purchaser any amount which remains from the payments made after subtracting 15 percent of the purchase price, exclusive of interest, or the amount of the seller's actual damages, whichever is the greater.

(4) If a deed is not delivered within 180 days of the signing of the contract or if the necessary provisions are not included in the contract, the following statement shall be used in place of any other rescission language: Under Federal law you may cancel your contract or agreement of sale any time within two years from the date of signing.

§ 1010.559

Previously accepted state filings notice of revocation rights in contracts and agreements.

(a)(1) All contracts or agreements, including promissory notes used in sale of lots for filings made with the Director pursuant to § 1010.552, must contain the language set forth in section XXXI

(2) If the purchaser is entitled to a longer revocation period by operation of State law or the Act, that period becomes the Federal revocation period and the contract or agreement must reflect the longer period, rather than the seven days. The language shall be consistent with that shown on the Cover Page (see § 1010.558).

(b) The above revocation provisions may not be limited or qualified in the contract or other document by requiring a specific type of notice or by requiring that notice be given at a specified place.

Pt. 1010, App. A

Appendix A to Part 1010 Standard and Model Forms and Clauses

I.

Forms for Developer's Affirmation for Land Sale

Developer's Name

Developer's Address

Purchaser's Name(s)

Purchaser's Address(es) (including county)

Name of Subdivision

Legal Description of Lot(s) Purchased

I hereby affirm that all of the requirements of the MSA exemption as set forth in 15 U.S.C. 1702(b)(8) and 12 CFR 1010.13 have been met in the sale or lease of the lot(s) described above.

I also affirm that I submit to the jurisdiction of the Interstate Land Sales Full Disclosure Act with regard to the sale or lease cited above.

(Date)

(Signature of Developer or Authorized Agent)

(Title)

II.

Language Notifying Buyer of Option to Cancel Contract

You have the option to cancel your contract or agreement of sale by notice to the seller until midnight of the seventh day following the date of signing of the contract or agreement.

If you did not receive a Lot Information Statement prepared pursuant to the rules and regulations of the Bureau of Consumer Financial Protection in advance of your signing the contract or agreement, the contract or agreement of sale may be cancelled at your option for two years from the date of signing.

III.

Sample Lot Information Statement and Sample Receipt

Sample Format

(Use of the following headings and first paragraph are mandatory.)

Lot Information Statement

Important: Read Carefully Before Signing Anything

The developer has obtained a regulatory exemption from registration under the Interstate Land Sales Full Disclosure Act. One requirement of that exemption is that you must receive this Statement prior to the time you sign an agreement (contract) to purchase a lot.

Right To Cancel

(Under this heading the developer is to state the specific rescission rights provided for in the contract pursuant to 1010.15(b)(5)(i)).

Risk of Buying Land

(Under this heading the developer is to list the following information:)

There are certain risks in purchasing real estate that you should be aware of. The following are some of those risks:

The future value of land is uncertain and dependent upon many factors. Do not expect all land to

automatically increase in value.

Any value which your lot may have will be affected if roads, utilities and/or amenities cannot be completed or maintained.

Any development will likely have some impact on the surrounding environment. Development which adversely affects the environment may cause governmental agencies to impose restriction on the use of the land.

In the purchase of real estate, many technical requirements must be met to assure that you receive proper title and that you will be able to use the land for its intended purpose. Since this purchase involves a major expenditure of money, it is recommended that you seek professional advice before you obligate yourself.

If adequate provisions have not been made for maintenance of the roads or if the land is not served by publicly maintained roads, you may have to maintain the roads at your expense.

If the land is not served by a central sewage system and/or water system, you should contact the local authorities to determine whether a permit will be given for an on-site sewage disposal system and/or well and whether there is an adequate supply of water. You should also become familiar with

Developer Information

(Under this heading the developer is to list the following information:)

Developer's Name:

Address:

Telephone Number:

Lot Information

(Under this heading the developer is to list the following information:)

Lot Location:

(Enter a statement disclosing all liens, reservations, taxes, assessments, easements and restrictions applicable to the lot. A copy of the restrictions may be attached in lieu of recitation.)

Suppliers of Utilities and Issuers of Permits

(Under this heading the developer is to list the name, address and phone number of the appropriate governmental agency or agencies, if any, that will provide information on permits or other requirements for water, sewer and electrical installations. The information will also contain the name, address and telephone number of the suppliers of such utilities which can provide information to the purchaser on costs and availability of such services. A chart similar to the one below may be used to supply this information).

Listed below are contact points for determining permit requirements, if any, and to obtain information on approximate costs and availability for the listed services:

Name, address and telephone number of

Governmental agency

Supplier

Water

Sewer

Electricity

If misrepresentations are made in the sale of this lot to you, you may have rights under the Interstate Land Sales Full Disclosure Act. If you have evidence of any scheme, artifice or device used to defraud you, you may wish to contact: Consumer Financial Protection Bureau, Interstate Land Sales Registration Program, 1700 G Street NW., Washington DC 20552.

(The Receipt is to be in the following form:)

Sample Receipt for Lot Information Statement

Purchaser (print or type):

Date:

Signature of purchaser:

Street Address:

City:

State:

Zip:

Name of salesperson (print or type):

Signature of salesperson:

IV.

Request for Multiple Site Subdivision Exemption

Request for Multiple Site Subdivision Exemption

Developer:

Name:

Address:

Telephone No.:

Agent:

Name:

Address:

Telephone No.:

(Insert a general description of the developer's method of operation.)

I affirm that I am, or will be, the developer of the property and/or method of operation described above.

I affirm that the lots in said property will be sold in compliance with all of the requirements of 12 CFR 1010.15.

I further affirm that the statements contained in all documents submitted with this request for an Exemption Order are true and complete.

Date:

Signature:

Title:

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry,

in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than 5 years or both.

V.

Request for Regulatory Exemption Order

REQUEST FOR EXEMPTION ORDER

Subdivision

Location (including county)

Developer

Address

Authorized Agent or President of Developer

Address

Number of Lots Subject to Exemption Request

Description of Lots (list lot and block number or other identifying designation)

I affirm that I am the developer or owner of the property described above or will be the developer or owner at the time the lots are

(Date)

(Signature of Developer, Owner or Authorized Agent)

(Title)

WARNING: Section 15 U.S.C. 1717 provides: Any person who willfully violates any of the provisions of this title or of the rules and regulations or any person who willfully, in a Statement of Record filed under, or in a Property Report issued pursuant to this title, makes any untrue statement of a material fact shall upon conviction be fined not more than \$10,000.00 or imprisoned not more than 5 years, or both.

VI.

Developer's Affirmation for Advisory Opinion

Developer's Affirmation

Name of Subdivision

Location (Including County and State)

Name of Developer

Address of Developer

Name of Agent

Address of Agent

Number of Lots in Subdivision

Number of Acres in Subdivision

I affirm that I am the developer or owner of the property described above or will be the developer or owner at the time the lots are offered for sale to the public, or that I am the agent authorized by the developer or owner to complete this statement. I further affirm that the statements contained in all documents submitted with the request for an Advisory Opinion are true and complete.

(Date)

(Signature)

(Title);

WARNING: 15 U.S.C. 1717 provides: Any person who willfully violates any of the provisions of this title or of the rules and regulations or any person who willfully, in a Statement of Record filed under, or in a Property Report issued pursuant to this title, makes any untrue statement of a material fact shall upon conviction be fined not more than \$10,000.00 or imprisoned not more than 5 years, or both.

VII.

Initial and Consolidated Registration Fee Schedule

Number of lots

Fees

200 or fewer lots

\$800

201 or more lots

1,000

VIII. Property Report for Statement of Record§ 1010.100(b)

Property Report

Heading and Section Number

Cover Sheet

1010.105

Table of Contents

1010.106

Risks of Buying Land

1010.107

General Information

1010.108

Title and Land Use

1010.109

(a) General Instructions

(b) Method of Sale

(c) Encumbrances, Mortgages and Liens

(d) Recording the Contract and Deed

(e) Payments

(f) Restrictions

(g) Plats, Zoning, Surveying, Permits, Environment

Roads

1010.110

Utilities

1010.111

- (a) Water
- (b) Sewer
- (c) Electricity
- (d) Telephone
- (e) Fuel or other Energy Source

Financial Information

1010.112

Local Services

1010.113

Recreational Facilities

1010.114

Subdivision Characteristics and Climate

1010.115

- (a) General Topography
- (b) Water Coverage
- (c) Drainage and Fill
- (d) Flood Plain
- (e) Flooding and Soil Erosion
- (f) Nuisances
- (g) Hazards
- (h) Climate
- (i) Occupancy

Additional Information

1010.116

- (a) Property Owners' Association
- (b) Taxes

(c) Violations and Litigation

(d) Resale or Exchange Program

(e) Unusual Situations

1. Leases

2. Foreign Subdivision

3. Time Sharing

4. Membership

(f) Equal Opportunity in Lot Sales

(g) Listing of lots

Cost Sheet

1010.117

Receipt, Agent Certification and Cancellation Page

1010.118

ADDITIONAL INFORMATION AND DOCUMENTATION

General Information

1010.208

Title and Land Use

1010.209

Roads

1010.210

Utilities

1010.211

Financial Information

1010.212

Recreational Facilities

1010.214

Subdivision Characteristics

1010.215

Additional Information

1010.216

Affirmation

1010.219

The Bureau's OMB control number for this information collection is: 3170-0012.

IX.

Sample Page for Statement of Record

SAMPLE PAGE

ROADS

Here we discuss the roads that lead to the subdivision, those within the subdivision and the location of nearby communities.

ACCESS TO THE SUBDIVISION.

County road #43 leads to the subdivision. It has two lanes and the width of the wearing surface is 22 feet. It's paved with a macadam surface.

This road is maintained by Bottineau County with County funds. No improvements are planned at this time.

ACCESS WITHIN THE SUBDIVISION.

The roads within the subdivision will be located on rights of way dedicated to the public.

We are responsible for constructing the interior roads. There will be no additional cost to you for this construction.

WE HAVE NOT SET ASIDE ANY FUNDS IN AN ESCROW OR TRUST ACCOUNT OR MADE ANY OTHER FINANCIAL ARRANGEMENTS TO ASSURE COMPLETION OF THE ROADS, SO THERE IS NO ASSURANCE WE WILL BE ABLE TO COMPLETE THE ROADS.

At present, the roads are under construction and do not provide access to the lots in Units 2 and 3

during wet weather. The succeeding chart describes their present condition and estimated completion dates.

UUnit

Estimated starting date

(month and year)

Percentage of construction now complete

Estimated completion date

(month and year)

Present

surface

Final surface

1

February 2010

50

December 2010

Gravel

Asphalt.

2

August 2010

0

June 2011

Dirt

Do.

3

April 2011

0

October 2011

None

Do.

X.

Language for Warning on Cover Page of Property Report

This Report is prepared and issued by the developer of this subdivision. It is not

Federal law requires that you receive this Report prior to your signing a contract or agreement to buy or lease a lot in this subdivision. However, NO FEDERAL AGENCY HAS JUDGED THE MERITS OR VALUE, IF ANY, OF THIS PROPERTY.

If you received this Report prior to signing a contract or agreement, you may cancel your contract or agreement by giving notice to the seller any time before midnight of the seventh day following the signing of the contract or agreement.

If you did not receive this Report before you signed a contract or agreement, you may cancel the contract or agreement any time within two years from the date of signing.

Name of Subdivision

Name of Developer

Date of This Report

XI.

Sample Entry in Table of Contents for Statement of Record

Title and Land Use # Page #

Method of Sale

Encumbrances, Mortgages and Liens

Recording the Contract and Deed

Payments

Restrictions on the Use of Your Lot

XII.

Required Language for Risks of Buying Land

- (1) The future value of any land is uncertain and dependent upon many factors. DO NOT expect all land to increase in value.
- (2) Any value which your lot may have will be affected if the roads, utilities and all proposed improvements are not completed. This paragraph may be omitted if all improvements have been completed or if no improvements are proposed.
- (3) Resale of your lot may be difficult or impossible, since you may face the competition of our own sales program and local real estate brokers may not be interested in listing your lot.
- (4) Any subdivision will have an impact on the surrounding environment. Whether or not the impact is adverse and the degree of impact, will depend on the location, size,
- (5) In the purchase of real estate, many technical requirements must be met to assure that you receive proper title. Since this purchase involves a major expenditure of money, it is recommended that you seek professional advice before you obligate yourself.

XIII.

Format for General Information

This Report covers ____ lots located in _____ County, (

State

The developer of this subdivision is:

(Developer's Name)

(Developer's Address)

(Developer's telephone number)

Answers to questions and information about this subdivision may be obtained by telephoning the developer at the number listed above.

XIV.

Paragraphs to be included in the General Report Title to the Property and Land Use

A person with legal title to property generally has the right to own, use and enjoy the property. A contract to buy a lot may give you possession but doesn't give you legal title. You won't have legal title until you receive a valid deed. A restriction or an encumbrance on your lot, or on the subdivision, could adversely affect your title.

Here we will discuss the sales contract you will sign and the deed you will receive. We will also provide you with information about any land use restrictions and encumbrances, mortgages, or liens affecting your lot and some important facts about payments, recording, and title insurance.

XV.

Statement on Release Provisions

The release provisions for the (indicate all or particular lots) have not been recorded. Therefore, they may not be honored by subsequent holders of the mortgage. If they are not honored, you may not be able to obtain clear title to a lot covered by this mortgage until we have paid the mortgage in full, even if you have paid the full purchase price of the lot. If we should default on the mortgage prior to obtaining a release of your lot, you may lose your lot and all monies paid.

XVI.

Warning for Release Provisions

1

The (state type of encumbrance) on (indicate all or particular lots) in this subdivision does not contain any provisions for the release of an individual lot when the full purchase price of the lot has been paid. Therefore, if your lot is subject to this (state type of encumbrance), you may not be able to obtain clear title to your lot until we have paid the (state type of encumbrance) in full, even though you may have received a deed and paid the full purchase price of the lot. If we should default on the (state type of encumbrance) prior to obtaining a release, you may lose your lot and all monies paid.

XVII.

Method and Purpose of Recording Warning

Unless your contract or deed is recorded you may lose your lot through the claims of subsequent purchasers or subsequent creditors of anyone having an interest in the land.

XVIII.

Escrow StatementDisclosure

You may lose your (indicate deposit, down payment and/or installment payments) on your lot if we fail to deliver legal title to you as called for in the contract, because (they are/it is) not held in an escrow account which fully protects you.

XIX.

Road Chart

UUnit

Estimated starting date

(month/year)

Percentage of construction now complete

Estimated completion date

(month/year)

Present

surface

Final surface

XX.

Nearby Communities Chart

Nearby Communities

Population

Distance Over Paved Roads

Distance Over Unpaved Roads

Total

XXI.

Water Chart Form

Water

UUnit

Estimated starting date

(month and year)

Percentage of

construction now

complete

Estimated service availability date

(month and year)

XXII.

Comfort Station Chart

Comfort Stations

Unit

Estimated Starting Date (month-year)

Percentage of Construction now complete

Estimated Service Availability Date (month and year)

XXIII.

Sewer Chart

Sewer

Unit Estimated Starting Date (month/year)

Percentage of Construction now complete

Estimated Service Availability Date (month/year)

XXIV. Electric Service Chart§ 1010.111(c)(2)

Electric Service

UUnit

Estimated starting date

(month and year)

Percentage of

construction complete

Estimated service availability date

(month and year)

XXV.

Recreational Facility Chart

Facility

Percentage of

construction now

complete

Estimated date of start of construction

(month/year)

Estimated date

available for use

(month/year)

Financial assurance of completion

Buyer's annual cost or assessments

XXVI.

Cost Sheet Format

Cost Sheet

In addition to the purchase price of your lot, there are other expenditures which must be made.

Listed below are the major costs. There may be other fees for use of the recreational facilities.

All costs are subject to change.

Sales Price

Cash Price of lot

\$

Finance Charge

\$

Total

\$

Estimated one-time charges

1. Water connection fee/installation or private well

\$

2. Sewer connection fee/installation of private on-site sewer system

\$

3. Construction costs to extend electric and/or telephone services

\$

4. Other (Identify)

\$

\$

Total of estimated sales price and one-time charges

\$

Estimated monthly/annual charges, exclusive of utility use fees

1. TaxesAverage unimproved lot after sale to purchaser

\$

2. Dues and assessments

\$

The information contained in this Property Report is an accurate description of our subdivision and development plans.

Signature of Senior Executive Officer

XXVII.

Sample Receipt, Agent Certification and Cancellation Page

Receipt, Agent Certification and Cancellation Page purchaser receipt Important: Read Carefully

Name of subdivision

ILSRP number

Date of report

We must give you a copy of this Property Report and give you an opportunity to read

Received by

Date

Street address

City

State

Zip

If any representations are made to you which are contrary to those in this Report, please notify the:

Bureau of Consumer Financial Protection

1700 G Street NW

Washington, DC 20552

Agent Certification

I certify that I have made no representations to the person(s) receiving this Property Report which are contrary to the information contained in this Property Report.

Lot

Block

Section

Name of salesperson

Signature

Date

Purchase Cancellation

If you are entitled to cancel your purchase contract, and wish to do so, you may cancel by personal notice, or in writing. If you cancel in person or by telephone, it is recommended that you immediately confirm the cancellation by certified mail. You may use the form below.

Name of subdivision

Date of contract

This will confirm that I/we wish to cancel our purchase contract.

Purchaser(s) signature

Date

XXVIII.

Affirmation of Senior Executive Officer

I hereby affirm that I am the Senior Executive Officer of the developer of the lots herein described or will be the Senior Executive Officer of the developer at the time lots are offered for sale or lease to the public, or that I am the agent authorized by the Senior Executive Officer of such developer to complete this statement (if agent, submit written authorization to act as agent); and,

That the statements contained in this Statement of Record and any supplement hereto, together with any documents submitted herein, are full, true, complete, and correct; and,

That the developer is bound to carry out the promises and obligations set forth in this Statement of Record and Property Report or I have clearly stated who is or will be responsible; and

That the fees accompanying this submission are in the amount required by the rules and regulations of the Bureau of Consumer Financial Protection.

(Date)

(Signature)

(Corporate seal if applicable)

(Title)

WARNING: 15 U.S.C. 1717 provides: Any person who willfully violates any of the provisions of this

title or of the rules and regulations or any person who willfully, in a Statement of Record filed under, or in a Property Report issued pursuant to this title, makes any untrue statement of a material fact shall upon conviction be fined not more than \$10,000.00 or imprisoned not more than 5 years, or both.

XXIX.

Form for Certification for Disclosure Documents

The (indicate the State Department of Real Estate or other appropriate entity) has reviewed the attached materials and finds they are true copies of (1) the (indicate Property Report or other similar state accepted document or amendment to such document) for (indicate the name of the subdivision), made effective by the state of _____ on _____ (give date) and still in effect; and (2) the supporting documentation upon which such (indicate the document or amendment) is based.

Signature

XXX.

Language to be Included on Property Report Cover Page

If you received this Report prior to signing a contract or agreement, you may cancel your contract or agreement by giving notice to the seller anytime before midnight of the seventh day following the signing of the contract or agreement.

If you did not receive this Report before you signed a contract or agreement, you may cancel the contract or agreement anytime within two years from the date of signing.

XXXI.

Notice of Revocation Rights

You have the option to cancel your contract or agreement of sale by notice to the seller until midnight of the seventh day following the signing of the contract or agreement. If you did not receive a Property Report prepared pursuant to the rules and regulations of the Bureau of Consumer Financial Protection, in advance of your signing the

[76 FR 79489, Dec. 21, 2011, as amended at 81 FR 29118, May 11, 2016; 88 FR 16538, Mar. 20, 2023]

Pt. 1011

PART 1011PURCHASERS' REVOCATION RIGHTS, SALES PRACTICES AND STANDARDS
(REGULATION K)

Subpart APurchasers' Revocation Rights

Sec.

1011.1

General.

1011.2

Revocation regardless of registration.

1011.4

Contract requirements and revocation.

1011.5

Reimbursement.

Subpart BSales Practices and Standards

1011.10

General.

1011.15

Unlawful sales practicesstatutory provisions.

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Unlawful sales practicesregulatory provisions.

1011.25

Misleading sales practices.

1011.27

Fair housing.

1011.30

Persons to whom subpart B is inapplicable.

Subpart C Advertising Disclaimers

1011.50

Advertising disclaimers; subdivisions registered and effective with the Bureau.

Authority:

12 U.S.C. 5512, 5581; 15 U.S.C. 1718.

Source:

76 FR 79522, Dec. 21, 2011, unless otherwise noted.

Subpart A Purchasers' Revocation Rights

§ 1011.1

General.

The purpose of this subpart A is to elaborate on the revocation rights in 15 U.S.C. 1703, by enumerating certain conditions under which purchasers may exercise revocation rights. Generally, whenever revocation rights are available, they apply to promissory notes, as well as traditional agreements.

§ 1011.2

Revocation regardless of registration.

All purchasers have the option to revoke a contract or lease with regard to a lot not exempt under §§ 1010.5 through 1010.11 and 1010.14 until midnight of the seventh day after the day that the purchaser signs a contract or lease. If a purchaser is entitled to a longer revocation period under state law, that period is deemed the Federal revocation period rather than the 7 days, and all contracts and agreements (including promissory notes) shall so state.

§ 1011.4

Contract requirements and revocation.

(a) In accordance with 15 U.S.C. 1703(d)(3), the refund to the purchaser is calculated by subtracting

from the amount described in 15 U.S.C. 1703(d)(3)(B), the greater of:

(1) Fifteen percent of the purchase or lease price of the lot (excluding interest owed) at the time of the default or breach of contract or agreement; or

(2) The amount of damages incurred by the seller or lessor due to the default or breach of contract.

(b) For the purposes of this section:

Damages incurred by the seller or lessor

Purchase price

(c) The contractual requirements of 15 U.S.C. 1703(d) do not apply to the sale of a lot for which, within 180 days after the signing of the sales contract, the purchaser receives a warranty deed or, where warranty deeds are not commonly used, its equivalent under state law.

§ 1011.5

Reimbursement.

If a purchaser exercises rights under 15 U.S.C. 1703(b), (c), or (d), but cannot reconvey the lot in substantially similar condition, the developer may subtract from the amount paid by the purchaser, and otherwise due to the purchaser under 15 U.S.C. 1703, any diminished value in the lot caused by the acts of the purchaser.

Subpart B Sales Practices and Standards

§ 1011.10

General.

Sales practices

§ 1011.15

Unlawful sales practices statutory provisions.

The statutory prohibitions against fraudulent or misleading sales practices are set forth at 15 U.S.C. 1703(a). With respect to the prohibitions against representing that certain facilities will be provided or completed unless there is a contractual obligation to do so by the developer:

(a) The contractual covenant to provide or complete the services or amenities may be conditioned

only upon grounds that are legally sufficient to establish impossibility of performance in the jurisdiction where the services or amenities are being provided or completed;

(b) Contingencies such as acts of God, strikes, or material shortages are recognized as permissible to defer completion of services or amenities; and

(c) In creating these contractual obligations developers have the option of incorporating by reference the Property Report in effect at the time of the sale or lease. If a developer chooses to incorporate the Property Report by reference, the effective date of the Property Report being included by reference must be specified in the contract of sale or lease.

§ 1011.20

Unlawful sales practicesregulatory provisions.

In selling, leasing or offering to sell or lease any lot in a subdivision it is an unlawful sales practice for any developer or agent, directly or indirectly, to:

(a) Give the Property Report to a purchaser along with other materials when done in such a manner so as to conceal the Property Report from the purchaser.

(b) Give a contract to a purchaser or encourage him to sign anything before delivery of the Property Report.

(c) Refer to the Property Report or Offering Statement as anything other than a Property Report or Offering Statement.

(d) Use any misleading practice, device or representation which would deny a purchaser any cancellation or refund rights or privileges granted the purchaser by the terms of a contract or any other document used by the developer as a sales inducement.

(e) Refuse to deliver a Property Report to any person who exhibits an interest in buying or leasing a lot in the subdivision and requests a copy of the Property Report.

(f) Use a Property Report, note, contract, deed or other document prepared in a language other than that in which the sales campaign is conducted, unless an accurate translation is attached to the document.

(g) Deliberately fail to maintain a sufficient supply of restrictive covenants and financial statements or to deliver a copy to a purchaser upon request as required by §§ 1010.109(f), 1010.112(d), 1010.209(g), and 1010.212(i).

(h) Use, as a sales inducement, any representation that any lot has good investment potential or will increase in value unless it can be established, in writing, that:

(1) Comparable lots or parcels in the subdivision have, in fact, been resold by their owners on the open market at a profit, or;

(2) There is a factual basis for the represented future increase in value and the factual basis is certain, and;

(3) The sales price of the offered lot does not already reflect the anticipated increase in value due to any promised facilities or amenities. The burden of establishing the relevancy of any comparable sales and the certainty of the factual basis of the increase in value shall rest upon the developer.

(i) Represent a lot as a homesite or building lot unless:

(1) Potable water is available at a reasonable cost;

(2) The lot is suitable for a septic tank operation or there is reasonable

(3) The lot is legally accessible; and

(4) The lot is free from periodic flooding.

§ 1011.25

Misleading sales practices.

Generally, promotional statements or material will be judged on the basis of the affirmative representations contained therein and the reasonable inferences to be drawn therefrom, unless the contrary is affirmatively stated or appears in promotional material, or unless adequate safeguards have been provided by the seller to reasonably guarantee the occurrence of the thing inferred. For example, when a lot is represented as being sold by a warranty deed, the inference is that the seller can and will convey fee simple title free and clear of all liens, encumbrances, and defects except those which are disclosed in writing to the prospective purchaser prior to conveyance. The following

advertising and promotional practices, while not all inclusive, are considered misleading, and are used to evaluate a developer's or agent's representations in determining possible violations of the Act or regulations. In this section represent carries its common meaning.

(a)

Proposed improvements.

(b)

Off-premises representations.

(1) It is clearly stated that the scenes or improvements are not related to the subdivision offered; or

(2) In the case of drawings that the scenes or improvements are artists' renderings;

(3) If the areas or improvements shown are available to purchasers, what the distance in road miles is to the scenes or improvements represented.

(c)

Land use representations.

(d)

Use of road and street.

(e)

Road access and use.

(f)

Waterfront property.

(g)

Maps and distances.

(2) The use of the terms such as minutes away, short distance, only miles, or near or similar terms to indicate distance unless the actual distance in road miles is used in conjunction with such terms. Road miles will be measured from the approximate geographical center of the subdivided lands to the approximate downtown or geographical center of the community.

(h)

Lot size.

(i)

Free lots.

(j)

Pre-development prices.

(k)

False reports of lot sales.

(l)

Guaranteed refund.

(m)

Discount certificates.

(n)

Lot exchanges.

(o)

Resale program.

(p)

Symbols for conditions.

(q)

Proposed public facilities.

(r)

Non-profit or institutional name use.

§ 1011.27

Fair housing.

Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601,

et seq.,

§ 1011.30

Persons to whom subpart B is inapplicable.

Newspaper or periodical publishers, job printers, broadcasters, or telecasters, or any of the employees thereof, are not subject to this subpart unless the publishers, printers, broadcasters, or telecasters:

- (a) Have actual knowledge of the falsity of the advertisement or
- (b) Have any interest in the subdivision advertised or
- (c) Also serve directly or indirectly as the advertising agent or agency for the developer.

Subpart C Advertising Disclaimers

§ 1011.50

Advertising disclaimers; subdivisions registered and effective with the Bureau.

(a) The following disclaimer statement shall be displayed below the text of all printed material and literature used in connection with the sale or lease of lots in a subdivision for which an effective Statement or Record is on file with the Director: Obtain the Property Report required by Federal law and read it before signing anything. No Federal agency has judged the merits or value, if any, of this property. If the material or literature consists of more than one page, it shall appear at the bottom of the front page. The disclaimer statement shall be set in type of at least ten point font.

(b) If the advertising is of a classified type; is not more than five inches long and not more than one column in print wide, the disclaimer statement may be set in type of at least six point font.

(c) This disclaimer statement need not appear on billboards, on normal size matchbook folders or business cards which are used in advertising nor in advertising of a classified type which is less than one column in print wide and is less than five inches long.

(d) A developer who is required by any state, or states, to display an advertising disclaimer in the same location, or one of equal prominence, as that of the Federal disclaimer, may combine the wording of the disclaimers. All of the wording of the Federal disclaimer must be included in the resulting combined disclaimer.

PART 1012SPECIAL RULES OF PRACTICE (REGULATION L)

Subpart A [Reserved]

Subpart B Filing Assistance

Sec.

1012.30

Scope of this subpart.

1012.35

Prefiling assistance.

1012.40

Processing of filings.

Subpart C [Reserved]

Subpart D Adjudicatory Proceedings

1012.105-1012.200

[Reserved]

1012.205

Suspension notice prior to effective date.

1012.210

Hearings suspension notice prior to effective date.

1012.215

Notice of proceedings subsequent to effective date.

1012.220

Hearings notice of proceedings subsequent to effective date.

1012.225

Suspension order for failure to cooperate.

1012.230

Suspension order pending amendments.

1012.235

Hearingsuspension orders for failure to cooperate and pending amendments.

1012.236

Notice of proceedings to withdraw a State's certification.

1012.237

Hearingsnotice of proceedings pursuant to withdrawal of state certification.

1012.238

Notices of proceedings to terminate exemptions.

1012.239

Hearingsnotice of proceedings pursuant to exemptions.

Authority:

12 U.S.C. 5512, 5581; 15 U.S.C. 1718.

Source:

76 FR 79524, Dec. 21, 2011, unless otherwise noted.

Subpart A [Reserved]

Subpart BFiling Assistance

§ 1012.30

Scope of this subpart.

This subpart applies to and governs procedures under which developers may obtain prefiling assistance and be notified of and permitted to correct deficiencies in the Statement of Record.

§ 1012.35

Prefiling assistance.

Persons intending to file with the Bureau of Consumer Financial Protection, Office of Supervision Examinations may receive advice of a general nature as to the preparation of the filing including information as to proper format to be used and the scope of the items to be included in the format. Inquiries and requests for informal discussions with staff members should be directed to the

Consumer Financial Protection Bureau, Interstate Land Sales Registration Program, 1700 G Street NW., Washington, DC 20552.

[81 FR 29119, May 11, 2016]

§ 1012.40

Processing of filings.

(a) Statements of Record and accompanying filing fees will be received on behalf of the Director by the Office of Supervision Examinations, for determination of whether the criteria set forth in paragraphs (a)(1) through (3) of this section have been satisfied. Where it appears that all three criteria are satisfied and it is otherwise practicable, acceleration of the effectiveness of the Statement of Record will normally be granted.

(1) Completeness of the statement

(2) Adequacy of the filing fee, and

(3) Adequacy of disclosure.

(b) Filings intended as Statements of Record but which do not comply in form with §§ 1010.105 and 1010.120 of this chapter, whichever is applicable, and Statements of Record accompanied by inadequate filing fees will not be effective to accomplish any purpose under the Act. At the discretion of the Interstate Land Sales Registration Program, such filings and any moneys accompanying them may be immediately returned to the sender or after notification may be held pending the sender's appropriate response.

(c) Persons filing incomplete or inaccurate Statements of Record will be notified of the deficiencies therein by the Suspension Notice procedure described in § 1010.45(a) of this chapter.

[76 FR 79524, Dec. 21, 2011, as amended at 81 FR 29119, May 11, 2016]

Subpart C [Reserved]

Subpart D Adjudicatory Proceedings

§§ 1012.105-1012.200

[Reserved]

§ 1012.205

Suspension notice prior to effective date.

A suspension pursuant to § 1010.45(a) of this chapter shall be effected by service of a suspension notice which shall contain:

- (a) An identification of the filing to which the notice applies.
- (b) A specification of the deficiencies of form, disclosure, accuracy, documentation or fee tender which constitute the grounds under § 1010.45(a) of this chapter, of the suspension, and of the additional or corrective procedure, information, documentation, or tender which will satisfy the Director's requirements.
- (c) A notice of the hearing rights of the developer under § 1012.210 and of the procedures for invoking those rights.
- (d) A notice that, unless otherwise ordered, the suspension shall remain in effect until 30 days after the developer cures the specified deficiencies as required by the notice.

§ 1012.210

Hearing suspension notice prior to effective date.

- (a) A developer, upon receipt of a suspension notice issued pursuant to § 1010.45(a) of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the suspension notice. Such a request must be filed within 15 days of receipt of the suspension notice and must be accompanied by an answer and 3 copies thereof signed by the respondent or the respondent's attorney conforming to the requirements of 1081.201(b) and (c).
- (b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 20 days of receipt of the request. The time and place for hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.
- (c) A request for hearing filed pursuant to paragraph (a) of this section shall not interrupt or annul the effectiveness of the suspension notice, and suspension of the effective date of the Statement or

amendment shall continue until vacated by order of the Director or administrative law judge. Except in cases in which the developer shall waive or withdraw the request for such hearing, or shall fail to pursue the same by appropriate appearance at a hearing duly scheduled, noticed and convened, the suspended filing shall be reinstated in the event of failure of the Director to schedule, give notice of or hold a duly-requested hearing within the time specified in paragraph (b) of this section, or in the event of a finding that the Director has failed to support at such hearing the propriety of the suspension with respect to the material issues of law and fact raised by the answer. Such reinstatement shall be effective on the date on which the filing would have become effective had no notice of suspension been issued with respect to it.

(d) If there is an outstanding suspension notice under § 1010.45(a) with respect to the same matter for which a suspension order under § 1010.45(b)(3) is issued, the notice and order shall be consolidated for the purposes of hearing. In the event that allegations upon which the suspension notice and suspension order are based are identical, only one answer need be filed.

§ 1012.215

Notice of proceedings subsequent to effective date.

A proceeding pursuant to § 1010.45(b)(1) of this chapter is commenced by issuance and service of a notice which shall contain:

(a) A clear and accurate identification of the filing or filings to which the notice relates.

(b) A clear and concise statement of material facts, sufficient to inform the respondent with reasonable definiteness of the statements, omissions, conduct, circumstances or practices alleged to constitute the grounds for the proposed suspension order under § 1010.45(b)(1) of this chapter.

(c) A notice of hearing rights of the developer under § 1012.220 and of the procedures for invoking those rights.

(d) Designation of the administrative law judge appointed to preside over pre-hearing procedures and over the hearings.

(e) A notice that failure to file an answer conforming to the requirements of § 1081.201(b) and (c) will

result in an order suspending the Statement of Record.

§ 1012.220

Hearings notice of proceedings subsequent to effective date.

(a) A developer, upon receipt of a notice of proceedings issued pursuant to § 1010.45(b)(1) of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the notice of proceedings. Such a request must be filed within 15 days of receipt of the notice of proceedings and must be accompanied by an answer conforming to the requirements of § 1081.201(b) and (c).

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 45 days of receipt of the request by the Director unless it is determined that it is not in the public interest. The time and place for hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) Failure to answer within the time allowed by paragraph (a) of this section or failure of a developer to appear at a hearing duly scheduled shall result in an appropriate order under § 1010.45(b)(1) of this chapter suspending the statement of record. Such order shall be effective as of the date of service or receipt.

§ 1012.225

Suspension order for failure to cooperate.

A suspension pursuant to § 1010.45(b)(2) of this chapter shall be effected by service of a suspension order which shall contain:

(a) An identification of the filing to which the order applies.

(b) Bases for issuance of order.

(c) A notice of the hearing rights of the developer under § 1012.235 the procedures for invoking those rights.

(d) A statement that the order shall remain in effect until the developer has complied with the Director's requirements.

§ 1012.230

Suspension order pending amendments.

A suspension pursuant to paragraph (b)(3) of § 1010.45 of this chapter shall be effected by service of a suspension order which shall contain:

- (a) An identification of the filing to which the order applies.
- (b) An identification of the amendment to the filing which generated the order.
- (c) A statement that the issuance of the order is necessary or appropriate in the public interest or for the protection of purchasers.
- (d) A statement that the order shall remain in effect until the amendment becomes effective.
- (e) A notice of the hearing rights of the developer under § 1012.235 and of the procedure for invoking those rights.

§ 1012.235

Hearing suspension orders for failure to cooperate and pending amendments.

(a) A developer, upon receipt of a suspension order issued pursuant to § 1010.45(b)(2) or § 1010.45(b)(3) of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the suspension order. Such request must be filed within 15 days of receipt of the suspension order and must be accompanied by an answer and 3 copies thereof signed by the respondent or respondent's attorney conforming to the requirements of § 1081.201(b) and (c).

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 20 days of receipt of the request. The time and place for hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) A request for hearing filed pursuant to paragraph (a) of this section shall not interrupt or annul the effectiveness of the suspension order.

§ 1012.236

Notice of proceedings to withdraw a State's certification.

A proceeding pursuant to § 1010.505 of this chapter is commenced by issuance and service of a notice which shall contain:

- (a) An identification of the state certification to which the notice applies.
- (b) A clear and concise statement of material facts, sufficient to inform the respondent with reasonable definiteness of the basis for the Director's determination, pursuant to § 1010.505, that the State's laws, regulations and the administration thereof, taken as a whole, no longer meet the requirements of subpart C of part 1010.
- (c) A notice of hearing rights of the state under § 1012.237 and of the procedures for invoking those rights.
- (d) A notice that failure to file an answer conforming to the requirements of § 1081.201(b) and (c) will result in an order suspending the State's certification.

[76 FR 79524, Dec. 21, 2011, as amended at 81 FR 29119, May 11, 2016]

§ 1012.237

Hearingsnotice of proceedings pursuant to withdrawal of state certification.

- (a) A State, upon receipt of a notice of proceedings issued pursuant to § 1010.505 of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the notice of proceedings. Such request must be filed within 15 days of receipt of the notice of proceedings and must be accompanied by an answer conforming to the requirements of § 1081.201(b) and (c).
- (b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 45 days of receipt of this request. The time and place for the hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.
- (c) Failure to answer within the time allowed by paragraph (a) of this section or failure to appear at a hearing duly scheduled shall result in an appropriate order under § 1010.505 of this chapter

withdrawing the State's certification. Such order shall be effective as of the date of service or receipt.

§ 1012.238

Notices of proceedings to terminate exemptions.

A proceeding to terminate a self-determining exemption under § 1010.14 or an exemption order under § 1010.15 or § 1010.16 is commenced by issuance and service of a notice which shall contain:

(a) In the case of an exemption under § 1010.14, an identification of the developer and subdivision to which this notice applies. In the case of an exemption under either § 1010.15 or § 1010.16, an identification of the exemption order to which the notice applies.

(b) A clear and concise statement of material facts, sufficient to inform the respondent with reasonable definiteness of the basis for the Director's determination that further exemption from the registration and disclosure requirements is not in the public interest or that the sales or leases do not meet the requirements for exemption, or both.

(c) A notice of hearing rights of the respondent under § 1012.239 and of the procedures for invoking those rights.

(d) A notice that failure to file an answer conforming to the requirements of § 1081.201(b) and (c) will result, in the case of a notice issued under § 1010.14, in an order terminating eligibility for the exemption, or, in the case of a notice issued under either § 1010.15 or § 1010.16, in an order terminating the exemption order.

§ 1012.239

Hearingsnotice of proceedings pursuant to exemptions.

(a) A developer, upon receipt of a notice of proceedings issued under §§ 1010.14, 1010.15, and 1010.16 of this chapter, may obtain a hearing by filing a written request contained in the notice of proceedings. The request must be filed within 15 days of receipt of the notice of proceedings and must be accompanied by an answer conforming to the requirements of § 1081.201(b) and (c).

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be

held within 45 days of receipt of this request. The time and place for the hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties of their representatives.

(c) Failure to answer within the time allowed by paragraph (a) of this section, or failure to appear at a duly scheduled hearing shall result in an appropriate order under § 1010.14, § 1010.15,

Pt. 1013

PART 1013 CONSUMER LEASING (REGULATION M)

Sec.

1013.1

Authority, scope, purpose, and enforcement.

1013.2

Definitions.

1013.3

General disclosure requirements.

1013.4

Content of disclosures.

1013.5

Renegotiations, extensions, and assumptions.

1013.6

[Reserved]

1013.7

Advertising.

1013.8

Record retention.

1013.9

Relation to state laws.

Appendix A to Part 1013Model Forms

Appendix B to Part 1013 [Reserved]

Appendix C to Part 1013Issuance of Official Interpretations

Supplement I to Part 1013Official Interpretations

Authority:

15 U.S.C. 1604 and 1667f; Pub. L. 111-203 section 1100E, 124 Stat. 1376.

Source:

76 FR 78502, Dec. 19, 2011, unless otherwise noted.

§ 1013.1

Authority, scope, purpose, and enforcement.

(a)

Authority.

et seq.

et seq.

(b)

Scope and purpose.

(1) To ensure that lessees of personal property receive meaningful disclosures that enable them to compare lease terms with other leases and, where appropriate, with credit transactions;

(2) To limit the amount of balloon payments in consumer lease transactions; and

(3) To provide for the accurate disclosure of lease terms in advertising.

(c)

Enforcement and liability.

§ 1013.2

Definitions.

For the purposes of this part the following definitions apply:

(a)

Act

et seq.

(b)

Advertisement

(c)

Bureau

(d)

Closed-end lease

(e)(1)

Consumer lease

(2) The term does not include a lease that meets the definition of a credit sale in Regulation Z (12 CFR 226.2(a)).

(3) 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:

(i) 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

(ii) The lessee has no option to purchase the leased property.

(f)

Gross capitalized cost

Capitalized cost reduction

adjusted capitalized cost

(g)

Lessee

(h)

Lessor

(i)

Open-end lease

(j)

Organization

(k)

Person

(l)

Personal property

(m)

Realized value

(1) The price received by the lessor for the leased property at disposition;

(2) The highest offer for disposition of the leased property; or

(3) The fair market value of the leased property at the end of the lease term.

(n)

Residual value

(o)

Security interest

security

(p)

State

§ 1013.3

General disclosure requirements.

(a)

General requirements.

et seq.

(1)

Form of disclosures.

(2)

Segregation of certain disclosures.

(3)

Timing of disclosures.

(4)

Language of disclosures.

(b)

Additional information; nonsegregated disclosures.

(c)

Multiple lessors or lessees.

(d)

Use of estimates.

(e)

Effect of subsequent occurrence.

(f)

Minor variations.

(1) That payments must be collected in whole cents;

(2) That dates of scheduled payments may be different because a scheduled date is not a business day;

(3) That months have different numbers of days; and

(4) That February 29 occurs in a leap year.

§ 1013.4

Content of disclosures.

For any consumer lease subject to this part, the lessor shall disclose the following information, as applicable:

(a)

Description of property.

(b)

Amount due at lease signing or delivery.

(c)

Payment schedule and total amount of periodic payments.

(d)

Other charges.

(e)

Total of payments.

(f)

Payment calculation.

(1)

Gross capitalized cost.

(2)

Capitalized cost reduction.

(3)

Adjusted capitalized cost.

(4)

Residual value.

(5)

Depreciation and any amortized amounts.

(6)

Rent charge.

(7)

Total of base periodic payments.

(8)

Lease payments.

(9)

Base periodic payment.

(10)

Itemization of other charges.

(11)

Total periodic payment.

(g)

Early termination

Conditions and disclosure of charges.

(2)

Early termination notice.

(h)

Maintenance responsibilities.

(1)

Statement of responsibilities.

(2)

Wear and use standard.

(3)

Notice of wear and use standard.

(i)

Purchase option.

(1)

End of lease term.

(2)

During lease term.

(j)

Statement referencing nonsegregated disclosures.

(k)

Liability between residual and realized values.

(l)

Right of appraisal.

(m)

Liability at end of lease term based on residual value.

(1)

Rent and other charges.

(2)

Excess liability.

(3)

Mutually agreeable final adjustment.

(n)

Fees and taxes.

(o)

Insurance.

(1)

Through the lessor.

(2)

Through a third party.

(p)

Warranties or guarantees.

(q)

Penalties and other charges for delinquency.

(r)

Security interest.

(s)

Limitations on rate information.

(t)

Non-motor vehicle open-end leases.

§ 1013.5

Renegotiations, extensions, and assumptions.

(a)

Renegotiation.

(b)

Extension.

(c)

Assumption.

(d)

Exceptions.

(1) A reduction in the rent charge;

(2) The deferment of one or more payments, whether or not a fee is charged;

(3) The extension of a lease for not more than six months on a month-to-month basis or otherwise;

(4) A substitution of leased property with property that has a substantially equivalent or greater economic value, provided no other lease terms are changed;

(5) 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

(6) An agreement resulting from a court proceeding.

§ 1013.6

[Reserved]

§ 1013.7

Advertising.

(a)

General rule.

(b)

Clear and conspicuous standard.

(1)

Amount due at lease signing or delivery.

(2)

Advertisement of a lease rate.

(c)

Catalogs or other multipage advertisements; electronic advertisements.

(d)

Advertisement of terms that require additional disclosure

Triggering terms.

(i) The amount of any payment; or

(ii) A statement of any capitalized cost reduction or other payment (or that no payment is required) prior to or at consummation or by delivery, if delivery occurs after consummation.

(2)

Additional terms.

(i) That the transaction advertised is a lease;

(ii) The total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;

(iii) The number, amounts, and due dates or periods of scheduled payments under the lease;

(iv) A statement of whether or not a security deposit is required; and

(v) A statement that an extra charge may be imposed at the end of the lease term where the

lessee's liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

(e)

Alternative disclosuresmerchandise tags.

(f)

Alternative disclosurestelevision or radio advertisements

Toll-free number or print advertisement.

(i) Lists a toll-free telephone number along with a reference that such number may be used by consumers to obtain the information required by paragraph (d)(2) of this section; or

(ii) Directs the consumer to a written advertisement in a publication of general circulation in the community served by the media station, including the name and the date of the publication, with a statement that information required by paragraph (d)(2) of this section is included in the advertisement. The written advertisement shall be published beginning at least three days before and ending at least ten days after the broadcast.

(2)

Establishment of toll-free number.

(ii) The lessor shall provide the information required by paragraph (d)(2) of this section orally, or in writing upon request.

§ 1013.8

Record retention.

A lessor shall retain evidence of compliance with the requirements imposed by this part, other than the advertising requirements under § 1013.7, 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.

§ 1013.9

Relation to state laws.

(a)

Inconsistent state law.

(b)

Exemptions

Application.

(i) The class of leasing transactions is subject to state law requirements substantially similar to the Act and

(ii) There is adequate provision for state enforcement.

(2)

Enforcement and liability.

Pt. 1013, App. A

Appendix A to Part 1013 Model Forms

A-1 Model Open-End or Finance Vehicle Lease Disclosures

A-2 Model Closed-End or Net Vehicle Lease Disclosures

A-3 Model Furniture Lease Disclosures

ER19DE11.010

ER19DE11.011

ER19DE11.012

ER19DE11.013

ER19DE11.014

ER19DE11.015

Appendix B to Part 1013 [Reserved]

Pt. 1013, App. C

Appendix C to Part 1013 Issuance of Official Interpretations

Interpretations of this part issued by officials of the Bureau provide the formal protection afforded under section 130(f) of the Act. Except in unusual circumstances, interpretations will not be issued separately but will be incorporated in an official commentary to Regulation M (Supplement I of this

part), which will be amended periodically. No official interpretations will be issued approving a lessor's forms, statements, or calculation tools or methods.

Pt. 1013, Supp. I

Supplement I to Part 1013 Official Interpretations

Introduction

1.

Official status.

2.

Procedures for requesting interpretations.

Federal Register.

3.

Comment designations.

4.

Illustrations.

Section 1013.1 Authority, Scope, Purpose, and Enforcement

1.

Foreign applicability.

Section 1013.2 Definitions

2(b) Advertisement

1.

Coverage.

i. Messages in newspapers, magazines, leaflets, catalogs, and fliers.

ii. Messages on radio, television, and public address systems.

iii. Direct mail literature.

iv. Printed material on any interior or exterior sign or display, in any window display, in any point-of-transaction literature or price tag that is delivered or made available to a lessee or

prospective lessee in any manner whatsoever.

v. Telephone solicitations.

vi. Online messages, such as those on the Internet.

2.

Exclusions.

i. Direct personal contacts, including follow-up letters, cost estimates for individual lessees, or oral or written communications relating to the negotiation of a specific transaction.

ii. Informational material distributed only to businesses.

iii. Notices required by Federal or state law, if the law mandates that specific information be displayed and only the mandated information is included in the notice.

iv. News articles controlled by the news medium.

v. Market research or educational materials that do not solicit business.

3.

Persons covered.

2(d) Closed-End Lease

1.

General.

2(e) Consumer Lease

1.

Primary purposes.

2.

Period of time.

i. A three-month lease extended on a month-to-month basis and terminated after one year is not subject to the regulation.

ii. A month-to-month lease with a penalty, such as the forfeiture of a security deposit for terminating before one year, is subject to the regulation.

3.

Total contractual obligation.

- i. Residual value amounts or purchase-option prices;
- ii. Amounts collected by the lessor but paid to a third party, such as taxes, licenses, and registration fees.

4.

Credit sale.

- 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.

5.

Agricultural purpose.

6.

Organization or other entity.

7.

Leases of personal property incidental to a service.

- i. Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.
- ii. Security alarm systems requiring the installation of leased equipment intended to monitor unlawful entries into a home and in some cases to provide fire protection.
- iii. Propane gas service where the consumer must lease a propane tank to receive the service.

8.

Safe deposit boxes.

9.

Threshold amount.

10.

No increase in the CPI-W.

i.

Net increases.

ii.

Net decreases.

11.

Threshold.

i. Prior to July 21, 2011, the threshold amount is \$25,000.

ii. From July 21, 2011, through December 31, 2011, the threshold amount is \$50,000.

iii. From January 1, 2012, through December 31, 2012, the threshold amount is \$51,800.

iv. From January 1, 2013, through December 31, 2013, the threshold amount is \$53,000.

v. From January 1, 2014, through December 31, 2014, the threshold amount is \$53,500.

vi. From January 1, 2015, through December 31, 2015, the threshold amount is \$54,600.

vii. From January 1, 2016, through December 31, 2016, the threshold amount is \$54,600.

viii. From January 1, 2017, through December 31, 2017, the threshold amount is \$54,600.

ix. From January 1, 2018, through December 31, 2018, the threshold amount is \$55,800.

x. From January 1, 2019, through December 31, 2019, the threshold amount is \$57,200.

xi. From January 1, 2020, through December 31, 2020, the threshold amount is \$58,300.

xii. From January 1, 2021, through December 31, 2021, the threshold amount is \$58,300.

xiii. From January 1, 2022, through December 31, 2022, the threshold amount is \$61,000.

xiv. From January 1, 2023, through December 31, 2023, the threshold amount is \$66,400.

xv. From January 1, 2024, through December 31, 2024, the threshold amount is \$69,500.

2(g) Lessee

1.

Guarantors.

2(h) Lessor

1.

Arranger of a lease.

i. An entity that, pursuant to a business relationship, completes the necessary lease agreement before forwarding it for execution to the leasing company (to whom the obligation is payable on its face) is arranging for the lease.

ii. An entity that, without receiving a fee for the service, refers a customer to a leasing company that will prepare all relevant contract documents is not arranging for the lease.

2.

Consideration.

3.

Assignees.

Ford Motor Credit Co.

Cenance,

4.

Multiple lessors.

2(j) Organization

1.

Coverage.

2(l) Personal Property

1.

Coverage.

2(m) Realized Value

1.

General.

2.

Options.

3.

Determination of realized value.

4.

Offers.

5.

Lessor's appraisal.

2(o) Security Interest and Security

1.

Disclosable interests.

2.

General coverage.

3.

Insurance exception.

Section 1013.3 General Disclosure Requirements

3(a) General Requirements

1.

Basis of disclosures.

i. In a three-year lease with no penalty for termination after a one-year minimum term, disclosures are based on the full three-year term of the lease. The one-year minimum term is only relevant to the early termination provisions of §§ 1013.4 (g)(1), (k) and (l).

2.

Clear and conspicuous standard.

3.

Multipurpose disclosure forms.

4.

Number of transactions.

i. When a lessor leases two items to the same lessee on the same day, the lessor may disclose the leases as either one or two lease transactions.

ii. When a lessor sells insurance or other incidental services in connection with a lease, the lessor may disclose in one of two ways: As a single lease transaction (in which case Regulation M, not Regulation Z, disclosures are required) or as a lease transaction and a credit transaction.

iii. When a lessor includes an outstanding lease or credit balance in a lease transaction, the lessor may disclose the outstanding balance as part of a single lease transaction (in which case Regulation M, not Regulation Z, disclosures are required) or as a lease transaction and a credit transaction.

3(a)(1) Form of Disclosures

1.

Cross-references.

2.

Identification of parties.

3.

Lessor's address.

4.

Multiple lessors and lessees.

5.

Lessee's signature.

3(a)(2) Segregation of Certain Disclosures

1.

Location.

2.

Additional information among segregated disclosures.

3.

Substantially similar.

3(a)(3) Timing of Disclosures

1.

Consummation.

3(b) Additional Information; Nonsegregated Disclosures

1.

State law disclosures.

3(c) Multiple Lessors or Lessees

1.

Multiple lessors.

3(d) Use of Estimates

1.

Time of estimated disclosure.

2.

Basis of estimates.

3.

Residual value of leased property at termination.

i. An automobile lessor offering a three-year open-end lease assigns a wholesale value to the vehicle at the end of the lease term. The lessor may disclose as an estimate a wholesale value derived from a generally accepted trade publication listing current wholesale values.

ii. Same facts as above, except that the lessor discloses an estimated value derived by adjusting the residual value quoted in the trade publication because, in its experience, the trade publication values either understate or overstate the prices actually received in local used vehicle markets. The lessor may adjust estimated values quoted in trade publications if the lessor reasonably believes based on its experience that the values are understated or overstated.

4.

Retail or wholesale value.

5.

Labeling estimates.

3(e) Effect of Subsequent Occurrence

1.

Subsequent occurrences.

i. An agreement between the lessee and lessor to change from a monthly to a weekly payment schedule.

ii. An increase in official fees or taxes.

iii. An increase in insurance premiums or coverage caused by a change in the law.

iv. Late delivery of an automobile caused by a strike.

2.

Redisclosure.

3.

Lessee's failure to perform.

Section 1013.4 Content of Disclosures

4(a) Description of Property

1.

Placement of description.

4(b) Amount Due at Lease Signing or Delivery

1.

Consummation.

2.

Capitalized cost reduction.

3.

Negative equity trade-in allowance.

4.

Rebates.

5.

Balance sheet approach.

6.

Amounts to be paid in cash.

4(c) Payment Schedule and Total Amount of Periodic Payments

1.

Periodic payments.

4(d) Other Charges

1.

Coverage.

2.

Excluded charges.

i. Late payment.

ii. Default.

iii. Early termination.

iv. Deferral of payments.

v. Extension of the lease.

3.

Third-party fees and charges.

4.

Relationship to other provisions.

i. The price of a mechanical breakdown protection (MBP) contract is sometimes disclosed as an other charge. Nevertheless, the price of MBP is sometimes reflected in the periodic payment disclosure under § 1013.4(c) or in states where MBP is regarded as insurance, the cost is be

disclosed in accordance with § 1013.4(o).

5.

Lessee's liabilities at the end of the lease term.

6.

Optional disposition charges.

4(e) Total of Payments

1.

Open-end lease.

4(f) Payment Calculation

1.

Motor vehicle lease.

2.

Multiple items.

4(f)(1) Gross Capitalized Cost

1.

Agreed upon value of the vehicle.

2.

Itemization of the gross capitalized cost.

4(f)(7) Total of Base Periodic Payments

1.

Accuracy of disclosure.

4(f)(8) Lease Payments

1.

Lease Term.

4(g) Early Termination

4(g)(1) Conditions and Disclosure of Charges

1.

Reasonableness of charges.

2.

Description of the method.

3.

Timing of written explanation of a named method.

4.

Default.

5.

Lessee's liability at early termination.

4(h) Maintenance Responsibilities

1.

Standards for wear and use.

4(i) Purchase Option

1.

Mandatory disclosure of no purchase option.

2.

Existence of purchase option.

3.

Purchase-option fee.

4.

Official fees and taxes.

5.

Purchase-option price.

4(j) Statement Referencing Nonsegregated Disclosures

1.

Content.

4(l) Right of Appraisal

1.

Disclosure inapplicable.

i. The automobile lessor might expect a lessee to return an undented car with four good tires at the end of the lease term. Even though it may hold the lessee liable for the difference between a dented car with bald tires and the value of a car in reasonably good repair, the disclosure under § 1013.4(l) is not required.

2.

Lessor's appraisal.

3.

Retail or wholesale.

4.

Time restriction on appraisal.

4(m) Liability at End of Lease Term Based on Residual Value

1.

Open-end leases.

2.

Lessor's payment of attorney's fees.

4(m)(1) Rent and Other Charges

1.

General.

4(m)(2) Excess Liability

1.

Coverage.

2.

Leases with a minimum term.

3.

Charges not subject to rebuttable presumption.

i. Disposition charges.

ii. Excess mileage charges.

iii. Late payment and default charges.

iv. In simple-interest accounting leases, amount by which the unamortized cost exceeds the residual value because the lessee has not made timely payments.

4(n) Fees and Taxes

1.

Treatment of certain taxes.

i. Taxes paid by lease signing or delivery are disclosed under § 1013.4(b) and § 1013.4(n).

ii. Taxes that are part of the scheduled payments are reflected in the disclosure under § 1013.4(c), (f), and (n).

iii. A tax payable by the lessor that is passed on to the consumer and is reflected in the lease documentation must be disclosed under § 1013.4(n). A tax payable by the lessor and absorbed as a cost of doing business need not be disclosed.

iv. Taxes charged in connection with the exercise of a purchase option are disclosed under § 1013.4(i), not § 1013.4(n).

2.

Estimates.

4(o) Insurance

1.

Coverage.

2.

Lessor's insurance.

3.

Mechanical breakdown protection and other products.

4(p) Warranties or Guarantees

1.

Brief identification.

2.

Warranty disclaimers.

3.

State law.

4(q) Penalties and Other Charges for Delinquency

1.

Collection costs.

2.

Charges for early termination.

3.

Simple-interest leases.

4.

Extension charges.

5.

Reasonableness of charges.

4(r) Security Interest

1.

Disclosable security interests.

4(s) Limitations on Rate Information

1.

Segregated disclosures.

Section 1013.5 Renegotiations, Extensions, and Assumptions

1.

Coverage.

5(a) Renegotiation

1.

Basis of disclosures.

i. If the renegotiated lease covers the 36-month period beginning January 1, 1998, the new disclosures would reflect all payments made by the lessee on the initial lease and all payments on the renegotiated lease. In this example, since the renegotiated lease covers a 36-month period beginning January 1, 1998, the disclosures must reflect payments made since that date. On the model form, the total of base periodic payments disclosed under § 1013.4(f)(7) should reflect periodic payments to be made over the entire 36-month term. Payments received since January 1, 1998, are added as a new line item disclosed as total of payments received and are subtracted from the total of base periodic payments in calculating a new item disclosed as the total of base periodic payments remaining. For example, if 6 monthly payments of \$300 were received since January 1, 1998, the disclosure form should include a total of base periodic payments line from which \$1,800 is subtracted to arrive at the total of base periodic payments remaining. The remainder of the disclosures would not change.

ii. If the renegotiated lease covers only the remaining 30 months, from July 1, 1998, to January 1, 2001, the disclosures would reflect only the charges incurred in connection with the renegotiation and the payments for the remaining period.

5(b) Extension

1.

Time of extension disclosures.

2.

Content of disclosures for month-to-month extensions.

3.

Basis of disclosures.

Section 1013.6 [Reserved]

Section 1013.7 Advertising

7(a) General Rule

1.

Persons covered.

2.

Usually and customarily.

3.

Total contractual obligation of advertised lease.

i. Assume that, in an advertisement, a lessor states that certain terms apply to a consumer lease for a specific automobile. The total contractual obligation of the advertised lease exceeds the threshold amount in effect when the advertisement is made. Although the advertisement does not refer to any other lease, some or all of the advertised terms for the exempt lease also apply to other leases offered by the lessor with total contractual obligations that do not exceed the applicable threshold amount. The advertisement is not required to comply with § 1013.7 because it refers only to an exempt lease.

ii. Assume that, in an advertisement, a lessor states certain terms (such as the amount due at lease signing) that will apply to consumer leases for automobiles of a particular brand. However, the advertisement does not refer to a specific lease. The total contractual obligations of the leases for some of the automobiles will exceed the threshold amount in effect when the advertisement is made, but the total contractual obligations of the leases for other automobiles will not exceed the threshold. The entire advertisement must comply with § 1013.7 because it refers to terms for consumer leases that are not exempt.

iii. Assume that, in a single advertisement, a lessor states that certain terms apply to consumer

leases for two different automobiles. The total contractual obligation of the lease for the first automobile exceeds the threshold amount in effect when the advertisement is made, but the total contractual obligation of the lease for the second automobile does not exceed the threshold. The entire advertisement must comply with § 1013.7 because it refers to a consumer lease that is not exempt.

7(b) Clear and Conspicuous Standard

1.

Standard.

7(b)(1) Amount Due at Lease Signing or Delivery

1.

Itemization not required.

2.

Prominence rule.

7(b)(2) Advertisement of a Lease Rate

1.

Location of statement.

7(c) Catalogs or Other Multi-Page Advertisements; Electronic Advertisements

1.

General rule.

2.

Cross references.

7(d)(1) Triggering Terms

1.

Typical example.

7(d)(2) Additional Terms

1.

Third-party fees that vary by state or locality.

- i. Exclude third-party fees, such as taxes, licenses, and registration fees and disclose that fact; or
- ii. Provide a periodic payment or total that includes third-party fees based on a particular state or locality as long as that fact and the fact that fees may vary by state or locality are disclosed.

7(e) Alternative DisclosuresMerchandise Tags

1.

Multiple-item leases.

7(f) Alternative DisclosuresTelevision or Radio Advertisements

7(f)(1) Toll-Free Number or Print Advertisement

1.

Publication in general circulation.

2.

Toll-free number, local or collect calls.

3.

Multi-purpose number.

4.

Statement accompanying toll free number.

Section 1013.8Record Retention

1.

Manner of retaining evidence.

Section 1013.9Relation to State Laws

1.

Exemptions granted.

i.

Maine.

ii.

Oklahoma.

Appendix A Model Forms

1.

Permissible changes.

2.

Examples of acceptable changes.

- i. Using the first person, instead of the second person, in referring to the lessee.
- ii. Using lessee, lessor, or names instead of pronouns.
- iii. Rearranging the sequence of the nonsegregated disclosures.
- iv. Incorporating certain state plain English requirements.
- v. Deleting or blocking out inapplicable disclosures, filling in N/A (not applicable) or 0, crossing out, leaving blanks, checking a box for applicable items, or circling applicable items (this should facilitate use of multipurpose standard forms).
- vi. Adding language or symbols to indicate estimates.
- vii. Adding numeric or alphabetic designations.
- viii. Rearranging the disclosures into vertical columns, except for § 1013.4(b) through (e) disclosures.
- ix. Using icons and other graphics.

3.

Model closed-end or net vehicle lease disclosure.

4.

Model furniture lease disclosures.

[76 FR 78502, Dec. 19, 2011, as amended at 76 FR 81790, Dec. 29, 2011; 77 FR 69736, Nov. 21, 2012; 79 FR 70194, Nov. 25, 2013; 79 FR 56483, Sept. 22, 2014; 80 FR 73947, Nov. 27, 2015, as amended at 81 FR 86259, Nov. 30, 2016; 82 FR 51977, Nov. 9, 2017; 83 FR 59276, Nov. 23, 2018; 84 FR 58019, Oct. 30, 2019; 85 FR 79393, Dec. 10, 2020; 86 FR 67850, Nov. 30, 2021; 87 FR

63669, Oct. 20, 2022; 88 FR 83321, Nov. 29, 2023]

Pt. 1014

PART 1014MORTGAGE ACTS AND PRACTICESADVERTISING (REGULATION N)

Sec.

1014.1

Scope of regulations in this part.

1014.2

Definitions.

1014.3

Prohibited representations.

1014.4

Waiver not permitted.

1014.5

Recordkeeping requirements.

1014.6

Actions by states.

1014.7

Severability.

Authority:

12 U.S.C. 5512, 5581; 15 U.S.C. 1638 note.

Source:

76 FR 78133, Dec. 16, 2011, unless otherwise noted.

§ 1014.1

Scope of regulations in this part.

This part, known as Regulation N, is issued by the Bureau of Consumer Financial Protection to implement the 2009 Omnibus Appropriations Act, Public L. 111-8, section 626, 123 Stat. 524 (Mar.

11, 2009), as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111-24, section 511, 123 Stat. 1734 (May 22, 2009), and as amended by the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010, Public Law 111-203, section 1097, 124 Stat. 1376 (July 21, 2010). This part applies to persons over which the Federal Trade Commission has jurisdiction under the Federal Trade Commission Act.

§ 1014.2

Definitions.

For the purposes of this part:

Commercial communication

commercial communication.

Consumer

Credit

Dwelling

Mortgage credit product

Person

Term

§ 1014.3

Prohibited representations.

It is a violation of this part for any person to make any material misrepresentation, expressly or by implication, in any commercial communication, regarding any term of any mortgage credit product, including but not limited to misrepresentations about:

(a) The interest charged for the mortgage credit product, including but not limited to misrepresentations concerning:

(1) The amount of interest that the consumer owes each month that is included in the consumer's payments, loan amount, or total amount due, or

(2) Whether the difference between the interest owed and the interest paid is added to the total

amount due from the consumer;

(b) The annual percentage rate, simple annual rate, periodic rate, or any other rate;

(c) The existence, nature, or amount of fees or costs to the consumer associated with the mortgage credit product, including but not limited to misrepresentations that no fees are charged;

(d) The existence, cost, payment terms, or other terms associated with any additional product or feature that is or may be sold in conjunction with the mortgage credit product, including but not limited to credit insurance or credit disability insurance;

(e) The terms, amounts, payments, or other requirements relating to taxes or insurance associated with the mortgage credit product, including but not limited to misrepresentations about:

(1) Whether separate payment of taxes or insurance is required; or

(2) The extent to which payment for taxes or insurance is included in the loan payments, loan amount, or total amount due from the consumer;

(f) Any prepayment penalty associated with the mortgage credit product, including but not limited to misrepresentations concerning the existence, nature, amount, or terms of such penalty;

(g) The variability of interest, payments, or other terms of the mortgage credit product, including but not limited to misrepresentations using the word fixed;

(h) Any comparison between:

(1) Any rate or payment that will be available for a period less than the full length of the mortgage credit product; and

(2) Any actual or hypothetical rate or payment;

(i) The type of mortgage credit product, including but not limited to misrepresentations that the product is or involves a fully amortizing mortgage;

(j) The amount of the obligation, or the existence, nature, or amount of cash or credit available to the consumer in connection with the mortgage credit product, including but not limited to misrepresentations that the consumer will receive a certain amount of cash or credit as part of a mortgage credit transaction;

(k) The existence, number, amount, or timing of any minimum or required payments, including but not limited to misrepresentations about any payments or that no payments are required in a reverse mortgage or other mortgage credit product;

(l) The potential for default under the mortgage credit product, including but not limited to misrepresentations concerning the circumstances under which the consumer could default for nonpayment of taxes, insurance, or maintenance, or for failure to meet other obligations;

(m) The effectiveness of the mortgage credit product in helping the consumer resolve difficulties in paying debts, including but not limited to misrepresentations that any mortgage credit product can reduce, eliminate, or restructure debt or result in a waiver or forgiveness, in whole or in part, of the consumer's existing obligation with any person;

(n) The association of the mortgage credit product or any provider of such product with any other person or program, including but not limited to misrepresentations that:

(1) The provider is, or is affiliated with, any governmental entity or other organization; or

(2) The product is or relates to a government benefit, or is endorsed, sponsored by, or affiliated with any government or other program, including but not limited to through the use of formats, symbols, or logos that resemble those of such entity, organization, or program;

(o) The source of any commercial communication, including but not limited to misrepresentations that a commercial communication is made by or on behalf of the consumer's current mortgage lender or servicer;

(p) The right of the consumer to reside in the dwelling that is the subject of the mortgage credit product, or the duration of such right, including but not limited to misrepresentations concerning how long or under what conditions a consumer with a reverse mortgage can stay in the dwelling;

(q) The consumer's ability or likelihood to obtain any mortgage credit product or term, including but not limited to misrepresentations concerning whether the consumer has been preapproved or guaranteed for any such product or term;

(r) The consumer's ability or likelihood to obtain a refinancing or modification of any mortgage credit

product or term, including but not limited to misrepresentations concerning whether the consumer has been preapproved or guaranteed for any such refinancing or modification; and

(s) The availability, nature, or substance of counseling services or any other expert advice offered to the consumer regarding any mortgage credit product or term, including but not limited to the qualifications of those offering the services or advice.

§ 1014.4

Waiver not permitted.

It is a violation of this part for any person to obtain, or attempt to obtain,

§ 1014.5

Recordkeeping requirements.

(a) Any person subject to this part shall keep, for a period of twenty-four months from the last date the person made or disseminated the applicable commercial communication regarding any term of any mortgage credit product, the following evidence of compliance with this part:

(1) Copies of all materially different commercial communications as well as sales scripts, training materials, and marketing materials, regarding any term of any mortgage credit product, that the person made or disseminated during the relevant time period;

(2) Documents describing or evidencing all mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such mortgage credit product available to consumers; and

(3) Documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such additional product or service available to consumers.

(b) Any person subject to this part may keep the records required by paragraph (a) of this section in any legible form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required under paragraph (a) of this section shall be a violation of this part.

§ 1014.6

Actions by states.

Any attorney general or other officer of a state authorized by the state to bring an action under this part may do so pursuant to section 626(b) of the 2009 Omnibus Appropriations Act, Public Law 111-8, section 626, 123 Stat. 524 (Mar. 11, 2009), as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111-24, section 511, 123 Stat. 1734 (May 22, 2009), and as amended by Public Law 111-203, section 1097, 124 Stat. 2102 (July 21, 2010).

§ 1014.7

Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Bureau of Consumer Financial Protection's intention that the remaining provisions shall continue in effect.

Pt. 1015

PART 1015MORTGAGE ASSISTANCE RELIEF SERVICES (REGULATION O)

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Authority:

12 U.S.C. 5512, 5581; 15 U.S.C. 1638 note.

Source:

76 FR 78133, Dec. 16, 2011, unless otherwise noted.

§ 1015.1

Scope of regulations in this part.

This part, known as Regulation O, is issued by the Bureau of Consumer Financial Protection to implement the 2009 Omnibus Appropriations Act, Public Law 111-8, section 626, 123 Stat. 524 (Mar. 11, 2009), as clarified by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111-24, section 511, 123 Stat. 1734 (May 22, 2009), and as amended by the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010, Public Law

111-203, section 1097, 124 Stat. 1376 (July 21, 2010).

This part applies to persons over which the Federal

§ 1015.2

Definitions.

For the purposes of this part:

Clear and prominent

(1) In textual communications, the required disclosures shall be easily readable; in a high degree of contrast from the immediate background on which it appears; in the same languages that are substantially used in the commercial communication; in a format so that the disclosure is distinct from other text, such as inside a border; in a distinct type style, such as bold; parallel to the base of the commercial communication, and, except as otherwise provided in this rule, each letter of the disclosure shall be, at a minimum, the larger of 12-point type or one-half the size of the largest letter or numeral used in the name of the advertised Web site or telephone number to which consumers are referred to receive information relating to any mortgage assistance relief service. Textual communications include any communications in a written or printed form such as print publications or words displayed on the screen of a computer;

(2) In communications disseminated orally or through audible means, such as radio or streaming audio, the required disclosures shall be delivered in a slow and deliberate manner and in a reasonably understandable volume and pitch;

(3) In communications disseminated through video means, such as television or streaming video, the required disclosures shall appear simultaneously in the audio and visual parts of the commercial communication and be delivered in a manner consistent with paragraphs (1) and (2) of this definition. The visual disclosure shall be at least four percent of the vertical picture or screen height and appear for the duration of the oral disclosure;

(4) In communications made through interactive media, such as the internet, online services, and software, the required disclosures shall:

- (i) Be consistent with paragraphs (1) through (3) of this definition;
- (ii) Be made on, or immediately prior to, the page on which the consumer takes any action to incur any financial obligation;
- (iii) Be unavoidable,
i.e.,
- (iv) Appear in type at least the same size as the largest character of the advertisement;
- (5) In all instances, the required disclosures shall be presented in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them; and
- (6) For program-length television, radio, or internet-based multimedia commercial communications, the required disclosures shall be made at the beginning, near the middle, and at the end of the commercial communication.

Client trust account

- (1) Maintained in compliance with all applicable state laws and regulations, including licensing regulations; and
- (2) Located in the state where the attorney's office is located, or elsewhere in the United States with the consent of the consumer on whose behalf the funds are held.

Commercial communication

(1)

General Commercial Communication

(2)

Consumer-Specific Commercial Communication

Consumer

Dwelling

Dwelling loan

Dwelling Loan Holder

Material

Mortgage Assistance Relief Service

- (1) Stopping, preventing, or postponing any mortgage or deed of trust foreclosure sale for the consumer's dwelling, any repossession of the consumer's dwelling, or otherwise saving the consumer's dwelling from foreclosure or repossession;
- (2) Negotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees;
- (3) Obtaining any forbearance or modification in the timing of payments from any dwelling loan holder or servicer on any dwelling loan;
- (4) Negotiating, obtaining, or arranging any extension of the period of time within which the consumer may:
 - (i) Cure his or her default on a dwelling loan,
 - (ii) Reinstate his or her dwelling loan,
 - (iii) Redeem a dwelling, or
 - (iv) Exercise any right to reinstate a dwelling loan or redeem a dwelling;
- (5) Obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling; or
- (6) Negotiating, obtaining or arranging:
 - (i) A short sale of a dwelling,
 - (ii) A deed-in-lieu of foreclosure, or
 - (iii) Any other disposition of a dwelling other than a sale to a third party who is not the dwelling loan holder.

Mortgage Assistance Relief Service Provider

Provider

- (1) The dwelling loan holder, or any agent or contractor of such individual or entity.
- (2) The servicer of a dwelling loan, or any agent or contractor of such individual or entity.

Person

Servicer

(1) Receiving any scheduled periodic payments from a consumer pursuant to the terms of the dwelling loan that is the subject of the offer to provide mortgage assistance relief services, including amounts for escrow accounts under section 10 of the Real Estate Settlement Procedures Act (12 U.S.C. 2609); and

(2) Making the payments of principal and interest and such other payments with respect to the amounts received from the consumer as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract.

Telemarketing

§ 1015.3

Prohibited representations.

It is a violation of this rule for any mortgage assistance relief service provider to engage in the following conduct:

(a) Representing, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief service, that a consumer cannot or should not contact or communicate with his or her lender or servicer.

(b) Misrepresenting, expressly or by implication, any material aspect of any mortgage assistance relief service, including but not limited to:

(1) The likelihood of negotiating, obtaining, or arranging any represented service or result, such as those set forth in the definition of

Mortgage Assistance Relief Service

(2) The amount of time it will take the mortgage assistance relief service provider to accomplish any represented service or result, such as those set forth in the definition of

Mortgage Assistance Relief Service

(3) That a mortgage assistance relief service is affiliated with, endorsed or approved by, or

otherwise associated with:

- (i) The United States government,
 - (ii) Any governmental homeowner assistance plan,
 - (iii) Any Federal, State, or local government agency, unit, or department,
 - (iv) Any nonprofit housing counselor agency or program,
 - (v) The maker, holder, or servicer of the consumer's dwelling loan, or
 - (vi) Any other individual, entity, or program;
- (4) The consumer's obligation to make scheduled periodic payments or any other payments pursuant to the terms of the consumer's dwelling loan;
- (5) The terms or conditions of the consumer's dwelling loan, including but not limited to the amount of debt owed;
- (6) The terms or conditions of any refund, cancellation, exchange, or repurchase policy for a mortgage assistance relief service, including but not limited to the likelihood of obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted, for a mortgage assistance relief service;
- (7) That the mortgage assistance relief service provider has completed the represented services or has a right to claim, demand, charge, collect, or receive payment or other consideration;
- (8) That the consumer will receive legal representation;
- (9) The availability, performance, cost, or characteristics of any alternative to for-profit mortgage assistance relief services through which the consumer can obtain mortgage assistance relief, including negotiating directly with the dwelling loan holder or servicer, or using any nonprofit housing counselor agency or program;
- (10) The amount of money or the percentage of the debt amount that a consumer may save by using the mortgage assistance relief service;
- (11) The total cost to purchase the mortgage assistance relief service; or
- (12) The terms, conditions, or limitations of any offer of mortgage assistance relief the provider

obtains from the consumer's dwelling loan holder or servicer, including the time period in which the consumer must decide to accept the offer;

(c) Making a representation, expressly or by implication, about the benefits, performance, or efficacy of any mortgage assistance relief service unless, at the time such representation is made, the provider possesses and relies upon competent and reliable evidence that substantiates that the representation is true. For the purposes of this paragraph,

competent and reliable evidence

§ 1015.4

Disclosures required in commercial communications.

It is a violation of this rule for any mortgage assistance relief service provider to engage in the following conduct:

(a)

Disclosures in All General Commercial Communications

(1) (Name of company) is not associated with the government, and our service is not approved by the government or your lender.

(2) In cases where the mortgage assistance relief service provider has represented, expressly or by implication, that consumers will receive any service or result set forth in paragraphs (2) through (6) of the definition of

Mortgage Assistance Relief Service

(3) The disclosures required by this paragraph must be made in a clear and prominent manner, and

(i) In textual communications the disclosures must appear together and be preceded by the heading **IMPORTANT NOTICE**, which must be in bold face font that is two point-type larger than the font size of the required disclosures; and

(ii) In communications disseminated orally or through audible means, wholly or in part, the audio component of the required disclosures must be preceded by the statement **Before using this service, consider the following information.**

(b)

Disclosures in All Consumer-Specific Commercial Communications

(1) You may stop doing business with us at any time. You may accept or reject the offer of mortgage assistance we obtain from your lender [or servicer]. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us (insert amount or method for calculating the amount) for our services. For the purposes of this paragraph (b)(1), the amount you will have to pay shall consist of the total amount the consumer must pay to purchase, receive, and use all of the mortgage assistance relief services that are the subject of the sales offer, including, but not limited to, all fees and charges.

(2) (Name of company) is not associated with the government, and our service is not approved by the government or your lender.

(3) In cases where the mortgage assistance relief service provider has represented, expressly or by implication, that consumers will receive any service or result set forth in paragraphs (2) through (6) of the definition of

Mortgage Assistance Relief Service

(4) The disclosures required by this paragraph must be made in a clear and prominent manner, and

(i) In textual communications the disclosures must appear together and be preceded by the heading **IMPORTANT NOTICE**, which must be in bold face font that is two point-type larger than the font size of the required disclosures; and

(ii) In communications disseminated orally or through audible means, wholly or in part, the audio component of the required disclosures must be preceded by the statement **Before using this service, consider the following information and, in telephone communications, must be made at the beginning of the call.**

(c)

Disclosures in All General Commercial Communications, Consumer-Specific Commercial Communications, and Other Communications

§ 1015.5

Prohibition on collection of advance payments and related disclosures.

It is a violation of this rule for any mortgage assistance relief service provider to:

(a) Request or receive payment of any fee or other consideration until the consumer has executed a written agreement between the consumer and the consumer's dwelling loan holder or servicer incorporating the offer of mortgage assistance relief the provider obtained from the consumer's dwelling loan holder or servicer;

(b) Fail to disclose, at the time the mortgage assistance relief service provider furnishes the consumer with the written agreement specified in paragraph (a) of this section, the following information: This is an offer of mortgage assistance we obtained from your lender [or servicer]. You may accept or reject the offer. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [same amount as disclosed pursuant to § 1015.4(b)(1)] for our services. The disclosure required by this paragraph must be made in a clear and prominent manner, on a separate written page, and preceded by the heading: **IMPORTANT NOTICE: Before buying this service, consider the following information.** The heading must be in bold face font that is two point-type larger than the font size of the required disclosure; or

(c)(1) Fail to provide, at the time the mortgage assistance relief service provider furnishes the consumer with the written agreement specified in paragraph (a) of this section, a notice from the consumer's dwelling loan holder or servicer that describes all material differences between the terms, conditions, and limitations associated with the consumer's current mortgage loan and the terms, conditions, and limitations associated with the consumer's mortgage loan if he or she accepts the dwelling loan holder's or servicer's offer, including but not limited to differences in the loan's:

(i) Principal balance;

(ii) Contract interest rate, including the maximum rate and any adjustable rates, if applicable;

(iii) Amount and number of the consumer's scheduled periodic payments on the loan;

(iv) Monthly amounts owed for principal, interest, taxes, and any mortgage insurance on the loan;

(v) Amount of any delinquent payments owing or outstanding;

(vi) Assessed fees or penalties; and

(vii) Term.

(2) The notice must be made in a clear and prominent manner, on a separate written page, and preceded by heading: **IMPORTANT INFORMATION FROM YOUR [name of lender or servicer] ABOUT THIS OFFER.** The heading must be in bold face font that is two-point-type larger than the font size of the required disclosure.

(d) Fail to disclose in the notice specified in paragraph (c) of this section, in cases where the offer of mortgage assistance relief the provider obtained from the consumer's dwelling loan holder or servicer is a trial mortgage loan modification, the terms, conditions, and limitations of this offer, including but not limited to:

(1) The fact that the consumer may not qualify for a permanent mortgage loan modification; and

(2) The likely amount of the scheduled periodic payments and any arrears, payments, or fees that the consumer would owe in failing to qualify.

§ 1015.6

Assisting and facilitating.

It is a violation of this rule for a person to provide substantial assistance or support to any mortgage assistance relief service provider when that person knows or consciously avoids knowing that the provider is engaged in any act or practice that violates this rule.

§ 1015.7

Exemptions.

(a) An attorney is exempt from this part, with the exception of § 1015.5, if the attorney:

(1) Provides mortgage assistance relief services as part of the practice of law;

(2) Is licensed to practice law in the state in which the consumer for whom

(3) Complies with state laws and regulations that cover the same type of conduct the rule requires.

(b) An attorney who is exempt pursuant to paragraph (a) of this section is also exempt from § 1015.5

if the attorney:

- (1) Deposits any funds received from the consumer prior to performing legal services in a client trust account; and
- (2) Complies with all state laws and regulations, including licensing regulations, applicable to client trust accounts.

§ 1015.8

Waiver not permitted.

It is a violation of this rule for any person to obtain, or attempt to obtain, a waiver from any consumer of any protection provided by or any right of the consumer under this rule.

§ 1015.9

Recordkeeping and compliance requirements.

(a) Any mortgage assistance relief provider must keep, for a period of twenty-four (24) months from the date the record is created, the following records:

- (1) All contracts or other agreements between the provider and any consumer for any mortgage assistance relief service;
- (2) Copies of all written communications between the provider and any consumer occurring prior to the date on which the consumer entered into an agreement with the provider for any mortgage assistance relief service;
- (3) Copies of all documents or telephone recordings created in connection with compliance with paragraph (b) of this section;
- (4) All consumer files containing the names, phone numbers, dollar amounts paid, and descriptions of mortgage assistance relief services purchased, to the extent the mortgage assistance relief service provider keeps such information in the ordinary course of business;
- (5) Copies of all materially different sales scripts, training materials, commercial communications, or other marketing materials, including Web sites and weblogs, for any mortgage assistance relief service; and

(6) Copies of the documentation provided to the consumer as specified in § 1015.5 of this rule;

(b) A mortgage assistance relief service provider also must:

(1) Take reasonable steps sufficient to monitor and ensure that all employees and independent contractors comply with this rule. Such steps shall include the monitoring of communications directed at specific consumers, and shall also include, at a minimum, the following:

(i) If the mortgage assistance relief service provider is engaged in the telemarketing of mortgage assistance relief services, performing random, blind recording and testing of the oral representations made by individuals engaged in sales or other customer service functions;

(ii) Establishing a procedure for receiving and responding to all consumer complaints; and

(iii) Ascertaining the number and nature of consumer complaints regarding transactions in which all employees and independent contractors are involved;

(2) Investigate promptly and fully each consumer complaint received;

(3) Take corrective action with respect to any employee or contractor whom the mortgage assistance relief service provider determines is not complying with this rule, which may include training, disciplining, or terminating such individual; and

(4) Maintain any information and material necessary to demonstrate its compliance with paragraphs (b)(1) through (3) of this section.

(c) A mortgage assistance relief provider may keep the records required by paragraphs (a) and (b) of this section in any form, and in the same manner, format, or place as it keeps such records in the ordinary course of business.

(d) It is a violation of this rule for a mortgage assistance relief service provider not to comply with this section.

§ 1015.10

Actions by states.

Any attorney general or other officer of a state authorized by the state to bring an action under this part may do so pursuant to section 626(b) of the 2009

§ 1015.11

Severability.

The provisions of this rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Bureau of Consumer Financial Protection's intention that the remaining provisions shall continue in effect.

Pt. 1016

PART 1016PRIVACY OF CONSUMER FINANCIAL INFORMATION (REGULATION P)

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Appendix to Part 1016 Model Privacy Form

Authority:

12 U.S.C. 5512, 5581; 15 U.S.C. 6804.

Source:

76 FR 79028, Dec. 21, 2011, unless otherwise noted.

§ 1016.1

Purpose and scope.

(a)

Purpose.

(1) Requires a financial institution to provide notice to customers about its privacy policies and practices;

(2) Describes the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by opting out of that disclosure, subject to the exceptions in §§ 1016.13, 1016.14, and 1016.15.

(b)

Scope.

(2)(i) Nothing in this part modifies, limits, or supersedes the standards governing individually identifiable health information promulgated by the Secretary of Health and Human Services under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-1320d-8).

(ii) Any institution of higher education that complies with the Federal Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations, 34 CFR part 99, and that is also a financial institution described in § 1016.3(l)(3) of this part, shall be deemed to be in compliance with this part if it is in compliance with FERPA.

(3) Nothing in this part shall apply to:

(i) A financial institution that is a person described in section 1029(a) of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111-203, 124 Stat. 1376 (12 U.S.C. 5519(a));

(ii) A financial institution or other person subject to the jurisdiction on the Commodity Futures Trading Commission under 7 U.S.C. 7b-2;

(iii) A broker or dealer that is registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.;

(iv) A registered investment adviser, properly registered by or on behalf of either the Securities Exchange Commission or any state, with respect to its investment advisory activities and its activities incidental to those investment advisory activities;

(v) An investment company that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.;

(vi) An insurance company, with respect to its insurance activities and its activities incidental to those insurance activities, that is subject to supervision by a state insurance regulator.

[76 FR 79028, Dec. 21, 2011, as amended at 79 FR 64081, Oct. 28, 2014]

§ 1016.2

Model privacy form and examples.

(a)

Model privacy form.

(b)

Examples.

§ 1016.3

Definitions.

As used in this part, unless the context requires otherwise:

(a)(1)

Affiliate

(2)

Examples in the case of a credit union.

(ii) An affiliate of a federally-insured, state-chartered credit union is a company that is controlled by the credit union.

(b)(1)

Clear and conspicuous

(2)

Examples

Reasonably understandable.

(A) Present the information 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 whenever possible; and

(F) Avoid explanations that are imprecise and readily subject to different interpretations.

(ii)

Designed to call attention.

(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, when you combine your notice with other information.

(iii)

Notices on Web sites.

(A) Place the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(B) Place a link on a screen that consumers frequently access, such as 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.

(c)

Collect

(d)

Company

(e)(1)

Consumer

(2)

Examples in the case of a financial institution other than a credit union.

(i) An individual who applies to you for credit for personal, family, or household purposes is a consumer of a financial service, regardless of whether the credit is extended.

(ii) An individual who provides nonpublic personal information to you in order to obtain a determination about whether he or she may qualify for a loan to be used primarily for personal, family, or household purposes is a consumer of a financial service, regardless of whether the loan is extended.

(iii) An individual who provides nonpublic personal information to you in connection with obtaining or seeking to obtain financial, investment, or economic advisory services is a consumer regardless of whether you establish a continuing advisory relationship.

(iv) If you hold ownership or servicing rights to an individual's loan that is used primarily for personal, family, or household purposes, the individual is your consumer, even if you hold those rights in conjunction with one or more other institutions. (The individual is also a consumer with respect to the other financial institutions involved.) An individual who has a loan in which you have ownership or servicing rights is your consumer, even if you, or another institution with those rights, hire an agent to collect on the loan.

(v) 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.

(vi) An individual is not your consumer solely because he or she has designated you as trustee for a

trust.

(vii) An individual is not your consumer solely because he or she is a beneficiary of a trust for which you are a trustee.

(viii) 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

(3)

Examples in the case of a credit union.

(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 customer 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.

(f)

Consumer reporting agency

(g)

Control

(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 determined by the applicable prudential regulator (as defined in 12 U.S.C. 5481(24)), if any.

(4)

Example in the case of credit unions.

(h)

Credit union

(i)

Customer

(j)(1)

Customer relationship

(2)

Examples in the case of financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.

(i)

Continuing relationship.

(A) Has a deposit or investment account with you;

(B) Obtains a loan from you;

(C) Has a loan for which you own the servicing rights;

(D) Purchases an insurance product from you;

(E) Holds an investment product through you, such as when you act as a custodian for securities or for assets in an Individual Retirement Arrangement;

(F) Enters into an agreement or understanding with you whereby you undertake to arrange or broker

a home mortgage loan for the consumer;

(G) Enters into a lease of personal property with you; or

(H) Obtains financial, investment, or economic advisory services from you for a fee.

(ii)

No continuing relationship.

(A) The consumer obtains a financial product or service only in isolated transactions, such as using your ATM to withdraw cash from an account at another financial institution or purchasing a cashier's check or money order;

(B) You sell the consumer's loan and do not retain the rights to service that loan; or

(C) You sell the consumer airline tickets, travel insurance, or traveler's checks in isolated transactions.

(3)

Examples in the case of covered entities subject to FTC enforcement jurisdiction.

(i)

Continuing relationship.

(A) Has a credit or investment account with you;

(B) Obtains a loan from you;

(C) Purchases an insurance product from you;

(D) Holds an investment product through you, such as when you act as a custodian for securities or for assets in an Individual Retirement Arrangement;

(E) Enters into an agreement or understanding with you whereby you undertake to arrange or broker a home mortgage loan, or credit to purchase a vehicle, for the consumer;

(F) Enters into a lease of personal property on a non-operating basis with you;

(G) Obtains financial, investment, or economic advisory services from you for a fee;

(H) Becomes your client for the purpose of obtaining tax preparation or credit counseling services from you;

(I) Obtains career counseling while seeking employment with a financial institution or the finance, accounting, or audit department of any company (or while employed by such a financial institution or department of any company);

(J) Is obligated on an account that you purchase from another financial institution, regardless of whether the account is in default when purchased, unless you do not locate the consumer or attempt to collect any amount from the consumer on the account;

(K) Obtains real estate settlement services from you; or

(L) Has a loan for which you own the servicing rights.

(ii)

No continuing relationship.

(A) The consumer obtains a financial product or service from you only in isolated transactions, such as using your ATM to withdraw cash from an account at another financial institution; purchasing a money order from you; cashing a check with you; or making a wire transfer through you;

(B) You sell the consumer's loan and do not retain the rights to service that loan;

(C) You sell the consumer airline tickets, travel insurance, or traveler's checks in isolated transactions;

(D) The consumer obtains one-time personal or real property appraisal services from you; or

(E) The consumer purchases checks for a personal checking account from you.

(4)

Examples in the case of a credit union.

Continuing relationship.

(A) Is a member as defined in the credit union's bylaws;

(B) Is a nonmember who has a share, share draft, or credit card account with the credit union jointly with a member;

(C) Is a nonmember who has a loan that the credit union services;

(D) Is a nonmember who has an account with 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)

No continuing relationship.

(A) The consumer only obtains a financial product or service in isolated transactions, such as using the credit union's ATM to withdraw cash from an account maintained at another financial institution or purchasing travelers checks; or

(B) The credit union sells the consumer's loan and does not retain the rights to service that loan.

(k)

Federal functional regulator

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The National Credit Union Administration Board; and

(5) The Securities and Exchange Commission.

(l)(1) Except for entities described in paragraph (l)(3) of this section,

financial institution

(2) For purposes of paragraph (l)(1) of this section,

financial institution

(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.;

(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.

(3)(i)

Special definition for entities subject to the Federal Trade Commission's enforcement jurisdiction.

financial institution

(ii)

Examples of financial institution.

(A) A retailer that extends credit by issuing its own credit card directly to consumers is a financial institution because extending credit is a financial activity listed in 12 CFR 225.28(b)(1) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act and issuing that extension of credit through a proprietary credit card demonstrates that a retailer is significantly engaged in extending credit.

(B) A personal property or real estate appraiser is a financial institution because real and personal property appraisal is a financial activity listed in 12 CFR 225.28(b)(2)(i) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(C) An automobile dealership that is not described in section 1029(a) of the Dodd-Frank Act (12 U.S.C. 5519(a)) and that, as a usual part of its business, leases automobiles on a nonoperating basis for longer than 90 days is a financial institution with respect to its leasing business because leasing personal property on a nonoperating basis where the initial term of the lease is at least 90 days is a financial activity listed in 12 CFR 225.28(b)(3) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(D) A career counselor that specializes in providing career counseling services to individuals currently employed by or recently displaced from a financial organization, individuals who are seeking employment with a financial organization, or individuals who are currently employed by or

seeking placement with the finance, accounting or audit departments of any company is a financial institution because such career counseling activities are financial activities listed in 12 CFR 225.28(b)(9)(iii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(E) A business that prints and sells checks for consumers, either as its sole business or as one of its product lines, is a financial institution because printing and selling checks is a financial activity that is listed in 12 CFR 225.28(b)(10)(ii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(F) A business that regularly wires money to and from consumers is a financial institution because transferring money is a financial activity referenced in section 4(k)(4)(A) of the Bank Holding Company Act and regularly providing that service demonstrates that the business is significantly engaged in that activity.

(G) A check cashing business is a financial institution because cashing a check is exchanging money, which is a financial activity listed in section 4(k)(4)(A) of the Bank Holding Company Act.

(H) An accountant or other tax preparation service that is in the business of completing income tax returns is a financial institution because tax preparation services is a financial activity listed in 12 CFR 225.28(b)(6)(vi) and referenced in section 4(k)(4)(G) of the Bank Holding Company Act.

(I) A business that operates a travel agency in connection with financial services is a financial institution because operating a travel agency in connection with financial services is a financial activity listed in 12 CFR 211.5(d)(15) and referenced in section 4(k)(4)(G) of the Bank Holding Company Act.

(J) An entity that provides real estate settlement services is a financial institution because providing real estate settlement services is a financial activity listed in 12 CFR 225.28(b)(2)(viii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(K) A mortgage broker is a financial institution because brokering loans is a financial activity listed in 12 CFR 225.28(b)(1) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(L) An investment advisory company and a credit counseling service are each financial institutions

because providing financial and investment advisory services are financial activities referenced in section 4(k)(4)(C) of the Bank Holding Company Act.

(iii) For purposes of this paragraph (l)(3),

financial institution

(A) 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.;

(B) 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.;

(C) 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 other than as permitted by §§ 1016.14 and 1016.15 of this part.

(D) Entities that engage in financial activities but that are not significantly engaged in those financial activities.

(iv)

Examples of entities that are not significantly engaged in financial activities.

(B) A retailer is not a financial institution merely because it accepts payment in the form of cash, checks, or credit cards that it did not issue.

(C) A merchant is not a financial institution merely because it allows an individual to run a tab.

(D) A grocery store is not a financial institution merely because it allows individuals to whom it sells groceries to cash a check, or write a check for a higher amount than the grocery purchase and obtain cash in return.

(m)(1)

Financial product or service

(2)

Special definition for entities subject to the Federal Trade Commission's enforcement jurisdiction.

financial product or service

(3)

Financial service

(n)

Member

(o)(1)

Nonaffiliated third party

(i) Your affiliate; or

(ii) A person employed jointly by you and any company that is not your affiliate (but
nonaffiliated third party

(2)

Nonaffiliated third party

(p)(1)

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 that is not
publicly available.

(2)

Nonpublic personal information

(i) Publicly available information, except as included on a list described in paragraph (p)(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 that

is not publicly available.

(3)

Examples of lists.

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

(q)(1)

Personally identifiable financial 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.

(2)

Examples

Information included.

(A) Information a consumer provides to you on an application to obtain a loan, a credit card, a credit union membership, 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 customers 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, or servicing, a loan or a credit account;

(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.

(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.

(r)(1)

Publicly available information

(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.

(2)

Reasonable basis.

(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 consumer has not done so.

(3)

Examples

Government records.

(ii)

Widely distributed media.

(iii)

Reasonable basis.

(B) 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 the consumer has informed you that the telephone number is not unlisted.

(s)(1)

You

(2)

You

(i) A financial institution that is a person described in section 1029(a) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5519(a));

(ii) A financial institution or other person subject to the jurisdiction on the Commodity Futures Trading Commission under 7 U.S.C. 7b-2;

(iii) A broker or dealer that is registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.;

(iv) A registered investment adviser, properly registered by or on behalf of either the Securities Exchange Commission or any State, with respect to its investment advisory activities and its activities incidental to those investment advisory activities;

(v) An investment company that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.;

(vi) An insurance company, with respect to its insurance activities and its activities incidental to those insurance activities, that is subject to supervision by a State insurance regulator.

[76 FR 79028, Dec. 21, 2011, as amended by CFPB-2016-0032, 83 FR 40958, Aug. 17, 2018]

Subpart A Privacy and Opt Out Notices

§ 1016.4

Initial privacy notice to consumers required.

(a)

Initial notice requirement.

(1)

Customer.

(2)

Consumer.

(b)

When initial notice to a consumer is not required.

(1) You do not disclose any nonpublic personal information about the consumer to any nonaffiliated third party, other than as authorized by §§ 1016.14 and 1016.15; and

(2) You do not have a customer relationship with the consumer.

(c)

When you establish a customer relationship

General rule.

(2)

Special rule for loans.

(3)

Examples

Examples of establishing customer relationship by financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.

(A) Opens a credit card account with you;

(B) Executes the contract to open a deposit account with you, obtains credit from you, or purchases insurance from you;

(C) Agrees to obtain financial, economic, or investment advisory services from you for a fee; or

(D) Becomes your client for the purpose of your providing credit counseling or tax preparation services.

(ii)

Examples of establishing customer relationship by covered entities subject to FTC enforcement jurisdiction.

- (A) Opens a credit card account with you;
- (B) Executes the contract to obtain credit from you or purchases insurance from you;
- (C) Agrees to obtain financial, economic, or investment advisory services from you for a fee;
- (D) Becomes your client for the purpose of your providing credit counseling or tax preparation services or to obtain career counseling while seeking employment with a financial institution or the finance, accounting, or audit department of any company (or while employed by such a company or financial institution);
- (E) Provides any personally identifiable financial information to you in an effort to obtain a mortgage loan through you;
- (F) Executes the lease for personal property with you;
- (G) Is an obligor on an account that you purchased from another financial institution and whom you have located and begun attempting to collect amounts owed on the account; or
- (H) Provides you with the information necessary for you to compile and provide access to all of the consumer's online financial accounts at your Web site.

(iii)

Examples of establishing customer relationship by credit unions.

- (A) Becomes your member under your bylaws;
- (B) Is a nonmember and opens a credit card account with you jointly with a member under your procedures;
- (C) Is a nonmember and executes the contract to open a share or share draft account with you or obtains credit from you jointly with a member, including an individual acting as a guarantor;
- (D) Is a nonmember and opens an account with you and you are a credit union designated as a low-income credit union;
- (E) Is a nonmember and opens an account with you pursuant to State law and you are a

State-chartered credit union.

(iv)

Examples of loan rule.

(A) Originate the loan to the consumer; or

(B) Purchase the servicing rights to the consumer's loan.

(d)

Existing customers.

(1) You may provide a revised privacy notice, under § 1016.8 of this part, that covers the customer's new financial product or service; or

(2) If the initial, revised, or annual notice that you most recently provided to that customer was accurate with respect to the new financial product or service, you do not need to provide a new privacy notice under paragraph (a) of this section.

(e)

Exceptions to allow subsequent delivery of notice.

(i) Establishing the customer relationship is not at the customer's election; or

(ii) Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(2)

Examples of exceptions

Not at customer's election.

(B) In the case of financial institutions described in § 1016.3(l)(3), establishing a customer relationship is not at the customer's election if you acquire a customer's loan or the servicing rights from another financial institution and the customer does not have a choice about your acquisition.

(C) In the case of credit unions, establishing a customer relationship is not at the customer's election if you acquire a customer's deposit liability from another financial institution and the customer does not have a choice about your acquisition.

(ii)

Substantial delay of customer's transaction.

(A) You and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service; or

(B) You establish a customer relationship with an individual under a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070

et seq.

(iii)

No substantial delay of customer's transaction.

(f)

Delivery.

§ 1016.5

Annual privacy notice to customers required.

(a)(1)

General rule.

Annually

(2)

Example.

(b)(1)

Termination of customer relationship.

(2)

Examples in the case of financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.

(i) In the case of a deposit account, the account is inactive under your policies;

(ii) In the case of a closed-end loan, the customer pays the loan in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(iii) In the case of a credit card relationship or other open-end credit relationship, you no longer provide any statements or notices to the customer concerning that relationship or you sell the credit card receivables without retaining servicing rights; or

(iv) You have not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(3)

Examples in the case of covered entities subject to FTC enforcement jurisdiction.

(i) In the case of a closed-end loan, the customer pays the loan in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(ii) In the case of a credit card relationship or other open-end credit relationship, you sell the receivables without retaining servicing rights;

(iii) In the case of credit counseling services, the customer has failed to make required payments under a debt management plan, has been notified that the plan is terminated, and you no longer provide any statements or notices to the customer concerning that relationship;

(iv) In the case of mortgage or vehicle loan brokering services, your customer has obtained a loan through you (and you no longer provide any statements or notices to the customer concerning that relationship), or has ceased using your services for such purposes;

(v) In the case of tax preparation services, you have provided and received payment for the service and no longer provide any statements or notices to the customer concerning that relationship;

(vi) In the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, you have received payment, or you have completed all of your responsibilities with respect to the settlement, including filing documents on the public record, whichever is later; or

(vii) In cases where there is no definitive time at which the customer relationship has terminated, you have not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(4)

Examples in the case of a credit union.

- (i) The individual is no longer the credit union's member as defined in the credit union's bylaws;
- (ii) In the case of a nonmember's share or share draft account, the account is inactive under the credit union's policies;
- (iii) In the case of a nonmember's closed-end loan, the loan is paid in full, the credit union charges off the loan, or the credit union sells the loan without retaining servicing rights;
- (iii) In the case of a credit card relationship or other open-end credit relationship with a nonmember, the credit union no longer provides any statements or notices to the nonmember concerning that relationship, or the credit union sells the credit card receivables without retaining servicing rights; or
- (v) The credit union has not communicated with the nonmember about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(c)

Special rule for loans in the case of a financial institution other than a credit union.

(d)

Delivery.

(e)

Exception to annual privacy notice requirement

When exception available.

- (i) Provide nonpublic personal information to nonaffiliated third parties only in accordance with the provisions of § 1016.13, § 1016.14, or § 1016.15; and
- (ii) Have not changed your policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed to the customer under § 1016.6(a)(2) through (5) and (9) in the most recent privacy notice provided pursuant to this part.

(2)

Delivery of annual privacy notice after financial institution no longer meets requirements for

exception.

(i)

Changes preceded by a revised privacy notice.

(ii)

Changes not preceded by a revised privacy notice.

(iii)

Examples.

(B) You change your policies and practices in such a way that you no longer meet the requirements of paragraph (e)(1) of this section, and so provide an annual notice to your customers. After providing the annual notice to your customers, you once again

[76 FR 79028, Dec. 21, 2011, as amended by CFPB-2016-0032, 83 FR 40958, Aug. 17, 2018]

§ 1016.6

Information to be included in privacy notices.

(a)

General rule.

(1) The categories of nonpublic personal information that you collect;

(2) The categories of nonpublic personal information that you disclose;

(3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under §§ 1016.14 and 1016.15 of this part;

(4) The categories of nonpublic personal information about your former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your former customers, other than those parties to whom you disclose information under §§ 1016.14 and 1016.15;

(5) If you disclose nonpublic personal information to a nonaffiliated third party under § 1016.13 (and no other exception in § 1016.14 or § 1016.15 applies to that disclosure), a separate statement of the

categories of information you disclose and the categories of third parties with whom you have contracted;

(6) An explanation of the consumer's right under § 1016.10(a) of this part to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right at that time;

(7) Any disclosures that you make under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(8) Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosure that you make under paragraph (b) of this section.

(b)

Description of nonaffiliated third parties subject to exceptions.

(1) For your everyday business purposes, such as []
include all that apply

(2) As permitted by law.

(c)

Examples

Categories of nonpublic personal information that you collect.

(i) Information from the consumer;

(ii) Information about the consumer's transactions with you or your affiliates;

(iii) Information about the consumer's transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

(2)

Categories of nonpublic personal information you disclose.

(ii) If you reserve the right to disclose all of the nonpublic personal information about consumers that

you collect, you may simply state that fact without describing the categories or

(3)

Categories of affiliates and nonaffiliated third parties to whom you disclose.

(i) Financial service providers, followed by illustrative examples such as mortgage bankers, securities broker-dealers, and insurance agents;

(ii) Non-financial companies, followed by illustrative examples such as retailers, magazine publishers, airlines, and direct marketers; and

(iii) Others, followed by examples such as nonprofit organizations.

(4)

Disclosures under exception for service providers and joint marketers.

(i) List the categories of nonpublic personal information you disclose, using the same categories and examples you used to meet the requirements of paragraph (a)(2) of this section, as applicable; and

(ii) State whether the third party is:

(A) A service provider that performs marketing services on your behalf or on behalf of you and another financial institution; or

(B) A financial institution with whom you have a joint marketing agreement.

(5)

Simplified notices.

(6)

Confidentiality and security.

(i) Describe in general terms who is authorized to have access to the information; and

(ii) State whether you have security practices and procedures in place to ensure the confidentiality of the information in accordance with your policy. You are not required to describe technical information about the safeguards you use.

(d)

Short-form initial notice with opt out notice for non-customers.

(2) A short-form initial notice must:

(i) Be clear and conspicuous;

(ii) State that your privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(3) You must deliver your short-form initial notice according to § 1016.9. You are not required to deliver your privacy notice with your short-form initial notice. You instead may simply provide the consumer a reasonable means to obtain your privacy notice. If a consumer who receives your short-form notice requests your privacy notice, you must deliver your privacy notice according to § 1016.9.

(4)

Examples of obtaining privacy notice.

(i) Provide a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at your office, maintain copies of the notice on hand that you provide to the consumer immediately upon request.

(e)

Future disclosures.

(1) Categories of nonpublic personal information that you reserve the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal information.

(f)

Model privacy form.

§ 1016.7

Form of opt out notice to consumers; opt out methods.

(a)(1)

Form of opt out notice.

- (i) That you disclose or reserve the right to disclose nonpublic personal information about your consumer to a nonaffiliated third party;
- (ii) That the consumer has the right to opt out of that disclosure; and
- (iii) A reasonable means by which the consumer may exercise the opt out right.

(2)

Examples

Adequate opt out notice.

- (A) Identify all of the categories of nonpublic personal information that you disclose or reserve the right to disclose, and all of the categories of nonaffiliated third parties to which you disclose the information, as described in § 1016.6(a)(2) and (3) of this part, and state that the consumer can opt out of the disclosure of that information; and
- (B) Identify the financial products or services that the consumer obtains from you, either singly or jointly, to which the opt out direction would apply.

(ii)

Reasonable opt out means.

- (A) Designate check-off boxes in a prominent position on the relevant forms with the opt out notice;
- (B) Include a reply form together with the opt out notice that, in the case of financial institutions described in § 1016.3(l)(3) of this part, includes the address to which the form should be mailed;
- (C) Provide an electronic means to opt out, such as a form that can be sent via electronic mail or a process at your Web site, if the consumer agrees to the electronic delivery of information; or
- (D) Provide a toll-free telephone number that consumers may call to opt out.

(iii)

Unreasonable opt out means.

do not

- (A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that you provided with the initial notice but did not include with the subsequent notice.

(iv)

Specific opt out means.

(b)

Same form as initial notice permitted.

(c)

Initial notice required when opt out notice delivered subsequent to initial notice.

(d)

Joint relationships in the case of financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.

(1) If two or more consumers jointly obtain a financial product or service from you, you may provide a single opt out notice. Your opt out notice must explain how you will treat an opt out

(2) Any of the joint consumers may exercise the right to opt out. You may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers;
or

(ii) Permit each joint consumer to opt out separately.

(3) If you permit each joint consumer to opt out separately, you must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) You may not require

all

any

(5)

Example.

(i) Send a single opt out notice to John's address, but you must accept an opt out direction from

either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If you do so, and John opts out, you may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If you do so:

(A) You must permit John and Mary to opt out for each other;

(B) If both opt out, you must permit both to notify you in a single response (such as on a form or through a telephone call); and

(C) If John opts out and Mary does not, you may only disclose nonpublic personal information about Mary, but not about John and not about John and Mary jointly.

(e)

Joint relationships in the case of credit unions.

(2) Any of the joint consumers may exercise the right to opt out. A credit union may either:

(i) Treat an opt out direction by a joint consumer to apply to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If a credit union permits each joint consumer to opt out separately, the credit union must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) A credit union may not require all joint consumers to opt out before the credit union implements any opt out direction.

(5)

Example.

(i) Send a single opt out notice to John's address, but it must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If it does so, and John opts out, it may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If it does so, and if John and Mary both opt out, it must permit one or both of them to notify it in a single response (such as on a form or through a telephone call).

(6)

Special rule for loans.

(ii) A credit union may satisfy its annual opt out notice requirement by providing one notice to those borrowers and guarantors jointly.

(f)

Joint relationships in the case of covered entities subject to FTC enforcement

(1) If two or more consumers jointly obtain a financial product or service from you, you may provide a single opt out notice, unless one or more of those consumers requests a separate opt out notice. Your opt out notice must explain how you will treat an opt out direction by a joint consumer (as explained in paragraph (f)(5) of this section).

(2) Any of the joint consumers may exercise the right to opt out. You may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers;
or

(ii) Permit each joint consumer to opt out separately.

(3) If you permit each joint consumer to opt out separately, you must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) You may not require

all

any

(5)

Example.

(i) Send a single opt out notice to John's address, but you must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If you do so, and John opts out, you may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If you do so:

(A) You must permit John and Mary to opt out for each other;

(B) If both opt out, you must permit both to notify you in a single response (such as on a form or through a telephone call); and

(C) If John opts out and Mary does not, you may only disclose nonpublic personal information about Mary, but not about John and not about John and Mary jointly.

(g)

Time to comply with opt out.

(h)

Continuing right to opt out.

(i)

Duration of consumer's opt out direction.

(2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal information that you collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with you, the opt out direction that applied to the former relationship does not apply to the new relationship.

(j)

Delivery.

(k)

Model privacy form.

§ 1016.8

Revised privacy notices.

(a)

General rule.

- (1) You have provided to the consumer a clear and conspicuous revised notice that accurately describes your policies and practices;
 - (2) You have provided to the consumer a new opt out notice;
 - (3) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and
 - (4) The consumer does not opt out.
- (b)

Examples.

- (i) Disclose a new category of nonpublic personal information to any nonaffiliated third party;
 - (ii) Disclose nonpublic personal information to a new category of nonaffiliated third party; or
 - (iii) Disclose nonpublic personal information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.
- (2) A revised notice is not required if you disclose nonpublic personal information to a new nonaffiliated third party that you adequately described in your prior notice.
- (c)

Delivery.

§ 1016.9

Delivering privacy and opt out notices.

(a)

How to provide notices.

(b)(1)

Examples of reasonable expectation of actual notice.

- (i) Hand-deliver a printed copy of the notice to the consumer;
- (ii) Mail a printed copy of the notice to the last known address of the consumer;

(iii) For the consumer who conducts transactions electronically:

(A) In the case of financial institutions other than those described in § 1016.3(l)(3) of this part, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service; or

(B) In the case of financial institutions described in § 1016.3(l)(3), clearly and conspicuously post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service;

(iv) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2)

Examples of unreasonable expectation of actual notice.

not,

(i) Only post a sign in your branch or office or generally publish advertisements of your privacy policies and practices; or

(ii) Send the notice via electronic mail to a consumer who does not obtain a financial product or service from you electronically.

(c)

Annual notices only.

(1) The customer uses your website to access financial products and services electronically and agrees to receive notices at the website, and you post your current privacy notice continuously in a clear and conspicuous manner on the website; or

(2) The customer has requested that you refrain from sending any information regarding the customer relationship, and your current privacy notice remains available to the customer upon request.

(d)

Oral description of notice insufficient.

(e)

Retention or accessibility of notices for customers.

(2)

Examples of retention or accessibility.

(i) Hand-deliver a printed copy of the notice to the customer;

(ii) Mail a printed copy of the notice to the last known address of the customer, or, in the case of credit unions, mail a printed copy of the notice to the last known address of the customer upon request of the customer; or

(iii) Make your current privacy notice available on a Web site (or a link to another Web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the Web site.

(f)

Joint notice with other financial institutions.

(g)

Joint relationships in the case of financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.

(h)

Joint relationships in the case of covered entities subject to FTC enforcement jurisdiction.

(i)

Joint relationships in the case of credit unions.

(2)

Special rule for loans in the case of credit unions.

(ii) A credit union may satisfy the annual notice requirements of § 1016.5 by providing one notice to those borrowers and guarantors jointly.

[76 FR 79028, Dec. 21, 2011, as amended at 79 FR 64081, Oct. 28, 2014; CFPB-2016-0032, 83 FR

40959, Aug. 17, 2018]

Subpart B Limits on Disclosures

§ 1016.10

Limits on disclosure of nonpublic personal information to nonaffiliated third parties.

(a)(1)

Conditions for disclosure.

- (i) You have provided to the consumer an initial notice as required under § 1016.4 of this part;
- (ii) You have provided to the consumer an opt out notice as required in § 1016.7 of this part;
- (iii) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and
- (iv) The consumer does not opt out.

(2)

Opt out definition.

(3)

Examples of reasonable opportunity to opt out.

(i)

By mail.

(ii)

By electronic means.

(iii)

Isolated transaction with consumer.

(b)

Application of opt out to all consumers and all nonpublic personal information.

- (2) Unless you comply with this section, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that you have collected, regardless of whether you collected it before or after receiving the direction to opt out from the consumer.

(c)

Partial opt out.

§ 1016.11

Limits on redisclosure and reuse of information.

(a)(1)

Information you receive under an exception.

(i) You may disclose the information to the affiliates of the financial institution from which you received the information;

(ii) You may disclose the information to your affiliates, but your affiliates may, in turn, disclose and use the information only to the extent that you may disclose and use the information; and

(iii) You may disclose and use the information pursuant to an exception in § 1016.14 or § 1016.15 in the ordinary course of business to carry out the activity covered by the exception under which you received the information.

(2)

Example.

(b)(1)

Information you receive outside of an exception.

(i) To the affiliates of the financial institution from which you received the information;

(ii) To your affiliates, but your affiliates may, in turn, disclose the information only to the extent that you can disclose the information; and

(iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which you received the information.

(2)

Example.

(i) You may use that list for your own purposes; and

(ii) You may disclose that list to another nonaffiliated third party only if the financial institution from

which you purchased the list could have lawfully disclosed the list to that third party. That is, you may disclose the list in accordance with the privacy policy of the financial institution from

(c)

Information you disclose under an exception.

(1) The third party may disclose the information to your affiliates;

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) The third party may disclose and use the information pursuant to an exception in § 1016.14 or § 1016.15 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(d)

Information you disclose outside of an exception.

(1) To your affiliates;

(2) To its affiliates, but its affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(3) To any other person, if the disclosure would be lawful if you made it directly to that person.

§ 1016.12

Limits on sharing account number information for marketing purposes.

(a)

General prohibition on disclosure of account numbers.

(b)

Exceptions.

(1) To your agent or service provider solely in order to perform marketing for your own products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; or

(2) To a participant in a private label credit card program or an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(c)

Examples

Account number.

(2)

Transaction account.

Subpart C Exceptions

§ 1016.13

Exception to opt out requirements for service providers and joint marketing.

(a)

General rule.

(i) Provide the initial notice in accordance with § 1016.4; and

(ii) Enter into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which you disclosed the information, including use under an exception in § 1016.14 or § 1016.15 in the ordinary course of business to carry out those purposes.

(2)

Example.

(b)

Service may include joint marketing.

(c)

Definition of joint agreement.

§ 1016.14

Exceptions to notice and opt out requirements for processing and servicing transactions.

(a)

Exceptions for processing transactions at consumer's request.

(1) Servicing or processing a financial product or service that a consumer requests or authorizes;

(2) Maintaining or servicing the consumer's account with you, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(3) A proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer.

(b)

Necessary to effect, administer, or enforce a transaction

(1) Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the financial service or financial product;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;

(v) To underwrite insurance at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments,

processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or state law; or

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or account number, or by other payment means;

(B) The transfer of receivables, accounts, or interests therein; or

(C) The audit of debit, credit, or other payment information.

§ 1016.15

Other exceptions to notice and opt out requirements.

(a)

Exceptions to opt out requirements.

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2)(i) To protect the confidentiality or security of your records pertaining to the consumer, service, product, or transaction;

(ii) To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants, and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance

with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401

et seq.

(5)(i) To a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681

et seq.

(ii) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(7)(i) To comply with Federal, state, or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by Federal, state, or local authorities; or

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over you for examination, compliance, or other purposes as authorized by law.

(b)

Examples of consent and revocation of consent.

(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 1016.7(h) of this part.

Subpart DRelation to Other Laws

§ 1016.16

Protection of Fair Credit Reporting Act.

Nothing in this part shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681

et seq.

§ 1016.17

Relation to state laws.

(a)

In general.

(b)

Greater protection under state law.

Pt. 1016, App.

Appendix to Part 1016 Model Privacy Form

A. The Model Privacy Form

ER21DE11.058

ER21DE11.059

ER21DE11.060

ER21DE11.061

ER21DE11.062

ER21DE11.063

ER21DE11.064

B. General Instructions

1. How the Model Privacy Form Is Used

(a) The model form may be used, at the option of a financial institution, including a group of financial institutions that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in §§ 1016.6 and 1016.7 of this part.

(b) The model form is a standardized form, including page layout, content, format, style, pagination, and shading. Institutions seeking to obtain the safe harbor through use of the model form may modify it only as described in these Instructions.

(c) Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681-1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated

third parties.

(d) The word customer may be replaced by the word member whenever it appears in the model form, as appropriate.

2. The Contents of the Model Privacy Form

The model form consists of two pages, which may be printed on both sides of a single sheet of paper, or may appear on two separate pages. Where an institution provides a long list of institutions at the end of the model form in accordance with Instruction C.3(a)(1), or provides additional information in accordance with Instruction C.3(c), and such list or additional information exceeds the space available on page two of the model form, such list or additional information may extend to a third page.

(a)

Page One.

(1) Date last revised (upper right-hand corner).

(2) Title.

(3) Key frame (Why?, What?, How?).

(4) Disclosure table (Reasons we can share your personal information).

(5) To limit our sharing box, as needed, for the financial institution's opt-out information.

(6) Questions box, for customer service contact information.

(7) Mail-in opt-out form, as needed.

(b)

Page Two.

(1) Heading (Page 2).

(2) Frequently Asked Questions (Who we are and What we do).

(3) Definitions.

(4) Other important information box, as needed.

3. The Format of the Model Privacy Form

The format of the model form may be modified only as described below.

(a)

Easily readable type font.

(b)

Logo.

(c)

Page size and orientation.

(d)

Color.

(e)

Languages.

C. Information Required in the Model Privacy Form

The information in the model form may be modified only as described below:

1. Name of the Institution or Group of Affiliated Institutions Providing the Notice

Insert the name of the financial institution providing the notice or a common identity of affiliated institutions jointly providing the notice on the form wherever [name of financial institution] appears.

2. Page One

(a)

Last revised date.

(b)

General instructions for the What? box.

(1) The bulleted list identifies the types of personal information that the institution collects and shares. All institutions must use the term Social Security number in the first bullet.

(2) Institutions must use five (5) of the following terms to complete the bulleted list: Income; account balances; payment history; transaction history; transaction or loss history; credit history; credit scores; assets; investment experience; credit-based insurance scores; insurance claim history;

medical information; overdraft history; purchase history; account transactions; risk tolerance; medical-related debts; credit card or other debt; mortgage rates and payments; retirement assets; checking account information; employment information; wire transfer instructions.

(c)

General instructions for the disclosure table.

See

(d)

Specific disclosures and corresponding legal provisions.

(1)

For our everyday business purposes.

(2)

For our marketing purposes.

(3)

For joint marketing with other financial companies.

(4)

For our affiliates' everyday business purposesinformation about transactions and experiences.

(5)

For our affiliates' everyday business purposesinformation about creditworthiness.

(6)

For our affiliates to market to you.

(7)

For nonaffiliates to market to you.

(e)

To limit our sharing:

only

(f)

Questions box.

(g)

Mail-in opt-out form.

only

see

see

(1)

Joint accountholder.

(2)

FCRA section 603(d)(2)(A)(iii) opt-out.

(3)

FCRA section 624 opt-out.

(4)

Nonaffiliate opt-out.

(5)

Additional opt-outs.

or

(h)

Barcodes.

3. Page Two

(a)

General Instructions for the Questions.

(1)

Who is providing this notice?

(2)

How does [name of financial institution] protect my personal information?

(3)

How does [name of financial institution] collect my personal information?

(4)

Why can't I limit all sharing?

Other important information

(5)

What happens when I limit sharing for an account I hold jointly with someone else?

(b)

General Instructions for the Definitions.

(1)

Affiliates.

affiliate information

(i) If it has no affiliates, state:

[name of financial institution] has no affiliates;

(ii) If it has affiliates but does not share personal information, state:

[name of financial institution] does not share with our affiliates

(iii) If it shares with its affiliates, state, as applicable:

Our affiliates include companies with a [common corporate identity of financial institution] name; financial companies such as [insert illustrative list of companies]; nonfinancial companies, such as [insert illustrative list of companies]; and others, such as [insert illustrative list].

(2)

Nonaffiliates.

nonaffiliate information

(i) If it does not share with nonaffiliated third parties, state:

[name of financial institution] does not share with nonaffiliates so they can market to you

(ii) If it shares with nonaffiliated third parties, state, as applicable:

Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations].

(3)

Joint Marketing.

joint marketing

(i) If it does not engage in joint marketing, state:

[name of financial institution] doesn't jointly market

(ii) If it shares personal information for joint marketing, state, as applicable:

Our joint marketing partners include [list categories of companies such as credit card companies].

(c)

General instructions for the Other important information box.

(1) State and/or international privacy law information; and/or

(2) Acknowledgment of receipt form.

Pt. 1022

PART 1022FAIR CREDIT REPORTING (REGULATION V)

Subpart AGeneral Provisions

Sec.

1022.1

Purpose, scope, and model forms and disclosures.

1022.2

Examples.

1022.3

Definitions.

Subpart B [Reserved]

Subpart CAffiliate Marketing

1022.20

Coverage and definitions.

1022.21

Affiliate marketing opt-out and exceptions.

1022.22

Scope and duration of opt-out.

1022.23

Contents of opt-out notice; consolidated and equivalent notices.

1022.24

Reasonable opportunity to opt out.

1022.25

Reasonable and simple methods of opting out.

1022.26

Delivery of opt-out notices.

1022.27

Renewal of opt-out.

Subpart DMedical Information

1022.30

Obtaining or using medical information in connection with a determination of eligibility for credit.

1022.31

Limits on redisclosure of information.

1022.32

Sharing medical information with affiliates.

Subpart EDuties of Furnishers of Information

1022.40

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1022.42

Reasonable policies and procedures concerning the accuracy and integrity of furnished information.

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1022.50-1022.53

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Duties of users making written firm offers of credit or insurance based on information contained in consumer files.

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Subpart H Duties of Users Regarding Risk-Based Pricing

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Scope.

1022.71

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General requirements for risk-based pricing notices.

1022.73

Content, form, and timing of risk-based pricing notices.

1022.74

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1022.75

Rules of construction.

Subpart I Duties of Users of Consumer Reports Regarding Identity Theft

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[Reserved]

1022.82

Duties of users regarding address discrepancies.

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Subpart MDuties of Consumer Reporting Agencies Regarding Identity Theft

1022.120

[Reserved]

1022.121

Active duty alerts.

1022.122

[Reserved]

1022.123

Proof of identity.

Subpart NDuties of Consumer Reporting Agencies Regarding Disclosures to Consumers

1022.130

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1022.131-1022.135

[Reserved]

1022.136

Centralized source for requesting annual file disclosures from nationwide consumer reporting agencies.

1022.137

Streamlined process for requesting annual file disclosures from nationwide specialty consumer reporting agencies.

1022.138

Prevention of deceptive marketing of free credit reports.

Subpart OMiscellaneous Duties of Consumer Reporting Agencies

1022.140

Prohibition against circumventing or evading treatment as a consumer reporting agency.

1022.141

Reasonable charges for certain disclosures.

1022.142

Prohibition on inclusion of adverse information in consumer reporting in cases of human trafficking.

Appendix A to Part 1022 [Reserved]

Appendix B to Part 1022Model Notices of Furnishing Negative Information

Appendix C to Part 1022Model Forms for Opt-Out Notices

Appendix D to Part 1022Model Forms for Firm Offers of Credit or Insurance

Appendix E to Part 1022 Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies

Appendices F-G to Part 1022 [Reserved]

Appendix H to Part 1022Model Forms for Risk-Based Pricing and Credit Score Disclosure Exception Notices

Appendix I to Part 1022Summary of Consumer Identity Theft Rights

Appendix J to Part 1022 [Reserved]

Appendix K to Part 1022Summary of Consumer Rights

Appendix L to Part 1022Standardized Form for Requesting Annual File Disclosures

Appendix M to Part 1022Notice of Furnisher Responsibilities

Appendix N to Part 1022Notice of User Responsibilities

Appendix O to Part 1022Reasonable Charges for Certain Disclosures

Authority:

12 U.S.C. 5512, 5581; 15 U.S.C. 1681a, 1681b, 1681c, 1681c-1, 1681c-3, 1681e, 1681g, 1681i,

1681j, 1681m, 1681s, 1681s-2, 1681s-3, and 1681t; Sec. 214, Pub. L. 108-159, 117 Stat. 1952.

Source:

76 FR 79312, Dec. 21, 2011, unless otherwise noted.

Subpart A General Provisions

§ 1022.1

Purpose, scope, and model forms and disclosures.

(a)

Purpose.

(b)

Scope.

(2)

Institutions covered.

(ii) For purposes of appendix B to this part, financial institutions as defined in section 509 of the Gramm-Leach-Bliley Act (12 U.S.C. 6809), may use the model notices in appendix B to this part to comply with the notice requirement in section 623(a)(7) of the FCRA (15 U.S.C. 1681s-2(a)(7)).

(c)

Model forms and disclosures

Use.

(2)

Definition. Substantially similar

§ 1022.2

Examples.

The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.

§ 1022.3

Definitions.

For purposes of this part, unless explicitly stated otherwise:

(a)

Act

et seq.

(b)

Affiliate

(c) [Reserved]

(d)

Common ownership or common corporate control

(1) One company has, with respect to the other company:

(i) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of a company, directly or indirectly, or acting through one or more other persons;

(ii) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of a company; or

(iii) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a company, as determined by the applicable prudential regulator (as defined in 12 U.S.C. 5481(24)) (a credit union is presumed to have a controlling influence over the management or policies of a credit union service corporation if the credit union service corporation is 67% owned by credit unions) or, where there is no prudential regulator, by the Bureau; or

(2) Any other person has, with respect to both companies, a relationship described in paragraphs (d)(1)(i) through (d)(1)(ii).

(e)

Company

(f)

Consumer

(g)

Identifying information

(1) Name, social security number, date of birth, official state or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number;

(2) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

(3) Unique electronic identification number, address, or routing code; or

(4) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)).

(h)

Identity theft

(i)(1)

Identity theft report

(i) That alleges identity theft with as much specificity as the consumer can provide;

(ii) That is a copy of an official, valid report filed by the consumer with a Federal, state, or local law enforcement agency, including the United States Postal Inspection Service, the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information, if, in fact, the information in the report is false; and

(iii) That may include additional information or documentation that an information furnisher or consumer reporting agency reasonably requests for the purpose of determining the validity of the alleged identity theft, provided that the information furnisher or consumer reporting agency:

(A) Makes such request not later than fifteen days after the date of receipt of the copy of the report form identified in Paragraph (i)(1)(ii) of this section or the request by the consumer for the particular service, whichever shall be the later;

(B) Makes any supplemental requests for information or documentation and final determination on the acceptance of the identity theft report within another fifteen days after its initial request for

information or documentation; and

(C) Shall have five days to make a final determination on the acceptance of the identity theft report, in the event that the consumer reporting

(2) Examples of the specificity referenced in Paragraph (i)(1)(i) of this section are provided for illustrative purposes only, as follows:

(i) Specific dates relating to the identity theft such as when the loss or theft of personal information occurred or when the fraud(s) using the personal information occurred, and how the consumer discovered or otherwise learned of the theft.

(ii) Identification information or any other information about the perpetrator, if known.

(iii) Name(s) of information furnisher(s), account numbers, or other relevant account information related to the identity theft.

(iv) Any other information known to the consumer about the identity theft.

(3) Examples of when it would or would not be reasonable to request additional information or documentation referenced in Paragraph (i)(1)(iii) of this section are provided for illustrative purposes only, as follows:

(i) A law enforcement report containing detailed information about the identity theft and the signature, badge number or other identification information of the individual law enforcement official taking the report should be sufficient on its face to support a victim's request. In this case, without an identifiable concern, such as an indication that the report was fraudulent, it would not be reasonable for an information furnisher or consumer reporting agency to request additional information or documentation.

(ii) A consumer might provide a law enforcement report similar to the report in Paragraph (i)(1) of this section but certain important information such as the consumer's date of birth or Social Security number may be missing because the consumer chose not to provide it. The information furnisher or consumer reporting agency could accept this report, but it would be reasonable to require that the consumer provide the missing information. The Bureau's Identity Theft Affidavit is available on the

Bureau's Web site (

consumerfinance.gov/learnmore

ftc.gov/idtheft

(iii) A consumer might provide a law enforcement report generated by an automated system with a simple allegation that an identity theft occurred to support a request for a tradeline block or cessation of information furnishing. In such a case, it would be reasonable for an information furnisher or consumer reporting agency to ask that the consumer fill out and have notarized the Bureau's Identity Theft Affidavit or a similar form and provide some form of identification documentation.

(iv) A consumer might provide a law enforcement report generated by an automated system with a simple allegation that an identity theft occurred to support a request for an extended fraud alert. In this case, it would not be reasonable for a consumer reporting agency to require additional documentation or information, such as a notarized affidavit.

(j) [Reserved]

(k)

Medical information

(1) Information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to:

(i) The past, present, or future physical, mental, or behavioral health or condition of an individual;

(ii) The provision of health care to an individual; or

(iii) The payment for the provision of health care to an individual.

(2) The term does not include:

(i) The age or gender of a consumer;

(ii) Demographic information about the consumer, including a consumer's residence address or email address;

(iii) Any other information about a consumer that does not relate to the physical, mental, or

behavioral health or condition of a consumer, including the existence or value of any insurance policy; or

(iv) Information that does not identify a specific consumer.

(l)

Person

Subpart B [Reserved]

Subpart C Affiliate Marketing

§ 1022.20

Coverage and definitions.

(a)

Coverage.

(b)

Definitions.

(1)

Clear and conspicuous.

(2)

Concise

In general.

(ii)

Combination with other required disclosures.

(3)

Eligibility information.

(4)

Pre-existing business relationship

In general.

(A) A financial contract between the person and the consumer which is in force on the date on which

the consumer is sent a solicitation covered by this subpart;

(B) The purchase, rental, or lease by the consumer of the person's goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and the person, during the 18-month period immediately preceding the date on which the consumer is sent a solicitation covered by this subpart; or

(C) An inquiry or application by the consumer regarding a product or service offered by that person during the three-month period immediately preceding the date on which the consumer is sent a solicitation covered by this subpart.

(ii)

Examples of pre-existing business relationships.

(B) If a consumer obtained a certificate of deposit from a financial institution, but did not renew the certificate at maturity, the financial institution has a pre-existing business relationship with the consumer and can use eligibility information it receives from its affiliates to make solicitations to the consumer about its products or services for 18 months after the date of maturity of the certificate of deposit.

(C) If a consumer obtains a mortgage, the mortgage lender has a pre-existing business relationship with the consumer. If the mortgage lender sells the consumer's entire loan to an investor, the mortgage lender has a pre-existing business relationship with the consumer and can use eligibility information it receives from its affiliates to make solicitations to the consumer about its products or services for 18 months after the date it sells the loan, and the investor has a pre-existing business relationship with the consumer upon purchasing the loan. If, however, the mortgage lender sells a fractional interest in the consumer's

(D) If a consumer applies to a financial institution for a product or service that it offers, but does not obtain a product or service from or enter into a financial contract or transaction with the institution, the financial institution has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from an affiliate to make solicitations to the consumer about its

products or services for three months after the date of the application.

(E) If a consumer makes a telephone inquiry to a financial institution about its products or services and provides contact information to the institution, but does not obtain a product or service from or enter into a financial contract or transaction with the institution, the financial institution has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services for three months after the date of the inquiry.

(F) If a consumer makes an inquiry to a financial institution by email about its products or services, but does not obtain a product or service from or enter into a financial contract or transaction with the institution, the financial institution has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services for three months after the date of the inquiry.

(G) If a consumer has an existing relationship with a financial institution that is part of a group of affiliated companies, makes a telephone call to the centralized call center for the group of affiliated companies to inquire about products or services offered by the insurance affiliate, and provides contact information to the call center, the call constitutes an inquiry to the insurance affiliate that offers those products or services. The insurance affiliate has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from its affiliated financial institution to make solicitations to the consumer about its products or services for three months after the date of the inquiry.

(iii)

Examples where no pre-existing business relationship is created.

(B) If a consumer who has a deposit account with a financial institution makes a telephone call to an affiliate of the institution to ask about the affiliate's retail locations and hours, but does not make an inquiry about the affiliate's products or services, the call does not constitute an inquiry and does not establish a pre-existing business relationship between the consumer and the affiliate. Also, the

affiliate's capture of the consumer's telephone number does not constitute an inquiry and does not establish a pre-existing business relationship between the consumer and the affiliate.

(C) If a consumer makes a telephone call to a financial institution in response to an advertisement that offers a free promotional item to consumers who call a toll-free number, but the advertisement does not indicate that the

(5)

Solicitation

In general.

(A) Based on eligibility information communicated to that person by its affiliate as described in this subpart; and

(B) Intended to encourage the consumer to purchase or obtain such product or service.

(ii)

Exclusion of marketing directed at the general public.

(iii)

Examples of solicitations.

(6)

You

§ 1022.21

Affiliate marketing opt-out and exceptions.

(a)

Initial notice and opt-out requirement

In general.

(i) It is clearly and conspicuously disclosed to the consumer in writing or, if the consumer agrees, electronically, in a concise notice that you may use eligibility information about that consumer received from an affiliate to make solicitations for marketing purposes to the consumer;

(ii) The consumer is provided a reasonable opportunity and a reasonable and simple method to opt

out, or prohibit you from using eligibility information to make solicitations for marketing purposes to the consumer; and

(iii) The consumer has not opted out.

(2)

Example.

(3)

Affiliates who may provide the notice.

(i) By an affiliate that has or has previously had a pre-existing business relationship with the consumer; or

(ii) As part of a joint notice from two or more members of an affiliated group of companies, provided that at least one of the affiliates on the joint notice has or has previously had a pre-existing business relationship with the consumer.

(b)

Making solicitations

In general.

(i) You receive eligibility information from an affiliate;

(ii) You use that eligibility information to do one or more of the following:

(A) Identify the consumer or type of consumer to receive a solicitation;

(B) Establish criteria used to select the consumer to receive a solicitation; or

(C) Decide which of your products or services to market to the consumer or tailor your solicitation to that consumer; and

(iii) As a result of your use of the eligibility information, the consumer is provided a solicitation.

(2)

Receiving eligibility information from an affiliate, including through a common database.

(3)

Receipt or use of eligibility information by your service provider.

(4)

Use by an affiliate of its own eligibility information.

- (i) Uses its own eligibility information that it obtained in connection with a pre-existing business relationship it has or had with the consumer to market your products or services to the consumer; or
- (ii) Directs its service provider to use the affiliate's own eligibility information that it obtained in connection with a pre-existing business relationship it has or had with the consumer to market your products or services to the consumer, and you do not communicate directly with the service provider regarding that use.

(5)

Use of eligibility information by a service provider

In general.

- (A) Your affiliate controls access to and use of its eligibility information by the service provider (including the right to establish the specific terms and conditions under which the service provider may use such information to market your products or services);
- (B) Your affiliate establishes specific terms and conditions under which the service provider may access and use the affiliate's eligibility information to market your products and services (or those of affiliates generally) to the consumer, such as the identity of the affiliated companies whose products or services may be marketed to the consumer by the service provider, the types of products or services of affiliated companies that may be marketed, and the number of times the consumer may receive marketing materials, and periodically evaluates the service provider's compliance with those terms and conditions;
- (C) Your affiliate requires the service provider to implement reasonable policies and procedures designed to ensure that the service provider uses the affiliate's eligibility information in accordance with the terms and conditions established by the affiliate relating to the marketing of your products or services;
- (D) Your affiliate is identified on or with the marketing materials provided to the consumer; and

(E) You do not directly use your affiliate's eligibility information in the manner described in paragraph (b)(1)(ii) of this section.

(ii)

Writing requirements.

(B) The specific terms and conditions established by your affiliate as provided in paragraph (b)(5)(i)(B) of this section must be set forth in writing.

(6)

Examples of making solicitations.

(ii) The same facts as in the example in paragraph (b)(6)(i) of this section, except that after using the eligibility information to identify the consumer to receive a solicitation about insurance products, the insurance company asks the financial institution to send the solicitation to the consumer and the financial institution does so. Pursuant to paragraph (b)(1) of this section, the insurance company has made a solicitation to the consumer because it used eligibility information about the consumer that it received from an affiliate to identify the consumer to receive a solicitation about its products or services, and, as a result, a solicitation was provided to the consumer about the insurance company's products.

(iii) The same facts as in the example in paragraph (b)(6)(i) of this section, except that eligibility information about consumers that have deposit accounts with the financial institution is placed into a common database that all members of the affiliated group of companies may independently access and use. Without using the financial institution's eligibility information, the insurance company develops selection criteria and provides those criteria, marketing materials, and related instructions to the financial institution. The financial institution reviews eligibility information about its own consumers using the selection criteria provided by the insurance company to determine which consumers should receive the insurance company's marketing materials and sends marketing materials about the insurance company's products to those consumers. Even though the insurance company has received eligibility information through the common database as provided in

paragraph (b)(2) of this section, it did not use that information to identify consumers or establish selection criteria; instead, the financial institution used its own eligibility information. Therefore, pursuant to paragraph (b)(4)(i) of this section, the insurance company has not made a solicitation to the consumer.

(iv) The same facts as in the example in paragraph (b)(6)(iii) of this section, except that the financial institution provides the insurance company's criteria to the financial institution's service provider and directs the service provider to use the financial institution's eligibility information to identify financial institution consumers who meet the criteria and to send the insurance company's marketing materials to those consumers. The insurance company does not communicate directly with the service provider regarding the use of the financial institution's information to market its products to the financial institution's consumers. Pursuant to paragraph (b)(4)(ii) of this section, the insurance company has not made a solicitation to the consumer.

(v) An affiliated group of companies includes a financial institution, an insurance company, and a service provider. Each affiliate in the group places information about its consumers into a common database. The service provider has access to all information in the common database. The financial institution controls access to and use of its eligibility information by the service provider. This control is set forth in a written agreement between the financial institution and the service provider. The written agreement also requires the service provider to establish reasonable policies and procedures designed to ensure that the service provider uses the financial institution's eligibility information in accordance with specific terms and conditions established by the financial institution relating to the marketing of the products and services of all affiliates, including the insurance company. In a separate written communication, the financial institution specifies the terms and conditions under which the service provider may use the financial institution's eligibility information to

(vi) The same facts as in the example in paragraph (b)(6)(v) of this section, except that the terms and conditions permit the service provider to use the financial institution's eligibility information to market the products and services of other affiliates to the financial institution's consumers whenever

the service provider deems it appropriate to do so. The service provider uses the financial institution's eligibility information in accordance with the discretion afforded to it by the terms and conditions. Because the terms and conditions are not specific, the requirements of paragraph (b)(5) of this section have not been satisfied.

(c)

Exceptions.

(1) To make a solicitation for marketing purposes to a consumer with whom you have a pre-existing business relationship;

(2) To facilitate communications to an individual for whose benefit you provide employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship or status of the individual as a participant or beneficiary of an employee benefit plan;

(3) To perform services on behalf of an affiliate, except that this subparagraph shall not be construed as permitting you to send solicitations on behalf of an affiliate if the affiliate would not be permitted to send the solicitation as a result of the election of the consumer to opt out under this subpart;

(4) In response to a communication about your products or services initiated by the consumer;

(5) In response to an authorization or request by the consumer to receive solicitations; or

(6) If your compliance with this subpart would prevent you from complying with any provision of state insurance laws pertaining to unfair discrimination in any state in which you are lawfully doing business.

(d)

Examples of exceptions

Example of the pre-existing business relationship

(2)

Examples of service provider exception.

(ii) The same facts as in paragraph (d)(2)(i) of this section, except the consumer has been given an opt-out notice, but has not elected to opt out. The financial institution asks a service provider to send the solicitation to the consumer on its behalf. The service provider may send the solicitation on behalf of the financial institution because, as a result of the consumer's not opting out, the financial institution is permitted to make the solicitation.

(3)

Examples of consumer-initiated communications.

(ii) A consumer who has a deposit account with a financial institution contacts the institution to request information about how to save and invest for a child's college education without specifying the type of product in which the consumer may be interested. Information about a range of different products or services offered by the financial institution and one or more affiliates of the institution may be responsive to that communication. Such products or services may include the following: mutual funds offered by the institution's mutual fund affiliate; section 529 plans offered by the institution, its mutual fund affiliate, or another securities affiliate; or trust services offered by a different financial institution in the affiliated group. Any affiliate offering investment products or services that would be responsive to the consumer's request for information about saving and investing for a child's college education may use eligibility information to make solicitations to the consumer in response to this communication.

(iii) A credit card issuer makes a marketing call to the consumer without using eligibility information received from an affiliate. The issuer leaves a voice-mail message that invites the consumer to call a toll-free number to apply for the issuer's credit card. If the consumer calls the toll-free number to inquire about the credit card, the call is a consumer-initiated communication about a product or service and the credit card issuer may now use eligibility information it receives from its affiliates to make solicitations to the consumer.

(iv) A consumer calls a financial institution to ask about retail locations and hours, but does not request information about products or services. The institution may not use eligibility information it

receives from an affiliate

(v) A consumer calls a financial institution to ask about retail locations and hours. The customer service representative asks the consumer if there is a particular product or service about which the consumer is seeking information. The consumer responds that the consumer wants to stop in and find out about certificates of deposit. The customer service representative offers to provide that information by telephone and mail additional information and application materials to the consumer. The consumer agrees and provides or confirms contact information for receipt of the materials to be mailed. The financial institution may use eligibility information it receives from an affiliate to make solicitations to the consumer about certificates of deposit because such solicitations would respond to the consumer-initiated communication about products or services.

(4)

Examples of consumer authorization or request for solicitations.

(ii) A consumer completes an online application to apply for a credit card from a credit card issuer. The issuer's online application contains a blank check box that the consumer may check to authorize or request information from the credit card issuer's affiliates. The consumer checks the box. The consumer has authorized or requested solicitations from the card issuer's affiliates.

(iii) A consumer completes an online application to apply for a credit card from a credit card issuer. The issuer's online application contains a pre-selected check box indicating that the consumer authorizes or requests information from the issuer's affiliates. The consumer does not deselect the check box. The consumer has not authorized or requested solicitations from the card issuer's affiliates.

(iv) The terms and conditions of a credit card account agreement contain preprinted boilerplate language stating that by applying to open an account the consumer authorizes or requests to receive solicitations from the credit card issuer's affiliates. The consumer has not authorized or requested solicitations from the card issuer's affiliates.

(e)

Relation to affiliate-sharing notice and opt-out.

§ 1022.22

Scope and duration of opt-out.

(a)

Scope of opt-out

In general.

(2)

Continuing relationship.

In general.

(A) A single continuing relationship or multiple continuing relationships that the consumer establishes with you or your affiliates, including continuing relationships established subsequent to delivery of the opt-out notice, so long as the notice adequately describes the continuing relationships covered by the opt-out; or

(B) Any other transaction between the consumer and you or your affiliates as described in the notice.

(ii)

Examples of continuing relationships.

(A) Opens a deposit or investment account with you or your affiliate;

(B) Obtains a loan for which you or your affiliate owns the servicing rights;

(C) Purchases an insurance product from you or your affiliate;

(D) Holds an investment product through you or your affiliate, such as when you act or your affiliate acts as a custodian for securities or for assets in an individual retirement arrangement;

(E) Enters into an agreement or understanding with you or your affiliate whereby you or your affiliate undertakes to arrange or broker a home mortgage loan for the consumer;

(F) Enters into a lease of personal property with you or your affiliate; or

(G) Obtains financial, investment, or economic advisory services from you or your affiliate for a fee.

(3)

No continuing relationship.

In general.

(ii)

Examples of isolated transactions.

(A) The consumer uses your or your affiliate's ATM to withdraw cash from an account at another financial institution; or

(B) You or your affiliate sells the consumer a cashier's check or money order, airline tickets, travel insurance, or traveler's checks in isolated transactions.

(4)

Menu of alternatives.

(5)

Special rule for a notice following termination of all continuing relationships

In general.

(ii)

Example.

(b)

Duration of opt-out.

(c)

Time of opt-out.

§ 1022.23

Contents of opt-out notice; consolidated and equivalent notices.

(a)

Contents of opt-out notice

In general.

(i) The name of the affiliate(s) providing the notice. If the notice is provided jointly by multiple

affiliates and each affiliate shares a common name, such as ABC, then the notice may indicate that it is being provided by multiple companies with the ABC name or multiple companies in the ABC group or family of companies, for example, by stating that the notice is provided by all of the ABC companies, the ABC banking, credit card, insurance, and securities companies, or by listing the name of each affiliate providing the notice. But if the affiliates providing the joint notice do not all share a common name, then the notice must either separately identify each affiliate by name or identify each of the common names used by those affiliates, for example, by stating that the notice is provided by all of the ABC and XYZ companies or by the ABC banking and credit card companies and the XYZ insurance companies;

(ii) A list of the affiliates or types of affiliates whose use of eligibility information is covered by the notice, which may include companies that become affiliates after the notice is provided to the consumer. If each affiliate covered by the notice shares a common name, such as ABC, then the notice may indicate that it applies to multiple companies with the ABC name or multiple companies in the ABC group or family of companies, for example, by stating that the notice is provided by all of the ABC companies, the ABC banking, credit card, insurance, and securities companies, or by listing the name of each affiliate providing the notice. But if the affiliates covered by the notice do not all share a common name, then the notice must either separately identify each covered affiliate by name or identify each of the common names used by those affiliates, for example, by stating that the notice applies to all of the ABC and XYZ companies or to the ABC banking and credit card companies and the XYZ insurance companies;

(iii) A general description of the types of eligibility information that may be used to make solicitations to the consumer;

(iv) That the consumer may elect to limit the use of eligibility information to make solicitations to the consumer;

(v) That the consumer's election will apply for the specified period of time stated in the notice and, if applicable, that the consumer will be allowed to renew the election once that period expires;

(vi) If the notice is provided to consumers who may have previously opted out, such as if a notice is provided to consumers annually, that the consumer who has chosen to limit solicitations does not need to act again until the consumer receives a renewal notice; and

(vii) A reasonable and simple method for the consumer to opt out.

(2)

Joint relationships.

(ii) The opt-out notice must explain how an opt-out direction by a joint consumer will be treated. An opt-out direction by a joint consumer may be treated as applying to all of the associated joint consumers, or each joint consumer may be permitted to opt out separately. If each joint consumer is permitted to opt out separately, one of the joint consumers must be permitted to opt out on behalf of all of the joint consumers and the joint consumers must be permitted to exercise their separate rights to opt out in a single response.

(iii) It is impermissible to require

all

any

(3)

Alternative contents.

(4)

Model notices.

(b)

Coordinated and consolidated notices.

(c)

Equivalent notices.

§ 1022.24

Reasonable opportunity to opt out.

(a)

In general.

(b)

Examples of a reasonable opportunity to opt out.

(1)

By mail.

(2)

By electronic means.

(ii) The opt-out notice is provided to the consumer by email where the consumer has agreed to receive disclosures by email from the person sending the notice. The consumer is given 30 days after the email is sent to elect to opt out by any reasonable means.

(3)

At the time of an electronic transaction.

(4)

At the time of an in-person transaction.

(5)

By including in a privacy notice.

§ 1022.25

Reasonable and simple methods of opting out.

(a)

In general.

(b)

Examples

Reasonable and simple opt-out methods.

(i) Designating a check-off box in a prominent position on the opt-out form;

(ii) Including a reply form and a self-addressed envelope together with the opt-out notice;

(iii) Providing an electronic means to opt out, such as a form that can be electronically mailed or

processed at a Web site, if the consumer agrees to the electronic delivery of information;

(iv) Providing a toll-free telephone number that consumers may call to opt out; or

(v) Allowing consumers to exercise all of their opt-out rights described in a consolidated opt-out notice that includes the privacy opt-out under the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 et seq.,

(2)

Opt-out methods that are not reasonable and simple.

do not

(i) Requiring the consumer to write his or her own letter;

(ii) Requiring the consumer to call or write to obtain a form for opting out, rather than including the form with the opt-out notice;

(iii) Requiring the consumer who receives the opt-out notice in electronic form only, such as through posting at a Web site, to opt out solely by paper mail or by visiting a different Web site without providing a link to that site.

(c)

Specific opt-out means.

§ 1022.26

Delivery of opt-out notices.

(a)

In general.

et seq.

(b)

Examples of reasonable expectation of actual notice.

(1) Hand-delivers a printed copy of the notice to the consumer;

(2) Mails a printed copy of the notice to the last known mailing address of the consumer;

(3) Provides a notice by email to a consumer who has agreed to receive electronic disclosures by

email from the affiliate providing the notice; or

(4) Posts the notice on the Web site at which the consumer obtained a product or service electronically and requires the consumer to acknowledge receipt of the notice.

(c)

Examples of no reasonable expectation of actual notice.

not

(1) Only posts the notice on a sign in a branch or office or generally publishes the notice in a newspaper;

(2) Sends the notice via email to a consumer who has not agreed to receive electronic disclosures by email from the affiliate providing the notice; or

(3) Posts the notice on a Web site without requiring the consumer to acknowledge receipt of the notice.

§ 1022.27

Renewal of opt-out.

(a)

Renewal notice and opt-out requirement

In general.

(i) The consumer has been given a renewal notice that complies with the requirements of this section and §§ 1022.24 through 1022.26 of this part, and a reasonable opportunity and a reasonable and simple method to renew the opt-out, and the consumer does not renew the opt-out; or

(ii) An exception in § 1022.21(c) of this part applies.

(2)

Renewal period.

(3)

Affiliates who may provide the notice.

- (i) By the affiliate that provided the previous opt-out notice, or its successor; or
- (ii) As part of a joint renewal notice from two or more members of an affiliated group of companies, or their successors, that jointly provided the previous opt-out notice.

(b)

Contents of renewal notice.

(1) The name of the affiliate(s) providing the notice. If the notice is provided jointly by multiple affiliates and each affiliate shares a common name, such as ABC, then the notice may indicate that it is being provided by multiple companies with the ABC name or multiple companies in the ABC group or family of companies, for example, by stating that the notice is provided by all of the ABC companies, the ABC banking, credit card, insurance, and securities companies, or by listing the name of each affiliate providing the notice. But if the affiliates providing the joint notice do not all share a common name, then the notice must either separately identify each affiliate by name or identify each of the common names used by those affiliates, for example, by stating that the notice is provided by all of the ABC and XYZ companies or by the ABC banking and credit card companies and the XYZ insurance companies;

(2) A list of the affiliates or types of affiliates whose use of eligibility information is covered by the notice, which may include companies that become affiliates after the notice is provided to the consumer. If each affiliate covered by the notice shares a common name, such as ABC, then the notice may indicate that it applies to multiple companies with the ABC name or multiple companies in the ABC group or family of companies, for example, by stating that the notice is provided by all of the ABC companies, the ABC banking, credit card, insurance, and securities companies, or by listing the name of each affiliate providing the notice. But if the affiliates covered by the notice do not all share a common name, then the notice must either separately identify each covered affiliate by name or identify each of the common names used by those affiliates, for example, by stating that the notice applies to all of the ABC and XYZ companies or to the ABC banking and credit card companies and the XYZ insurance companies;

- (3) A general description of the types of eligibility information that may be used to make solicitations to the consumer;
- (4) That the consumer previously elected to limit the use of certain information to make solicitations to the consumer;
- (5) That the consumer's election has expired or is about to expire;
- (6) That the consumer may elect to renew the consumer's previous election;
- (7) If applicable, that the consumer's election to renew will apply for the specified period of time stated in the notice and that the consumer will be allowed to renew the election once that period expires; and
- (8) A reasonable and simple method for the consumer to opt out.

(c)

Timing of the renewal notice

In general.

- (i) A reasonable period of time before the expiration of the opt-out period; or
- (ii) Any time after the expiration of the opt-out period but before solicitations that would have been prohibited by the expired opt-out are made to the consumer.

(2)

Combination with annual privacy notice.

et seq.,

(d)

No effect on opt-out period.

Subpart DMedical Information

§ 1022.30

Obtaining or using medical information in connection with a determination of eligibility for credit.

(a)

Scope.

(b)

General prohibition on obtaining or using medical information

In general.

(2)

Definitions.

Credit

(ii)

Creditor

(iii)

Eligibility, or continued eligibility, for credit

(A) Any determination of the consumer's qualification or fitness for employment, insurance (other than a credit insurance product), or other non-credit products or services;

(B) Authorizing, processing, or documenting a payment or transaction on behalf of the consumer in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit; or

(C) Maintaining or servicing the consumer's account in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit.

(c)

Rule of construction for obtaining and using unsolicited medical information

In general.

(2)

Use of unsolicited medical information.

(3)

Examples.

(i) In response to a general question regarding a consumer's debts or expenses, the creditor receives information that the consumer owes a debt to a hospital.

(ii) In a conversation with the creditor's loan officer, the consumer informs the creditor that the consumer has a particular medical condition.

(iii) In connection with a consumer's application for an extension of credit, the creditor requests a consumer report from a consumer reporting agency and receives medical information in the consumer report furnished by the agency even though the creditor did not specifically request medical information from the consumer reporting agency.

(d)

Financial information exception for obtaining and using medical information

In general.

(i) The information is the type of information routinely used in making credit eligibility determinations, such as information relating to debts, expenses, income, benefits, assets, collateral, or the purpose of the loan, including the use of proceeds;

(ii) The creditor uses the medical information in a manner and to an extent that is no less favorable than it would use comparable information that is not medical information in a credit transaction; and

(iii) The creditor does not take the consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account as part of any such determination.

(2)

Examples

Examples of the types of information routinely used in making credit eligibility determinations.

(A) The dollar amount, repayment terms, repayment history, and similar information regarding medical debts to calculate, measure, or verify the repayment ability of the consumer, the use of proceeds, or the terms for granting credit;

(B) The value, condition, and lien status of a medical device that may serve as collateral to secure a loan;

(C) The dollar amount and continued eligibility for disability income, workers' compensation income, or other benefits related to health or a medical condition that is relied on as a source of repayment;

or

(D) The identity of creditors to whom outstanding medical debts are owed in connection with an application for credit, including but not limited to, a transaction involving the consolidation of medical debts.

(ii)

Examples of uses of medical information consistent with the exception.

(B) A consumer indicates on an application for a \$200,000 mortgage loan that she receives \$15,000 in long-term disability income each year from her former employer and has no other income. Annual income of \$15,000, regardless of source, would not be sufficient to support the requested amount of credit. The creditor denies the application on the basis that the projected debt-to-income ratio of the consumer does not meet the creditor's underwriting criteria. The creditor has used medical information in a manner and to an extent that is no less favorable than it would use comparable non-medical information.

(C) A consumer includes on an application for a \$10,000 home equity loan that he has a \$50,000 debt to a medical facility that specializes in treating a potentially terminal disease. The creditor contacts the medical facility to verify the debt and obtain the repayment history and current status of the loan. The creditor learns that the debt is current. The applicant meets the income and other requirements of the creditor's underwriting guidelines. The creditor grants the application. The creditor has used medical information in accordance with the exception.

(iii)

Examples of uses of medical information inconsistent with the exception.

(B) A consumer meets with a loan officer of a creditor to apply for a mortgage loan. While filling out the loan application, the consumer informs the loan officer orally that she has a potentially terminal disease. The consumer

(C) A consumer who has an apparent medical condition, such as a consumer who uses a wheelchair or an oxygen tank, meets with a loan officer to apply for a home equity loan. The

consumer meets the creditor's established requirements for the requested home equity loan and the creditor typically does not require consumers to obtain a debt cancellation contract, debt suspension agreement, or credit insurance product in connection with such loans. However, based on the consumer's apparent medical condition, the loan officer recommends to the credit committee that credit be extended to the consumer only if the consumer obtains a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party. The credit committee agrees with the loan officer's recommendation. The loan officer informs the consumer that the consumer must obtain a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party to qualify for the loan. The consumer obtains one of these products and the creditor approves the loan. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis in setting conditions on the consumer's eligibility for credit.

(e)

Specific exceptions for obtaining and using medical information

In general.

(i) To determine whether the use of a power of attorney or legal representative that is triggered by a medical condition or event is necessary and appropriate or whether the consumer has the legal capacity to contract when a person seeks to exercise a power of attorney or act as legal representative for a consumer based on an asserted medical condition or event;

(ii) To comply with applicable requirements of local, state, or Federal laws;

(iii) To determine, at the consumer's request, whether the consumer qualifies for a legally permissible special credit program or credit-related assistance program that is:

(A) Designed to meet the special needs of consumers with medical conditions; and

(B) Established and administered pursuant to a written plan that:

(

1

(

2

(iv) To the extent necessary for purposes of fraud prevention or detection;

(v) In the case of credit for the purpose of financing medical products or services, to determine and verify the medical purpose of a loan and the use of proceeds;

(vi) Consistent with safe and sound practices, if the consumer or the consumer's legal representative specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit, to accommodate the consumer's particular circumstances, and such request is documented by the creditor;

(vii) Consistent with safe and sound practices, to determine whether the provisions of a forbearance practice or program that is triggered by a medical condition or event apply to a consumer;

(viii) To determine the consumer's eligibility for, the triggering of, or the

(ix) To determine the consumer's eligibility for, the triggering of, or the reactivation of a credit insurance product if a medical condition or event is a triggering event for the provision of benefits under the product.

(2)

Example of determining eligibility for a special credit program or credit assistance program.

(3)

Examples of verifying the medical purpose of the loan or the use of proceeds.

(ii) If a consumer applies for \$10,000 of credit for the purpose of financing cosmetic surgery, the creditor may confirm the cost of the procedure with the surgeon. If the surgeon reports that the cost of the procedure is \$5,000, the creditor may use that medical information to offer the consumer only \$5,000 of credit.

(iii) A creditor has an established medical loan program for financing particular elective surgical procedures. The creditor receives a loan application from a consumer requesting \$10,000 of credit

under the established loan program for an elective surgical procedure. The consumer indicates on the application that the purpose of the loan is to finance an elective surgical procedure not eligible for funding under the guidelines of the established loan program. The creditor may deny the consumer's application because the purpose of the loan is not for a particular procedure funded by the established loan program.

(4)

Examples of obtaining and using medical information at the request of the consumer.

(ii) If a consumer applies for a loan by telephone and explains that his income has been and will continue to be interrupted on account of a medical condition and that he expects to repay the loan by liquidating assets, the

(iii) If a consumer applies for a loan and the application form provides a space where the consumer may provide any other information or special circumstances, whether medical or non-medical, that the consumer would like the creditor to consider in evaluating the consumer's application, the creditor may use medical information provided by the consumer in that space on that application to accommodate the consumer's application for credit, consistent with safe and sound practices, or may disregard that information.

(iv) If a consumer specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit and provides the creditor with medical information for that purpose, and the creditor determines that it needs additional information regarding the consumer's circumstances, the creditor may request, obtain, and use additional medical information about the consumer as necessary to verify the information provided by the consumer or to determine whether to make an accommodation for the consumer. The consumer may decline to provide additional information, withdraw the request for an accommodation, and have the application considered under the creditor's otherwise applicable underwriting criteria.

(v) If a consumer completes and signs a credit application that is not for medical purpose credit and the application contains boilerplate language that routinely requests medical information from the

consumer or that indicates that by applying for credit the consumer authorizes or consents to the creditor obtaining and using medical information in connection with a determination of the consumer's eligibility, or continued eligibility, for credit, the consumer has not specifically requested that the creditor obtain and use medical information to accommodate the consumer's particular circumstances.

(5)

Example of a forbearance practice or program.

§ 1022.31

Limits on redisclosure of information.

(a)

Scope.

(b)

Limits on redisclosure.

§ 1022.32

Sharing medical information with affiliates.

(a)

Scope.

(b)

In general.

(1) Medical information;

(2) An individualized list or description based on the payment transactions of the consumer for medical products or services; or

(3) An aggregate list of identified consumers based on payment transactions for medical products or services.

(c)

Exceptions.

- (1) In connection with the business of insurance or annuities (including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners, as in effect on January 1, 2003);
- (2) For any purpose permitted without authorization under the regulations promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA);
- (3) For any purpose referred to in section 1179 of HIPAA;
- (4) For any purpose described in section 502(e) of the Gramm-Leach-Bliley Act;
- (5) In connection with a determination of the consumer's eligibility, or continued eligibility, for credit consistent with § 1022.30 of this part; or
- (6) As otherwise permitted by order of the Bureau.

Subpart E Duties of Furnishers of Information

§ 1022.40

Scope.

Subpart E of this part applies to any person that furnishes information to a consumer reporting agency, except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376.

§ 1022.41

Definitions.

For purposes of this subpart and appendix E of this part, the following definitions apply:

(a)

Accuracy

- (1) Reflects the terms of and liability for the account or other relationship;
- (2) Reflects the consumer's performance and other conduct with respect to the account or other relationship; and

(3) Identifies the appropriate consumer.

(b)

Direct dispute

(c)

Furnisher

(1) Provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA;

(2) Is acting as a consumer reporting agency as defined in section 603(f) of the FCRA;

(3) Is a consumer to whom the furnished information pertains; or

(4) Is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the

(d)

Integrity

(1) Is substantiated by the furnisher's records at the time it is furnished;

(2) Is furnished in a form and manner that is designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; and

(3) Includes the information in the furnisher's possession about the account or other relationship that the Bureau has:

(i) Determined that the absence of which would likely be materially misleading in evaluating a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and

(ii) Listed in section I(b)(2)(iii) of appendix E of this part.

§ 1022.42

Reasonable policies and procedures concerning the accuracy and integrity of furnished information.

(a)

Policies and procedures.

(b)

Guidelines.

(c)

Reviewing and updating policies and procedures.

§ 1022.43

Direct disputes.

(a)

General rule.

(1) The consumer's liability for a credit account or other debt with the furnisher, such as direct disputes relating to whether there is or has been identity theft or fraud against the consumer, whether there is individual or joint liability on an account, or whether the consumer is an authorized user of a credit account;

(2) The terms of a credit account or other debt with the furnisher, such as direct disputes relating to the type of account, principal balance, scheduled payment amount on an account, or the amount of the credit limit on an open-end account;

(3) The consumer's performance or other conduct concerning an account or other relationship with the furnisher, such as direct disputes relating to the current payment status, high balance, date a payment was made, the amount of a payment made, or the date an account was opened or closed;
or

(4) Any other information contained in a consumer report regarding an account or other relationship with the furnisher that bears on the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(b)

Exceptions.

(1) The direct dispute relates to:

(i) The consumer's identifying information (other than a direct dispute relating to a consumer's

liability for a credit account or other debt with the furnisher, as provided in paragraph (a)(1) of this section) such as name(s), date of birth, Social Security number, telephone number(s), or address(es);

(ii) The identity of past or present employers;

(iii) Inquiries or requests for a consumer report;

(iv) Information derived from public records, such as judgments, bankruptcies, liens, and other legal matters (unless provided by a furnisher with an account or other relationship with the consumer);

(v) Information related to fraud alerts or active duty alerts; or

(vi) Information provided to a consumer reporting agency by another furnisher; or

(2) The furnisher has a reasonable belief that the direct dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization, as defined in 15 U.S.C. 1679a(3), or an entity that would be a credit repair organization, but for 15 U.S.C. 1679a(3)(B)(i).

(c)

Direct dispute address.

(1) The address of a furnisher provided by a furnisher and set forth on a consumer report relating to the consumer;

(2) An address clearly and conspicuously specified by the furnisher for submitting direct disputes that is provided to the consumer in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher); or

(3) Any business address of the furnisher if the furnisher has not so specified and provided an address for submitting direct disputes under paragraphs (c)(1) or (2) of this section.

(d)

Direct dispute notice contents.

(1) Sufficient information to identify the account or other relationship that is in dispute, such as an account number and the name, address, and telephone number of the consumer, if applicable;

(2) The specific information that the consumer is disputing and an explanation of the basis for the dispute; and

(3) All supporting documentation or other information reasonably required by the furnisher to substantiate the basis of the dispute. This documentation may include, for example: a copy of the relevant portion of the consumer report that contains the allegedly inaccurate information; a police report; a fraud or identity theft affidavit; a court order; or account statements.

(e)

Duty of furnisher after receiving a direct dispute notice.

(1) Conduct a reasonable investigation with respect to the disputed information;

(2) Review all relevant information provided by the consumer with the dispute notice;

(3) Complete its investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) of the FCRA (15 U.S.C. 1681i(a)(1)) within which a consumer reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and

(4) If the investigation finds that the information reported was inaccurate, promptly notify each consumer reporting agency to which the furnisher provided inaccurate information of that determination and provide to the consumer reporting agency any correction to that information that is necessary to make the information provided by the furnisher accurate.

(f)

Frivolous or irrelevant disputes.

(i) The consumer did not provide sufficient information to investigate the disputed information as required by paragraph (d) of this section;

(ii) The direct dispute is substantially the same as a dispute previously submitted by or on behalf of the consumer, either directly to the furnisher or through a consumer reporting agency, with respect to which the furnisher has already satisfied the applicable requirements of the Act or this section; provided, however, that a direct dispute is not substantially the same as a dispute previously

submitted if the dispute includes information listed in paragraph (d) of this section that had not previously been provided to the furnisher; or

(iii) The furnisher is not required to investigate the direct dispute because one or more of the exceptions listed in paragraph (b) of this section applies.

(2)

Notice of determination.

(3)

Contents of notice of determination that a dispute is frivolous or irrelevant.

Subpart FDuties of Users Regarding Obtaining and Using Consumer Reports

§§ 1022.50-1022.53

[Reserved]

§ 1022.54

Duties of users making written firm offers of credit or insurance based on information contained in consumer files.

(a)

Scope.

(b)

Definitions.

(1)

Simple and easy to understand

(i) A layered format as described in paragraph (c) of this section;

(ii) Plain language designed to be understood by ordinary consumers; and

(iii) Use of clear and concise sentences, paragraphs, and sections.

(iv) Examples. For purposes of this part, examples of factors to be considered in determining whether a statement is in plain language and uses clear and concise sentences, paragraphs, and sections include:

- (A) Use of short explanatory sentences;
 - (B) Use of definite, concrete, everyday words;
 - (C) Use of active voice;
 - (D) Avoidance of multiple negatives;
 - (E) Avoidance of legal and technical business terminology;
 - (F) Avoidance of explanations that are imprecise and reasonably subject to different interpretations;
- and
- (G) Use of language that is not misleading.

(2)

Principal promotional document

(c)

Prescreen opt-out notice.

(1)

Short notice.

(i)

Content.

(ii)

Form.

- (A) In a type size that is larger than the type size of the principal text on the same page, but in no event smaller than 12 point type, or if provided by electronic means, then reasonable steps shall be taken to ensure that the type size is larger than the type size of the principal text on the same page;
- (B) On the front side of the first page of the principal promotional document in the solicitation, or, if provided electronically, on the same page and in close proximity to the principal marketing message;
- (C) Located on the page and in a format so that the statement is distinct from other text, such as inside a border; and
- (D) In a type style that is distinct from the principal type style used on the same page, such as

bolded, italicized, underlined, and/or in a color that contrasts with the color of the principal text on the page, if the solicitation is in more than one color.

(2)

Long notice.

(i)

Content.

(ii)

Form.

(A) Appear in the solicitation;

(B) Be in a type size that is no smaller than the type size of the principal text on the same page, and, for solicitations provided other than by electronic means, the type size shall in no event be smaller than 8 point type;

(C) Begin with a heading in capital letters and underlined, and identifying the long notice as the **PRESCREEN&OPT-OUT NOTICE**;

(D) Be in a type style that is distinct from the principal type style used on the same page, such as bolded, italicized, underlined, and/or in a color that contrasts with the color of the principal text on the page, if the solicitation is in more than one color; and

(E) Be set apart from other text on the page, such as by including a blank line above and below the statement, and by indenting both the left and right margins from other text on the page.

§§ 1022.55-1022.59

[Reserved]

Subpart G [Reserved]

Subpart H Duties of Users Regarding Risk-Based Pricing

§ 1022.70

Scope.

(a)

Coverage

In general.

(i) Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer that is primarily for personal, family, or household purposes; and

(ii) Based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to the consumer on material terms that are materially less favorable than the most favorable material terms available to a substantial proportion of consumers from or through that person.

(2)

Business credit excluded.

(b)

Enforcement.

§ 1022.71

Definitions.

For purposes of this subpart, the following definitions apply:

(a)

Adverse action

(b)

Annual percentage rate

(c)

Closed-end credit

(d)

Consumer

(e)

Consummation

(f)

Consumer report

(g)

Consumer reporting agency

(h)

Credit

(i)

Creditor

(j)

Credit card

(k)

Credit card issuer

card issuer,

(l)

Credit score

(m)

Firm offer of credit

(n)

Material terms

(1)(i) Except as otherwise provided in paragraphs (n)(1)(ii) and (n)(3) of this section, in the case of credit extended under an open-end credit plan, the annual percentage rate required to be disclosed under 12 CFR 1026.6(a)(1)(ii) or 12 CFR 1026.6(b)(2)(i), excluding any temporary initial rate that is lower than the rate that will apply after the temporary rate expires, any penalty rate that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, and any fixed annual percentage rate option for a home equity line of credit;

(ii) In the case of a credit card (other than a credit card that is used to access a home equity line of credit or a charge card), the annual percentage rate required to be disclosed under 12 CFR

1026.6(b)(2)(i) that applies to purchases (purchase annual percentage rate) and no other annual percentage rate, or in the case of a credit card that has no purchase annual percentage rate, the annual percentage rate that varies based on information in a consumer report and that has the most significant financial impact on consumers;

(2) In the case of closed-end credit, the annual percentage rate required to be disclosed under 12 CFR 1026.17(c) and 1026.18(e); and

(3) In the case of credit for which there is no annual percentage rate, the financial term that varies based on information in a consumer report and that has the most significant financial impact on consumers, such as a deposit required in connection with credit extended by a telephone company or utility or an annual membership fee for a charge card.

(o)

Materially less favorable

(p)

Open-end credit plan

(q)

Person

§ 1022.72

General requirements for risk-based pricing notices.

(a)

In general.

(1) Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to that consumer that is primarily for personal, family, or household purposes; and

(2) Based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to that consumer on material terms that are materially less favorable than the most favorable material terms available to a substantial proportion of consumers from or through that person.

(b)

Determining which consumers must receive a notice.

(1)

Credit score proxy method

In general.

(A) Determining the credit score (hereafter referred to as the cutoff score) that represents the point at which approximately 40 percent of the consumers to whom it grants, extends, or provides credit have higher credit scores and approximately 60 percent of the consumers to whom it grants, extends, or provides credit have lower credit scores; and

(B) Providing a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit whose credit score is lower than the cutoff score.

(ii)

Alternative to the 40/60 cutoff score determination.

(iii)

Determining the cutoff score

Sampling approach.

(B)

Secondary source approach in limited circumstances.

(C)

Recalculation of cutoff scores.

(D)

Use of two or more credit scores.

e.g.,

(iv)

Credit score not available.

(v)

Examples.

(B) A credit card issuer engages in risk-based pricing, and the annual percentage rates it offers to consumers are based in whole or in part on a credit score. The credit card issuer takes a representative sample of the consumers to whom it issued credit cards over the preceding six months. The credit card issuer determines that approximately 80 percent of the sampled consumers received credit at its lowest annual percentage rate, and 20 percent received credit at a higher annual percentage rate. Approximately 80 percent of the sampled consumers have a credit score at or above 750 (on a scale of 350 to 850), and 20 percent have a credit score below 750. Thus, the card issuer selects 750 as its cutoff score. A consumer applies to the credit card issuer for a credit card. The card issuer obtains a credit score for the consumer. The consumer's credit score is 740. Since the consumer's 740 credit score falls below the 750 cutoff score, the credit card issuer must provide a risk-based pricing notice to the consumer.

(C) An auto lender engages in risk-based pricing, obtains credit scores from one of the nationwide consumer reporting agencies, and uses the credit score proxy method to determine which consumers must receive a risk-based pricing notice. A consumer applies to the auto lender for credit to finance the purchase of an automobile. A credit score about that consumer is not available from the consumer reporting agency from which the lender obtains credit scores. The lender nevertheless grants, extends, or provides credit to the consumer. The lender must provide a risk-based pricing notice to the consumer.

(2)

Tiered pricing method

In general.

(ii)

Four or fewer pricing tiers.

(iii)

Five or more pricing tiers.

(c)

Application to credit card issuers

In general.

(i) A consumer applies for a credit card either in connection with an application program, such as a direct-mail offer or a take-one application, or in response to a solicitation under 12 CFR 1026.60, and more than a single possible purchase annual percentage rate may apply under the program or solicitation; and

(ii) Based in whole or in part on a consumer report, the credit card issuer provides a credit card to the consumer with an annual percentage rate referenced in § 1022.71(n)(1)(ii) that is greater than the lowest annual percentage rate referenced in § 1022.71(n)(1)(ii) available in connection with the application or solicitation.

(2)

No requirement to compare different offers.

(i) The consumer applies for a credit card for which the card issuer provides a single annual percentage rate referenced in § 1022.71(n)(1)(ii), excluding a temporary initial rate that is lower than the rate that will apply after the temporary rate expires and a penalty rate that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit; or

(ii) The credit card issuer offers the consumer the lowest annual percentage rate referenced in § 1022.71(n)(1)(ii) available under the credit card offer for which the consumer applied, even if a lower annual percentage rate referenced in § 1022.71(n)(1)(ii) is available under a different credit card offer issued by the card issuer.

(3)

Examples.

(ii) The same facts as in the example in paragraph (c)(3)(i) of this section, except that the card issuer provides a credit card to the consumer at a purchase annual percentage rate of 10 percent.

The card issuer is not required to provide a risk-based pricing notice to the consumer even if, under a different credit card solicitation, that consumer or other consumers might qualify for a purchase annual percentage rate of 8 percent.

(d)

Account review

In general.

(i) Uses a consumer report in connection with a review of credit that has been extended to the consumer; and

(ii) Based in whole or in part on the consumer report, increases the annual percentage rate (the annual percentage rate referenced in § 1022.71(n)(1)(ii) in the case of a credit card).

(2)

Example.

§ 1022.73

Content, form, and timing of risk-based pricing notices.

(a)

Content of the notice

In general.

(i) A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;

(ii) A statement that the terms offered, such as the annual percentage rate, have been set based on information from a consumer report;

(iii) A statement that the terms offered may be less favorable than the terms offered to consumers with better credit histories;

(iv) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

(v) The identity of each consumer reporting agency that furnished a consumer report used in the

credit decision;

(vi) A statement that Federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;

(vii) A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;

(viii) A statement directing consumers to the Web site of the Bureau to obtain more information about consumer reports; and

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

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

(B) The credit score used by the person in making the credit decision;

(C) The range of possible credit scores under the model used to generate the credit score;

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

(E) The date on which the credit score was created; and

(F) The name of the consumer reporting agency or other person that provided the credit score.

(2)

Account review.

(i) A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that credit history;

- (ii) A statement that the person has conducted a review of the account using information from a consumer report;
- (iii) A statement that as a result of the review, the annual percentage rate on the account has been increased based on information from a consumer report;
- (iv) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;
- (v) The identity of each consumer reporting agency that furnished a consumer report used in the account review;
- (vi) A statement that Federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;
- (vii) A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;
- (viii) A statement directing consumers to the Web site of the Bureau to obtain more information about consumer reports; and
- (ix) If a credit score of the consumer whose extension of credit is under review is used in increasing the annual percentage rate:
 - (A) A statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;
 - (B) The credit score used by the person in making the credit decision;
 - (C) The range of possible credit scores under the model used to generate the credit score;
 - (D) All of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquires made with respect to the

consumer report, the number of key factors shall not exceed five;

(E) The date on which the credit score was created; and

(F) The name of the consumer reporting agency or other person that provided the credit score.

(b)

Form of the notice

In general.

(i) Clear and conspicuous; and

(ii) Provided to the consumer in oral, written, or electronic form.

(2)

Model forms.

(c)

Timing

General.

(i) In the case of a grant, extension, or other provision of closed-end credit,

(ii) In the case of credit granted, extended, or provided under an open-end credit plan, before the first transaction is made under the plan, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit is communicated to the consumer by the person required to provide the notice; or

(iii) In the case of a review of credit that has been extended to the consumer, at the time the decision to increase the annual percentage rate (annual percentage rate referenced in § 1022.71(n)(1)(ii) in the case of a credit card) based on a consumer report is communicated to the consumer by the person required to provide the notice, or if no notice of the increase in the annual percentage rate is provided to the consumer prior to the effective date of the change in the annual percentage rate (to the extent permitted by law), no later than five days after the effective date of the change in the annual percentage rate.

(2)

Application to certain automobile lending transactions.

(i) Provides a notice described in §§ 1022.72(a), 1022.74(e), or 1022.74(f) to the consumer within the time periods set forth in paragraph (c)(1)(i) of this section, § 1022.74(e)(3), or § 1022.74(f)(4), as applicable; or

(ii) Arranges to have the auto dealer or other party provide a notice described in §§ 1022.72(a), 1022.74(e), or 1022.74(f) to the consumer on its behalf within the time periods set forth in paragraph (c)(1)(i) of this section, § 1022.74(e)(3), or § 1022.74(f)(4), as applicable, and maintains reasonable policies and procedures to verify that the auto dealer or other party provides such notice to the consumer within the applicable time periods. If the person arranges to have the auto dealer or other party provide a notice described in § 1022.74(e), the person's obligation is satisfied if the consumer receives a notice containing a credit score obtained by the dealer or other party, even if a different credit score is obtained and used by the person on whose behalf the notice is provided.

(3)

Timing requirements for contemporaneous purchase credit.

(i) The time of the first mailing by the person to the consumer after the decision is made to approve the grant, extension, or other provision of open-end credit, such as in a mailing containing the account agreement or a credit card; or

(ii) Within 30 days after the decision to approve the grant, extension, or other provision of credit.

(d)

Multiple credit scores

In general.

(2)

Examples.

(ii) A person that uses consumer reports to set the material terms of automobile loans granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies, each of which it uses in an underwriting program in order to determine the

material terms it will offer to the consumer. That person may choose one of these scores to include in the notices described in paragraph (a)(1) and (2) of this section.

§ 1022.74

Exceptions.

(a)

Application for specific terms

In general.

(2)

Example.

before,

after,

(b)

Adverse action notice.

(c)

Prescreened solicitations

In general.

(i) Obtains a consumer report that is a prescreened list as described in section 604(c)(2) of the FCRA; and

(ii) Uses the consumer report for the purpose of making a firm offer of credit to the consumer.

(2)

More favorable material terms.

(3)

Example.

(d)

Loans secured by residential real property credit score disclosure

In general.

- (i) The consumer requests from the person an extension of credit that is or will be secured by one to four units of residential real property; and
- (ii) The person provides to each consumer described in paragraph (d)(1)(i) of this section a notice that contains the following:
- (A) A statement that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;
- (B) A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;
- (C) A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;
- (D) The information required to be disclosed to the consumer pursuant to section 609(g) of the FCRA;
- (E) The distribution of credit scores among consumers who are scored under the same scoring model that is used to generate the consumer's credit score using the same scale as that of the credit score that is provided to the consumer, presented in the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar or by other clear and readily understandable graphical means, or a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers. Use of a graph or statement obtained from the person providing the credit score that meets the requirements of this paragraph (d)(1)(ii)(E) is deemed to comply with this requirement;
- (F) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;
- (G) A statement that Federal law gives the consumer the right to obtain copies of his or her

consumer reports directly from the consumer reporting agencies, including a free report from each of the nationwide consumer reporting agencies once during any 12-month period;

(H) Contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

(I) A statement directing consumers to the Web site of the Bureau to obtain more information about consumer reports.

(2)

Form of the notice.

(i) Clear and conspicuous;

(ii) Provided on or with the notice required by section 609(g) of the FCRA;

(iii) Segregated from other information provided to the consumer, except for the notice required by section 609(g) of the FCRA; and

(iv) Provided to the consumer in writing and in a form that the consumer may keep.

(3)

Timing.

(4)

Multiple credit scores

In general.

(ii)

Examples.

(B) A person that uses consumer reports to set the material terms of mortgage credit granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies, each of which it uses in an underwriting program in order to determine the material terms it will offer to the consumer. That person may choose one of these scores to include in the notice described in paragraph (d)(1)(ii) of this section.

(5)

Model form.

(e)

Other extensions of creditcredit score disclosure

In general.

(i) The consumer requests from the person an extension of credit other than credit that is or will be secured by one to four units of residential real property; and

(ii) The person provides to each consumer described in paragraph (e)(1)(i) of this section a notice that contains the following:

(A) A statement that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;

(B) A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;

(C) A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(D) The current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the consumer reporting agency for a purpose related to the extension of credit;

(E) The range of possible credit scores under the model used to generate the credit score;

(F) The distribution of credit scores among consumers who are scored under the same scoring model that is used to generate the consumer's credit score using the same scale as that of the credit score that is provided to the consumer, presented in the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar, or by other clear and readily understandable graphical means, or a clear and readily understandable statement informing the consumer how his or her credit score compares to

the scores of other consumers. Use of a graph or statement obtained from the person providing the credit score that meets the requirements of this paragraph (e)(1)(ii)(F) is deemed to comply with this requirement;

(G) The date on which the credit score was created;

(H) The name of the consumer reporting agency or other person that provided the credit score;

(I) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

(J) A statement that Federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free report from each of the nationwide consumer reporting agencies once during any 12-month period;

(K) Contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

(L) A statement directing consumers to the Web site of the Bureau to obtain more information about consumer reports.

(2)

Form of the notice.

(i) Clear and conspicuous;

(ii) Segregated from other information provided to the consumer; and

(iii) Provided to the consumer in writing and in a form that the consumer may keep.

(3)

Timing.

(4)

Multiple credit scores.

In general.

(ii)

Examples.

(5)

Model form.

(f)

Credit score not available

In general.

(i) Regularly obtains credit scores from a consumer reporting agency and provides credit score disclosures to consumers in accordance with paragraphs (d) or (e) of this section, but a credit score is not available from the consumer reporting agency from which the person regularly obtains credit scores for a consumer to whom the person grants, extends, or provides credit;

(ii) Does not obtain a credit score from another consumer reporting agency in connection with granting, extending, or providing credit to the consumer; and

(iii) Provides to the consumer a notice that contains the following:

(A) A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;

(B) A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time in response to changes in the consumer's credit history;

(C) A statement that credit scores are important because consumers with higher credit scores generally obtain more favorable credit terms;

(D) A statement that not having a credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(E) A statement that a credit score about the consumer was not available from a consumer reporting agency, which must be identified by name, generally due to insufficient information regarding the consumer's credit history;

(F) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer

report;

(G) A statement that Federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period;

(H) The contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

(I) A statement directing consumers to the Web site of the Bureau to obtain more information about consumer reports.

(2)

Example.

(3)

Form of the notice.

(i) Clear and conspicuous;

(ii) Segregated from other information provided to the consumer; and

(iii) Provided to the consumer in writing and in a form that the consumer may keep.

(4)

Timing.

(5)

Model form.

§ 1022.75

Rules of construction.

For purposes of this subpart, the following rules of construction apply:

(a)

One notice per credit extension.

(b)

Multi-party transactions

Initial creditor.

(2)

Purchasers or assignees.

(3)

Example.

(c)

Multiple consumers

Risk-based pricing notices.

(2)

Credit score disclosure notices.

(3)

Examples.

(ii) Two consumers jointly apply for credit with a creditor. The two consumers reside at the same address. The creditor obtains credit scores on each of the two consumer applicants. The creditor grants credit to the consumers. The creditor provides credit score disclosure notices to satisfy its obligations under this subpart. Even though the two consumers reside at the same address, the creditor must provide a separate credit score disclosure notice to each of the consumers. Each notice must contain only the credit score of the consumer to whom the notice is provided.

Subpart I Duties of Users of Consumer Reports Regarding Identity Theft

§§ 1022.80-1022.81

[Reserved]

§ 1022.82

Duties of users regarding address discrepancies.

(a)

Scope.

(b)

Definition.

notice of address discrepancy

(c)

Reasonable belief

Requirement to form a reasonable belief.

(2)

Examples of reasonable policies and procedures.

(A) Obtains and uses to verify the consumer's identity in accordance with the requirements of the Customer Identification Program (CIP) rules implementing 31 U.S.C. 5318(l) (31 CFR 1020.220);

(B) Maintains in its own records, such as applications, change of address notifications, other customer account records, or retained CIP documentation; or

(C) Obtains from third-party sources; or

(ii) Verifying the information in the consumer report provided by the consumer reporting agency with the consumer.

(d)

Consumer's address

Requirement to furnish consumer's address to a consumer reporting agency.

(i) Can form a reasonable belief that the consumer report relates to the consumer about whom the user requested the report;

(ii) Establishes a continuing relationship with the consumer; and

(iii) Regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of address discrepancy relating to the consumer was obtained.

(2)

Examples of confirmation methods.

(i) Verifying the address with the consumer about whom it has requested the report;

(ii) Reviewing its own records to verify the address of the consumer;

(iii) Verifying the address through third-party sources; or

(iv) Using other reasonable means.

(3) Timing. The policies and procedures developed in accordance with paragraph (d)(1) of this section must provide that the user will furnish the consumer's address that the user has reasonably confirmed is accurate to the consumer reporting agency described in 15 U.S.C. 1681a(p) as part of the information it regularly furnishes for the reporting period in which it establishes a relationship with the consumer.

Subparts J-L [Reserved]

Subpart MDuties of Consumer Reporting Agencies Regarding Identity Theft

§ 1022.120

[Reserved]

§ 1022.121

Active duty alerts.

(a)

Duration.

§ 1022.122

[Reserved]

§ 1022.123

Appropriate proof of identity.

(a) Consumer reporting agencies shall develop and implement reasonable requirements for what information consumers shall provide to constitute proof of identity for purposes of sections 605A, 605B, and 609(a)(1) of the FCRA. In developing these requirements, the consumer reporting agencies must:

(1) Ensure that the information is sufficient to enable the consumer reporting agency to match consumers with their files; and

(2) Adjust the information to be commensurate with an identifiable risk of

(b) Examples of information that might constitute reasonable information requirements for proof of identity are provided for illustrative purposes only, as follows:

(1)

Consumer file match.

(2)

Additional proof of identity.

§§ 1022.124-1022.129

[Reserved]

Subpart NDuties of Consumer Reporting Agencies Regarding Disclosures to Consumers

§ 1022.130

Definitions.

For purposes of this subpart, the following definitions apply:

(a)

Annual file disclosure

(b)

Associated consumer reporting agency

(c)

Consumer report

(d)

Consumer reporting agency

(e)

Extraordinary request volume

i.e.,

(f)

File disclosure

(g)

High request volume

i.e.,

(h)

Nationwide consumer reporting agency

(i)

Nationwide specialty consumer reporting agency

(j)

Request method

§§ 1022.131-1022.135

[Reserved]

§ 1022.136

Centralized source for requesting annual file disclosures from nationwide consumer reporting agencies.

(a)

Purpose.

(b)

Establishment and operation.

(1) Enable consumers to request annual file disclosures by any of the following request methods, at the consumers' option:

(i) A single, dedicated Web site,

(ii) A single, dedicated toll-free telephone number; and

(iii) Mail directed to a single address;

(2) Be designed, funded, implemented, maintained, and operated in a manner that:

(i) Has adequate capacity to accept requests from the reasonably anticipated volume of consumers contacting the centralized source through each request method, as determined in accordance with Paragraph (c) of this section;

(ii) Collects only as much personally identifiable information as is reasonably necessary to properly identify the consumer as required under the FCRA, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, and to process the transaction(s) requested by the consumer;

(iii) Provides information through the centralized source Web site and telephone number regarding how to make a request by all request methods required under paragraph (b)(1) of this section; and

(iv) Provides clear and easily understandable information and instructions to consumers, including, but not necessarily limited to:

(A) Providing information on the progress of the consumer's request while the consumer is engaged in the process of requesting a file disclosure;

(B) For a Web site request method, providing access to a help or frequently asked questions screen, which includes specific information that consumers might reasonably need to request file disclosures, the answers to questions that consumers might reasonably ask, and instructions whereby a consumer may file a complaint with the centralized source and with the Bureau;

(C) In the event that a consumer requesting a file disclosure through the centralized source cannot be properly identified in accordance with the FCRA, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, providing a statement that the consumers' identity cannot be verified; and directions on how to complete the request, including what additional information or documentation will be required to complete the request, and how to submit such information; and

(D) A statement indicating that the consumer has reached the Web site or telephone number for ordering free annual credit reports as required by Federal law; and

(3) Make available to consumers a standardized form established jointly by the nationwide consumer reporting agencies, which consumers may use to make a request for an annual file disclosure, either by mail or on the Web site required under paragraph (b)(1) of this section, from the centralized source required by this part. The form provided at appendix L to part 1022, may be used to comply with this section.

(c)

Requirement to anticipate.

(1) The contingency plans required by this section shall include reasonable measures to minimize the impact of such circumstances on the operation of the centralized source and on consumers contacting, or attempting to contact, the centralized source.

(i) Such reasonable measures to minimize impact shall include, but are not necessarily limited to:

(A) The extent reasonably practicable under the circumstances, providing information to consumers on how to use another available request method;

(B) The extent reasonably practicable under the circumstances, communicating, to a consumer who attempts but is unable to make a request, the fact that a condition exists that has precluded the centralized source from accepting all requests, and the period of time after which the centralized source is reasonably anticipated to be able to accept the consumers' request for an annual file disclosure; and

(C) Taking all reasonable steps to restore the centralized source to normal operating status as quickly as reasonably practicable under the circumstances.

(ii) Reasonable measures to minimize impact may also include, as appropriate, collecting request information but declining to accept the request for processing until a reasonable later time, provided that the consumer is clearly and prominently informed, to the extent reasonably practicable under the circumstances, of when the request will be accepted for processing.

(2) A nationwide consumer reporting agency shall not be deemed in violation of paragraph (b)(2)(i) of this section if a centralized source request method is unavailable to accept requests for a reasonable period of time for purposes of conducting maintenance on the request method, provided that the other required request methods remain available during such time.

(d)

Disclosures required.

(e)

High request volume and extraordinary request volume

High request volume.

(i) Collects all consumer request information and delays accepting the request for processing until a reasonable later time; and

(ii) Clearly and prominently informs the consumer of when the request will be accepted for processing.

(2)

Extraordinary request volume.

(f)

Information use and disclosure.

(1) To provide the annual file disclosure or other disclosure required under the FCRA requested by the consumer;

(2) To process a transaction requested by the consumer at the same time as a request for annual file disclosure or other disclosure;

(3) To comply with applicable legal requirements, including those imposed by the FCRA and this part; and

(4) To update personally identifiable information already maintained by the nationwide consumer reporting agency for the purpose of providing consumer reports, provided that the nationwide consumer reporting agency uses and discloses the updated personally identifiable information subject to the same restrictions that would apply, under any applicable provision of law or regulation, to the information updated or replaced.

(g)

Communications provided through centralized source.

(i) In the case of requests made by mail or telephone, the consumer has obtained his or her annual file disclosure when the file disclosure is mailed, and the nationwide consumer reporting agency may include advertising for other products or services with the file disclosure.

(ii) In the case of requests made through the centralized source Web site, the consumer has

obtained his or her annual file disclosure when the file disclosure is delivered to the consumer through the Internet, and the nationwide consumer reporting agency may include advertising for other products or services with the file disclosure.

(2) Any communications, instructions, or permitted advertising or marketing shall not interfere with, detract from, contradict, or otherwise undermine the purpose of the centralized source stated in Paragraph (a) of this section.

(3) Examples of interfering, detracting, inconsistent, and/or undermining communications include:

(i) Centralized source materials that represent, expressly or by implication, that a consumer must purchase a paid product or service in order to receive or to understand the annual file disclosure;

(ii) Centralized source materials that represent, expressly or by implication, that annual file disclosures are not free, or that obtaining an annual file disclosure will have a negative impact on the consumers' credit standing; and

(iii) Centralized source materials that falsely represent, expressly or by implication, that a product or service offered ancillary to receipt of a file disclosure, such as a credit score or credit monitoring service, is free, or fail to clearly and prominently disclose that consumers must cancel a service, advertised as free for an initial period of time, to avoid being charged, if such is the case.

(h)

Other practices prohibited through the centralized source.

(1) Contain hyperlinks to commercial or proprietary Web sites until after the consumer has obtained his or her annual file disclosure, except for technical transfers to a Web page on which consumers can request their free annual file disclosure; provided, however, that no hyperlinks to commercial Web sites shall appear on the initial page of the centralized source.

(2) Require consumers to set up an account in connection with obtaining an annual file disclosure;
or

(3) Ask or require consumers to agree to terms or conditions in connection with obtaining an annual file disclosure.

§ 1022.137

Streamlined process for requesting annual file disclosures from nationwide specialty consumer reporting agencies.

(a)

Streamlined process requirements.

(1) Enable consumers to request annual file disclosures by a toll-free telephone number that:

(i) Provides clear and prominent instructions for requesting disclosures by any additional available request methods, that do not interfere with, detract from, contradict, or otherwise undermine the ability of consumers to obtain annual file disclosures through the streamlined process required by this part;

(ii) Is published, in conjunction with all other published numbers for the nationwide specialty consumer reporting agency, in any telephone directory in which any telephone number for the nationwide specialty consumer reporting agency is published; and (iii) Is clearly and prominently posted on any Web site owned or maintained by the nationwide specialty consumer reporting agency that is related to consumer reporting, along with instructions for requesting disclosures by any additional available request methods; and

(2) Be designed, funded, implemented, maintained, and operated in a manner that:

(i) Has adequate capacity to accept requests from the reasonably anticipated volume of consumers contacting the nationwide specialty consumer reporting agency through the streamlined process, as determined in compliance with Paragraph (b) of this section;

(ii) Collects only as much personal information as is reasonably necessary to properly identify the consumer as required under the FCRA, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations; and

(iii) Provides clear and easily understandable information and instructions to consumers, including but not necessarily limited to:

(A) Providing information on the status of the consumers request while the consumer is in the

process of making a request;

(B) For a Web site request method, providing access to a help or frequently asked questions screen, which includes more specific information that consumers might reasonably need to order their file disclosure, the answers to questions that consumers might reasonably ask, and instructions whereby a consumer may file a complaint with the nationwide specialty consumer reporting agency and with the Bureau; and

(C) In the event that a consumer requesting a file disclosure cannot be properly identified in accordance with the FCRA, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, providing a statement that the consumers identity cannot be verified; and directions on how to complete the request, including what additional information or documentation will be required to complete the request, and how to submit such information.

(b)

Requirement to anticipate.

(1) The contingency plans required by this section shall include reasonable measures to minimize the impact of such circumstances on the operation of the streamlined process and on consumers contacting, or attempting to contact, the nationwide specialty consumer reporting agency through the streamlined process.

(i) Such reasonable measures to minimize impact shall include, but are not necessarily limited to:

(A) To the extent reasonably practicable under the circumstances, providing information to consumers on how to use another available request method;

(B) To the extent reasonably practicable under the circumstances, communicating, to a consumer who attempts but is unable to make a request, the fact that a condition exists that has precluded the nationwide specialty consumer reporting agency from accepting all requests, and the period of time after which the agency is reasonably anticipated to be able to accept the consumers request for an annual file disclosure; and

(C) Taking all reasonable steps to restore the streamlined process to normal operating status as

quickly as reasonably practicable under the circumstances.

(ii) Measures to minimize impact may also include, as appropriate, collecting request information but declining to accept the request for processing

(2) A nationwide specialty consumer reporting agency shall not be deemed in violation of paragraph (a)(2)(i) of this section if the toll-free telephone number required by this part is unavailable to accept requests for a reasonable period of time for purposes of conducting maintenance on the request method, provided that the nationwide specialty consumer reporting agency makes other request methods available to consumers during such time.

(c)

High request volume and extraordinary request volume

High request volume.

(i) Collects all consumer request information and delays accepting the request for processing until a reasonable later time; and

(ii) Clearly and prominently informs the consumer of when the request will be accepted for processing.

(2)

Extraordinary request volume.

(d)

Information use and disclosure.

(1) To provide the annual file disclosure or other disclosure required under the FCRA requested by the consumer;

(2) To process a transaction requested by the consumer at the same time as a request for annual file disclosure or other disclosure;

(3) To comply with applicable legal requirements, including those imposed by the FCRA and this part; and

(4) To update personally identifiable information already maintained by the nationwide specialty

consumer reporting agency for the purpose of providing consumer reports, provided that the nationwide specialty consumer reporting agency uses and discloses the updated personally identifiable information subject to the same restrictions that would apply, under any applicable provision of law or regulation, to the information updated or replaced.

(e)

Requirement to accept or redirect requests.

(1) Accept the consumers request; or

(2) Instruct the consumer how to make the request using the streamlined process required by this part.

§ 1022.138

Prevention of deceptive marketing of free credit reports.

(a) For purposes of this section:

(1)

AnnualCreditReport.com and (877) 322-8228

(2)

Free credit report

(3)

General requirements for disclosures.

(i) All disclosures shall be prominent;

(ii) All disclosures shall be made in the same language as that principally used in the advertisement;

(iii) Visual disclosures shall be easily readable; in a high degree of contrast from the immediate background on which it appears; in a format so that the disclosure is distinct from other text, such as inside a border; in a distinct type style, such as bold; and parallel to the base of the advertisement or screen;

(iv) Audio disclosures shall be delivered in a slow and deliberate manner and in a reasonably understandable volume and pitch;

(v) Program-length television, radio, or Internet-hosted multimedia advertisement disclosures shall be made at the beginning, near the middle, and at the end of the advertisement; and

(vi) Nothing contrary to, inconsistent with, or that undermines the required disclosures shall be used in any advertisement in any medium, nor shall any audio, visual, or print technique be used that is likely to detract significantly from the communication of any disclosure.

(b)

Medium-specific disclosures.

(1)

Television advertisements.

(ii) The disclosure shall appear at the same time in the audio and visual part of the advertisement. The visual disclosure shall be at least four percent of the vertical picture height and appear for a minimum of four seconds.

(2)

Radio advertisements.

(3)

Print advertisements.

AnnualCreditReport.com

(4)

Web sites.

(i) The first element of the disclosure shall be a header that is centered and shall consist of the following text: THIS NOTICE IS REQUIRED BY LAW. Read more at
consumerfinance.gov/learnmore.

consumerfinance.gov/learnmore

www.ftc.gov

(ii) The second element of the disclosure shall appear below the header required by paragraph

(b)(4)(i) and shall consist of the following text: You have the right to a free credit report from

AnnualCreditReport.com

AnnualCreditReport.com

consumerfinance.gov/learnmore

(iii) The color of the text required by § 1022.138(b)(4)(i) and (ii) shall be in a high degree of contrast with the background color of the box;

(iv) The background of the box shall be a solid color in a high degree of contrast from the background of the page and the color shall not appear elsewhere on the page;

(v) The third element of the disclosure shall appear below the text required by paragraph (b)(4)(ii) and shall be an operational hyperlink to

AnnualCreditReport.com

(vi) Each character of the text required in paragraph (b)(4)(ii) and (v) of this section shall be, at minimum, the same size as the largest character on the page, including characters in an image or graphic banner;

(vii) Each character of the disclosure shall be displayed as plain text and in a sans serif font, such as Arial; and

(viii) The space between each element of the disclosure required in paragraph (b)(i), (ii), and (v) of this section shall be, at minimum, the same size as the largest character on the page, including characters in an image or graphic banner. The space between the boundaries of the box and the text or button required in § 1022.138(b)(i), (ii), and (v) shall be, at minimum, twice the size of the vertical height of the largest character on the page, including characters in an image or graphic banner.

(5)

Internet-hosted multimedia advertising.

AnnualCreditReport.com

(6)

Telephone requests.

(7)

Telemarketing solicitations.

§ 1022.139

[Reserved]

Subpart OMiscellaneous Duties of Consumer Reporting Agencies

§ 1022.140

Prohibition against circumventing or evading treatment as a consumer reporting agency.

(a) A consumer reporting agency shall not circumvent or evade treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined under section 603(p) of the FCRA, 15 U.S.C. 1681a(p), by any means, including, but not limited to:

(1) Corporate organization, reorganization, structure, or restructuring, including merger, acquisition, dissolution, divestiture, or asset sale of a consumer reporting agency; or

(2) Maintaining or merging public record and credit account information in a manner that is substantially equivalent to that described in Paragraphs (1) and (2) of section 603(p) of the FCRA, 15 U.S.C. 1681a(p).

(b)

Examples:

(1)

Circumvention through reorganization by data type.

(2)

Circumvention through reorganization by regional operations.

(3)

Circumvention by a newly formed entity.

(4)

Bona fide, arm's length transaction with unaffiliated party.

(c)

Limitation on applicability.

et seq.

§ 1022.141

Reasonable charges for certain disclosures.

Pursuant to section 612(f) of the FCRA, 15 U.S.C. 1681j(f), the charge imposed by a consumer reporting agency for a disclosure to the consumer pursuant to section 609 of the FCRA, 15 U.S.C. 1681g, shall not exceed the maximum allowable charge set by the Bureau.

[84 FR 517, Jan. 31, 2019]

§ 1022.142

Prohibition on inclusion of adverse information in consumer reporting in cases of human trafficking.

(a)

Scope.

(b)

Definitions.

(1)

Appropriate proof of identity

(2)

Consumer report

(3)

Consumer reporting agency

(4)

Severe forms of trafficking in persons

(5)

Sex trafficking

(6)

Trafficking documentation

(i)

Victim determination.

(A) Is of a determination that a consumer is a victim of trafficking made by a:

(

1

(

2

(B) Is of a determination that a consumer is a victim of trafficking made by a court of competent jurisdiction or determination consisting of documents filed in a court of competent jurisdiction where a central issue in the case is whether the consumer is a victim of trafficking and the court has, at a minimum, affirmed the consumer's claim either by accepting certain pieces of evidence which are assumed to be true or finding that there is no genuine dispute as to any material fact supporting a judgment in favor of the victim as a matter of law; or

(C) Is of a signed statement by the consumer attesting that the consumer is a victim of trafficking if such statement or an accompanying document is signed or certified by a representative of an entity described in paragraph (b)(6)(i)(A) or (B) of this section.

(ii)

Identified adverse items of information.

(A) Identifies any items of adverse information that should not be furnished by a consumer reporting agency because the items resulted from a severe form of trafficking in persons or sex trafficking of which the consumer is a victim; and

(B) Must contain a preferred method for a consumer reporting agency to contact the consumer electronically or in writing such as an email address or physical address where mail can be received. A consumer reporting agency shall use only the consumer's preferred method of contact for communications under paragraphs (d), (e), and (f) of this section about the consumer's submission and shall not use the consumer's preferred contact information for any other purpose.

(7)

Victim of trafficking

(c)

Prohibition on inclusion of adverse information of trafficking victims.

(d)

Method of submission to consumer reporting agencies

Mailing and website address.

(2)

Disclosing methods for submission.

(3)

Toll-free telephone number.

(i) Allocate a reasonable amount of personnel to respond to consumer inquiries about the process for and status of a consumer's submission at the toll-free telephone number used for disputes under section 611 of the FCRA; and

(ii) Establish a toll-free telephone number dedicated to addressing submissions from consumers seeking to block adverse items of information resulting from a severe form of trafficking in persons or sex trafficking under this section.

(e)

Block of adverse information resulting from trafficking

Block upon receipt of the submission.

(2)

Requirement to notify the consumer and attempt to resolve deficiencies

In general.

(ii)

Timing of final determination.

(3)

Final determination of the block.

(4)

Authority to decline or rescind a block.

(f)

Notification to consumer of actions taken in response to the consumer's submission

In general.

(2)

Contents.

(i) A statement that the review of the submission is completed;

(ii) A statement of the outcome of the submission, including the reason(s) if the consumer reporting agency declined to block the adverse information identified by the consumer, or rescinded such a block, under paragraph (e)(4) of this section;

(iii) A consumer report, provided at no cost to the consumer, that is based upon the consumer's revised file (if applicable) as a result of the consumer's submission;

(iv) A description of the procedure used to determine the outcome;

(v) A method for contacting the consumer reporting agency to appeal the determination or revise the submission to cure any of the noted reasons for declining to block the adverse information identified by the consumer; and

(vi) The web page consumers can use to submit complaints to the Consumer Financial Protection Bureau.

(g)

Record retention.

(h)

Policies and procedures to ensure and maintain compliance.

[87 FR 37723, June 24, 2022]

Appendix A to Part 1022 [Reserved]

Appendix B to Part 1022 Model Notices of Furnishing Negative Information

a. Although use of the model notices is not required, a financial institution that is subject to section 623(a)(7) of the FCRA shall be deemed to be in compliance with the notice requirement in section 623(a)(7) of the FCRA if the institution properly uses the model notices in this appendix (as applicable).

b. A financial institution may use Model Notice B-1 if the institution provides the notice prior to furnishing negative information to a nationwide consumer reporting agency.

c. A financial institution may use Model Notice B-2 if the institution provides the notice after furnishing negative information to a nationwide consumer reporting agency.

d. Financial institutions may make certain changes to the language or format of the model notices without losing the safe harbor from liability provided by the model notices. The changes to the model notices may not be so extensive as to affect the substance, clarity, or meaningful sequence of the language in the model notices. Financial institutions making such extensive revisions will lose the safe harbor from liability that this appendix provides. Acceptable changes include, for example,

1. Rearranging the order of the references to late payment(s), or missed payment(s).
2. Pluralizing the terms credit bureau, credit report, and account.
3. Specifying the particular type of account on which information may be furnished, such as credit card account.
4. Rearranging in Model Notice B-1 the phrases information about your account and to credit bureaus such that it would read We may report to credit bureaus information about your account.

Model Notice B-1

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

Model Notice B-2

We have told a credit bureau about a late payment, missed payment or other default on your

account. This information may be reflected in your credit report.

Pt. 1022, App. C

Appendix C to Part 1022 Model Forms for Opt-Out Notices

a. Although use of the model forms is not required, use of the model forms in this appendix (as applicable) complies with the requirement in section 624 of the Act for clear, conspicuous, and concise notices.

b. Certain changes may be made to the language or format of the model forms without losing the protection from liability afforded by use of the model forms. These changes may not be so extensive as to affect the substance, clarity, or meaningful sequence of the language in the model forms. Persons making such extensive revisions will lose the safe harbor that this appendix provides. Acceptable changes include, for example:

1. Rearranging the order of the references to your income, your account history, and your credit score.
2. Substituting other types of information for income, account history, or credit score for accuracy, such as payment history, credit history, payoff status, or claims history.
3. Substituting a clearer and more accurate description of the affiliates providing or covered by the notice for phrases such as the [ABC] group of companies, including without limitation a statement that the entity providing the notice recently purchased the consumer's account.
4. Substituting other types of affiliates covered by the notice for credit card, insurance, or securities affiliates.
5. Omitting items that are not accurate or applicable. For example, if a person does not limit the duration of the opt-out period, the notice may omit information about the renewal notice.
6. Adding a statement informing consumers how much time they have to opt out before shared eligibility information may be used to make solicitations to them.
7. Adding a statement that the consumer may exercise the right to opt out at any time.
8. Adding the following statement, if accurate: If you previously opted out, you do not need to do so

again.

9. Providing a place on the form for the consumer to fill in identifying information, such as his or her name and address.

10. Adding disclosures regarding the treatment of opt-outs by joint consumers to comply with § 1022.23(a)(2) of this part.

C-1Model Form for Initial Opt-out Notice (Single-Affiliate Notice)

C-2Model Form for Initial Opt-out Notice (Joint Notice)

C-3Model Form for Renewal Notice (Single-Affiliate Notice)

C-4Model Form for Renewal Notice (Joint Notice)

C-5Model Form for Voluntary No Marketing Notice

C-1Model Form for Initial Opt-Out Notice (Single-Affiliate Notice)[Your Choice To Limit Marketing]/[Marketing Opt-Out]

[Name of Affiliate] is providing this notice.

[Optional: Federal law gives you the right to limit some but not all marketing from our affiliates. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from our affiliates.]

You may limit our affiliates in the [ABC] group of companies, such as our [credit card, insurance, and securities] affiliates, from marketing their products or services to you based on your personal information that we collect and share with them. This information includes your [income], your [account history with us], and your [credit score].

Your choice to limit marketing offers from our affiliates will apply [until you tell us to change your choice]/[for x years from when you tell us your choice]/[for at least 5 years from when you tell us your choice]. [Include if the opt-out period expires.] Once that period expires, you will receive a renewal notice that will allow you to continue to limit marketing offers from our affiliates for [another x years]/[at least another 5 years].

[Include, if applicable, in a subsequent notice, including an annual notice, for consumers who may

have previously opted out.] If you have already made a choice to limit marketing offers from our affiliates, you do not need to act again until you receive the renewal notice.

To limit marketing offers, contact us [include all that apply]:

By telephone: 1-(877) ###-####

On the Web:

www..com

By mail: Check the box and complete the form below, and send the form to:

[Company name]

[Company address]

Do not allow your affiliates to use my personal information to market to me.

C-2Model Form for Initial Opt-Out Notice (Joint Notice)[Your Choice To Limit Marketing]/[Marketing Opt-Out]

The [ABC group of companies] is providing this notice.

[Optional: Federal law gives you the right to limit some but not all marketing from the [ABC] companies. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from the [ABC] companies.]

You may limit the [ABC] companies, such as the [ABC credit card, insurance, and securities] affiliates, from marketing their products or services to you based on your personal information that they receive from other [ABC] companies. This information includes your [income], your [account history], and your [credit score].

Your choice to limit marketing offers from the [ABC] companies will apply [until you tell us to change your choice]/[for x years from when you tell us your choice]/[for at least 5 years from when you tell us your choice]. [Include if the opt-out period expires.] Once that period expires, you will receive a renewal notice that will allow you to continue to limit marketing offers from the [ABC] companies for [another x years]/[at least another 5 years].

[Include, if applicable, in a subsequent notice, including an annual notice, for consumers who may

have previously opted out.] If you have already made a choice to limit marketing offers from the [ABC] companies, you do not need to act again until you receive the renewal notice.

To limit marketing offers, contact us [include all that apply]:

By telephone: 1-(877) ###-####

On the Web:

www..com

By mail: Check the box and complete the form below, and send the form to:

[Company name]

[Company address]

Do not allow any company [in the ABC group of companies] to use my personal information to market to me.

C-3Model Form for Renewal Notice (Single-Affiliate Notice)[Renewing Your Choice To Limit Marketing]/[Renewing Your Marketing Opt-Out]

[Name of Affiliate] is providing this notice.

[Optional: Federal law gives you the right to limit some but not all marketing from our affiliates. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from our affiliates.]

You previously chose to limit our affiliates in the [ABC] group of companies, such as our [credit card, insurance, and securities] affiliates, from marketing their products or services to you based on your personal information that we share with them. This information includes your [income], your [account history with us], and your [credit score].

Your choice has expired or is about to expire.

To renew your choice to limit marketing for [x] more years, contact us [include all that apply]:

By telephone: 1-(877) ###-####

On the Web:

www..com

By mail: Check the box and complete the form below, and send the form to:

[Company name]

[Company address]

Renew my choice to limit marketing for [x] more years.

C-4Model Form for Renewal Notice (Joint Notice)[Renewing Your Choice To Limit Marketing]/[Renewing Your Marketing Opt-Out]

The [ABC group of companies] is providing this notice.

[Optional: Federal law gives you the right to limit some but not all marketing from the [ABC] companies. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from the [ABC] companies.]

You previously chose to limit the [ABC] companies, such as the [ABC credit card, insurance, and securities] affiliates, from marketing their products or services to you based on your personal information that they receive from other ABC companies. This information includes your [income], your [account history], and your [credit score].

Your choice has expired or is about to expire.

To renew your choice to limit marketing for [x] more years, contact us [include all that apply]:

By telephone: 1-(877) ###-####

On the Web:

www..com

By mail: Check the box and complete the form below, and send the form to:

[Company name]

[Company address]

Renew my choice to limit marketing for [x] more years.

C-5Model Form for Voluntary No Marketing Notice[Your Choice To Stop Marketing]

[Name of Affiliate] is providing this notice.

You may choose to stop all marketing from us and our affiliates.

[Your choice to stop marketing from us and our affiliates will apply until you tell us to change your choice.]

To stop all marketing, contact us [include all that apply]:

By telephone: 1 (877) ###-####

On the Web:

www..com

By mail: Check the box and complete the form below, and send the form to:

[Company name]

[Company address]

Do not market to me.

Pt. 1022, App. D

Appendix D to Part 1022 Model Forms for Firm Offers of Credit or Insurance

In order to comply with § 1022.54, the following model notices may be used:

(a)

English language model notice

Short notice.

ER21DE11.000

(2)

Long notice.

ER21DE11.001

(b)

Spanish language model notice

Short notice.

ER21DE11.002

(2)

Long notice.

Appendix E to Part 1022 Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies

The Bureau encourages voluntary furnishing of information to consumer reporting agencies. Section 1022.42 of this part requires each furnisher to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of the information it furnishes to consumer reporting agencies. Under § 1022.42(b) of this

I. Nature, Scope, and Objectives of Policies and Procedures

(a)

Nature and Scope.

- (1) The types of business activities in which the furnisher engages;
- (2) The nature and frequency of the information the furnisher provides to consumer reporting agencies; and
- (3) The technology used by the furnisher to furnish information to consumer reporting agencies.

(b)

Objectives.

- (1) To furnish information about accounts or other relationships with a consumer that is accurate, such that the furnished information:
 - (i) Identifies the appropriate consumer;
 - (ii) Reflects the terms of and liability for those accounts or other relationships; and
 - (iii) Reflects the consumer's performance and other conduct with respect to the account or other relationship;
- (2) To furnish information about accounts or other relationships with a consumer that has integrity, such that the furnished information:
 - (i) Is substantiated by the furnisher's records at the time it is furnished;

(ii) Is furnished in a form and manner that is designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; thus, the furnished information should:

(A) Include appropriate identifying information about the consumer to whom it pertains; and

(B) Be furnished in a standardized and clearly understandable form and manner and with a date specifying the time period to which the information pertains; and

(iii) Includes the credit limit, if applicable and in the furnisher's possession;

(3) To conduct reasonable investigations of consumer disputes and take appropriate actions based on the outcome of such investigations; and

(4) To update the information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including, for example:

(i) Any transfer of an account (

e.g.,

(ii) Any cure of the consumer's failure to abide by the terms of the account or other relationship.

II. Establishing and Implementing Policies and Procedures

In establishing and implementing its policies and procedures, a furnisher should:

(a) Identify practices or activities of the furnisher that can compromise the accuracy or integrity of information furnished to consumer reporting agencies, such as by:

(1) Reviewing its existing practices and activities, including the technological means and other methods it uses to furnish information to consumer reporting agencies and the frequency and timing of its furnishing of information;

(2) Reviewing its historical records relating to accuracy or integrity or to disputes; reviewing other information relating to the accuracy or integrity of information provided by the furnisher to consumer reporting agencies; and considering the types of errors, omissions, or other problems that may have affected the accuracy or integrity of information it has furnished about consumers to consumer reporting agencies;

(3) Considering any feedback received from consumer reporting agencies, consumers, or other

appropriate parties;

(4) Obtaining feedback from the furnisher's staff; and

(5) Considering the potential impact of the furnisher's policies and procedures on consumers.

(b) Evaluate the effectiveness of existing policies and procedures of the furnisher regarding the accuracy and integrity of information furnished to consumer reporting agencies; consider whether new, additional, or different policies and procedures are necessary; and consider whether implementation of existing policies and procedures should be modified to enhance the accuracy and integrity of information about consumers furnished to consumer reporting agencies.

(c) Evaluate the effectiveness of specific methods (including technological means) the furnisher uses to provide information to consumer reporting agencies; how those methods may affect the accuracy and integrity of the information it provides to consumer reporting agencies; and whether new, additional, or different methods (including technological means) should be used to provide information to consumer reporting agencies to enhance the accuracy and integrity of that information.

III. Specific Components of Policies and Procedures

In developing its policies and procedures, a furnisher should address the following, as appropriate:

(a) Establishing and implementing a system for furnishing information about consumers to consumer reporting agencies that is appropriate to the nature, size, complexity, and scope of the furnisher's business operations.

(b) Using standard data reporting formats and standard procedures for compiling and furnishing data, where feasible, such as the electronic transmission of information about consumers to consumer reporting agencies.

(c) Maintaining records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a direct dispute.

(d) Establishing and implementing appropriate internal controls regarding the accuracy and integrity

of information about consumers furnished to consumer reporting agencies, such as by implementing standard procedures and verifying random samples of information provided to consumer reporting agencies.

(e) Training staff that participates in activities related to the furnishing of information about consumers to consumer reporting agencies to implement the policies and procedures.

(f) Providing for appropriate and effective oversight of relevant service providers whose activities may affect the accuracy or integrity of information about consumers furnished to consumer reporting agencies to ensure compliance with the policies and procedures.

(g) Furnishing information about consumers to consumer reporting agencies following mergers, portfolio acquisitions or sales, or other acquisitions or transfers of accounts or other obligations in a manner that prevents re-aging of information, duplicative reporting, or other problems that may similarly affect the accuracy or integrity of the information furnished.

(h) Deleting, updating, and correcting information in the furnisher's records, as appropriate, to avoid furnishing inaccurate information.

(i) Conducting reasonable investigations of disputes.

(j) Designing technological and other means of communication with consumer reporting agencies to prevent duplicative reporting of accounts, erroneous association of information with the wrong consumer(s), and other occurrences that may compromise the accuracy or integrity of information provided to consumer reporting agencies.

(k) Providing consumer reporting agencies with sufficient identifying information in the furnisher's possession about each consumer about whom information is furnished to enable the consumer reporting agency properly to identify the consumer.

(l) Conducting a periodic evaluation of its own practices, consumer reporting agency practices of which the furnisher is aware, investigations of disputed information, corrections of inaccurate information, means of communication, and other factors that may affect the accuracy or integrity of information furnished to consumer reporting agencies.

(m) Complying with applicable requirements under the FCRA and its implementing regulations.

Appendixes F-G to Part 1022 [Reserved]

Pt. 1022, App. H

Appendix H to Part 1022 Model Forms for Risk-Based Pricing and Credit Score Disclosure Exception Notices

1. This appendix contains four model forms for risk-based pricing notices and three model forms for use in connection with the credit score disclosure exceptions. Each of the model forms is designated for use in a particular set of circumstances as indicated by the title of that model form.

2. Model form H-1 is for use in complying with the general risk-based pricing notice requirements in Sec. 1022.72 if a credit score is not used in setting the material terms of credit. Model form H-2 is for risk-based pricing notices given in connection with account review if a credit score is not used in increasing the annual percentage rate. Model form H-3 is for use in connection with the credit score disclosure exception for loans secured by residential real property. Model form H-4 is for use in connection with the credit score disclosure exception for loans that are not secured by residential real property. Model form H-5 is for use in connection with the credit score disclosure exception when no credit score is available for a consumer. Model form H-6 is for use in complying with the general risk-based pricing notice requirements in Sec. 1022.72 if a credit score is used in setting the material terms of credit. Model form H-7 is for risk-based pricing notices given in connection with account review if a credit score is used in increasing the annual percentage rate. All forms contained in this appendix are models; their use is optional.

3. A person may change the forms by rearranging the format or by making technical modifications to the language of the forms, in each case without modifying the substance of the disclosures. Any such rearrangement or modification of the language

a. Acceptable changes include, for example:

i. Corrections or updates to telephone numbers, mailing addresses, or Web site addresses that may change over time.

- ii. The addition of graphics or icons, such as the person's corporate logo.
- iii. Alteration of the shading or color contained in the model forms.
- iv. Use of a different form of graphical presentation to depict the distribution of credit scores.
- v. Substitution of the words credit and creditor or finance and finance company for the terms loan and lender.
- vi. Including pre-printed lists of the sources of consumer reports or consumer reporting agencies in a check-the-box format.
- vii. Including the name of the consumer, transaction identification numbers, a date, and other information that will assist in identifying the transaction to which the form pertains.
- viii. Including the name of an agent, such as an auto dealer or other party, when providing the Name of the Entity Providing the Notice.
- ix. Until January 1, 2013, substituting For more information about credit reports and your rights under Federal law, visit the Federal Reserve Board's Web site at
www.federalreserve.gov,
www.ftc.gov.
www.consumerfinance.gov/learnmore.

b. Unacceptable changes include, for example:

- i. Providing model forms on register receipts or interspersed with other disclosures.
- ii. Eliminating empty lines and extra spaces between sentences within the same section.

4. If a person uses an appropriate appendix H model form, or modifies a form in accordance with the above instructions, that person shall be deemed to be acting in compliance with the provisions of § 1022.73 or § 1022.74, as applicable, of this part. It is intended that appropriate use of Model Form H-3 also will comply with the disclosure that may be required under section 609(g) of the FCRA. Optional language in model forms H-6 and H-7 may be used to direct the consumer to the entity (which may be a consumer reporting agency or the creditor itself, for a proprietary score that meets the definition of a credit score) that provided the credit score for any questions about the credit

score, along with the entity's contact information. Creditors may use or not use the additional language without losing the safe harbor, since the language is optional.

H-1 Model form for risk-based pricing notice.

H-2 Model form for account review risk-based pricing notice.

H-3 Model form for credit score disclosure exception for credit secured by one to four units of residential real property.

H-4 Model form for credit score disclosure exception for loans not secured by residential real property.

H-5 Model form for credit score disclosure exception for loans where credit score is not available.

H-6 Model form for risk-based pricing notice with credit score information.

H-7 Model form for account review risk-based pricing notice with credit score information.

ER21DE11.004

ER21DE11.005

ER21DE11.006

ER21DE11.007

ER21DE11.008

ER21DE11.009

ER21DE11.010

ER21DE11.011

ER21DE11.012

ER21DE11.013

ER21DE11.014

ER21DE11.015

ER21DE11.016

Pt. 1022, App. I

Appendix I to Part 1022Summary of Consumer Identity Theft Rights

The prescribed form for this summary is a disclosure that is substantially similar to the Bureau's model summary with all information clearly and prominently displayed. A summary should accurately reflect changes to those items that may change over time (such as telephone numbers) to remain in compliance. Translations of this summary will be in compliance with the Bureau's prescribed model, provided that the translation is accurate and that it is provided in a language used by the recipient consumer.

ER18SE18.006

ER18SE18.007

ER18SE18.008

[83 FR 47033, Sept. 18, 2018]

Appendix J to Part 1022 [Reserved]

Pt. 1022, App. K

Appendix K to Part 1022Summary of Consumer Rights

The prescribed form for this summary is a disclosure that is substantially similar to the Bureau's model summary with all information clearly and prominently displayed. The list of Federal regulators that is included in the Bureau's prescribed summary may be provided separately so long as this is done in a clear and conspicuous way. A summary should accurately reflect changes to those items that may change over time (

e.g.,

ER25AU23.004

ER25AU23.005

ER25AU23.006

ER25AU23.007

[88 FR 58066, Aug. 25, 2023]

Pt. 1022, App. L

Appendix L to Part 1022Standardized Form for Requesting Annual File Disclosures

ER21DE11.022

ER21DE11.023

Pt. 1022, App. M

Appendix M to Part 1022 Notice of Furnisher Responsibilities

The prescribed form for this disclosure is a separate document that is substantially similar to the Bureau's model notice with all information clearly and prominently displayed. Consumer reporting agencies may limit the disclosure to only those items that they know are relevant to the furnisher that will receive the notice.

ER14NO12.044

ER14NO12.045

ER14NO12.046

ER14NO12.047

[77 FR 67750, Nov. 14, 2012]

Pt. 1022, App. N

Appendix N to Part 1022 Notice of User Responsibilities

The prescribed form for this disclosure is a separate document that is substantially similar to the Bureau's notice with all information clearly and prominently displayed. Consumer reporting agencies may limit the disclosure to only those items that they know are relevant to the user that will receive the notice.

ER14NO12.048

ER14NO12.049

ER14NO12.050

ER14NO12.051

ER14NO12.052

ER14NO12.053

ER14NO12.054

ER14NO12.055

ER14NO12.056

[77 FR 67754, Nov. 14, 2012]

Pt. 1022, App. O

Appendix O to Part 1022 Reasonable Charges for Certain Disclosures

Section 612(f) of the FCRA, 15 U.S.C. 1681j(f), directs the Bureau to increase the maximum allowable charge a consumer reporting agency may impose for making a disclosure to the consumer pursuant to section 609 of the FCRA, 15 U.S.C. 1681g, on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents. The Bureau will publish notice of the maximum allowable charge each year by amending this appendix. For calendar year 2024, the maximum allowable charge is \$15.50. For historical purposes:

1. For calendar year 2012, the maximum allowable disclosure charge was \$11.50.
2. For calendar year 2013, the maximum allowable disclosure charge was \$11.50.
3. For calendar year 2014, the maximum allowable disclosure charge was \$11.50.
4. For calendar year 2015, the maximum allowable disclosure charge was \$12.00.
5. For calendar year 2016, the maximum allowable disclosure charge was \$12.00.
6. For calendar year 2017, the maximum allowable disclosure charge was \$12.00.
7. For calendar year 2018, the maximum allowable disclosure charge was \$12.00.
8. For calendar year 2019, the maximum allowable disclosure charge was \$12.50.
9. For calendar year 2020, the maximum allowable disclosure charge was \$12.50.
10. For calendar year 2021, the maximum allowable disclosure charge was \$13.00.
11. For calendar year 2022, the maximum allowable disclosure charge was \$13.50.
12. For calendar year 2023, the maximum allowable disclosure charge was \$14.50.
13. For calendar year 2024, the maximum allowable disclosure charge is \$15.50.

[88 FR 78231, Nov. 15, 2023]

Pt. 1024

PART 1024REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)

Subpart AGeneral Provisions

Sec.

1024.1

Designation.

1024.2

Definitions.

1024.3

E-Sign applicability.

1024.4

Reliance upon rule, regulation, or interpretation by the Bureau.

1024.5

Coverage of RESPA.

Subpart BMortgage Settlement and Escrow Accounts

1024.6

Special information booklet at time of loan application.

1024.7

Good faith estimate.

1024.8

Use of HUD-1 or HUD-1A settlement statements.

1024.9

Reproduction of settlement statements.

1024.10

One-day advance inspection of HUD-1 or HUD-1A settlement statement; delivery; recordkeeping.

1024.11

Mailing.

1024.12

No fee.

1024.13

[Reserved]

1024.14

Prohibition against kickbacks and unearned fees.

1024.15

Affiliated business arrangements.

1024.16

Title companies.

1024.17

Escrow accounts.

1024.18-1024.19

[Reserved]

1024.20

List of homeownership counseling organizations.

Subpart CMortgage Servicing

1024.30

Scope.

1024.31

Definitions.

1024.32

General disclosure requirements.

1024.33

Mortgage servicing transfers.

1024.34

Timely escrow payments and treatment of escrow account balances.

1024.35

Error resolution procedures.

1024.36

Requests for information.

1024.37

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Appendix MS-3 to Part 1024Model Force-Placed Insurance Notice Forms

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Supplement I to Part 1024Official Bureau Interpretations

Authority:

12 U.S.C. 2603-2605, 2607, 2609, 2617, 5512, 5532, 5581.

Source:

76 FR 78981, Dec. 20, 2011, unless otherwise noted.

Subpart AGeneral Provisions

§ 1024.1

Designation.

This part, known as Regulation X, is issued by the Bureau of Consumer Financial Protection to implement the Real Estate Settlement Procedures Act of 1974, as amended, 12 U.S.C. 2601 et. seq.

§ 1024.2

Definitions.

(a)

Statutory terms.

(b)

Other terms.

Application

Balloon payment

Bureau

Business day

Changed circumstances

(1)(i) Acts of God, war, disaster, or other emergency;

(ii) Information particular to the borrower or transaction that was relied on in providing the GFE and that changes or is found to be inaccurate after the GFE has been provided. This may include

information about the credit quality of the borrower, the amount of the loan, the estimated value of the property, or any other information that was used in providing the GFE;

(iii) New information particular to the borrower or transaction that was not relied on in providing the GFE; or

(iv) Other circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems.

(2) Changed circumstances do not include:

(i) The borrower's name, the borrower's monthly income, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any information contained in any credit report obtained by the loan originator prior to providing the GFE, unless the information changes or is found to be inaccurate after the GFE has been provided; or

(ii) Market price fluctuations by themselves.

Dealer

Dealer loan or dealer consumer credit contract

Effective date of transfer

Federally related 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

(

2

(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(g) of the Consumer Credit Protection Act (15 U.S.C. 1602(g)), 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

(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

GFE

HUD

HUD-1 or HUD-1A settlement statement

HUD-1 or HUD-1A

Lender

Loan originator

Manufactured home

Mortgage broker

Mortgaged property

Origination service

Person

Prepayment penalty

Public Guidance Documents

Federal Register

Federal Register.

Refinancing

(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

et seq.

Required use

RESPA

et seq.

Servicer

(1) The Federal Deposit Insurance Corporation (FDIC), 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;

(2) The National Credit Union Administration (NCUA), in connection with assets acquired, assigned, sold, or transferred pursuant to section 208 of the Federal Credit Union Act or as conservator or liquidating agent of an insured credit union; and

(3) The Federal National Mortgage Corporation (FNMA); the Federal Home Loan Mortgage Corporation (Freddie Mac); 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.

Servicing

Settlement

Settlement service

(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

Federal Register

Federal Register.

State

Table funding

Third party

Title company

Title service

Tolerance

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 10873, Feb. 14, 2013; 88 FR 16542, Mar. 20, 2023]

§ 1024.3

E-Sign applicability.

The disclosures required by this part may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.

[78 FR 10873, Feb. 14, 2013]

§ 1024.4

Reliance upon rule, regulation, or interpretation by the Bureau.

(a)

Rule, regulation or interpretation.

(i) All provisions, including appendices and supplements, of this part. Any other document referred to in this part is not incorporated in this part unless it is specifically set out in this part;

(ii) Any other document that is published in the

Federal Register

(2) A rule, regulation, or interpretation thereof by the Bureau for purposes of section 19(b) of RESPA (12 U.S.C. 2617(b)) shall not include the special information booklet prescribed by the Bureau or any other statement or issuance, whether oral or written, by an officer or representative of the Bureau, letter or memorandum by the Director, General Counsel, or other officer or employee of the Bureau, preamble to a regulation or other issuance of the Bureau, Public Guidance Document,

report to Congress, pleading, affidavit or other document in litigation, pamphlet, handbook, guide, telegraphic communication, explanation, instructions to forms, speech or other material of any nature which is not specifically included in paragraph (a)(1) of this section.

(b) All informal counsel's opinions and staff interpretations issued by HUD before November 2, 1992, were withdrawn as of that date. Courts and administrative agencies, however, may use previous opinions to determine the validity of conduct under the previous Regulation X.

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 10874, Feb. 14, 2013]

§ 1024.5

Coverage of RESPA.

(a)

Applicability.

(b)

Exemptions.

(2)

Business purpose loans.

(3)

Temporary financing.

bona fide

(4)

Vacant land.

(5)

Assumption without lender approval.

(6)

Loan conversions.

(7)

Secondary market transactions.

bona fide

(c)

Relation to State laws.

(2) Upon request by any person, the Bureau is authorized to determine if inconsistencies with State law exist; in doing so, the Bureau shall consult with appropriate Federal agencies.

(i) The Bureau may not determine that a State law or regulation is inconsistent with any provision of RESPA or this part, if the Bureau determines that such law or regulation gives greater protection to the consumer.

(ii) In determining whether provisions of State law or regulations concerning affiliated business arrangements are inconsistent with RESPA or this part, the Bureau may not construe those provisions that impose more stringent limitations on affiliated business arrangements as inconsistent with RESPA so long as they give more protection to consumers and/or competition.

(3) Any person may request the Bureau to determine whether an inconsistency exists by submitting to the address established by the Bureau to request an official interpretation, a copy of the State law in question, any other law or judicial or administrative opinion that implements, interprets or applies the relevant provision, and an explanation of the possible inconsistency. A determination by the Bureau that an inconsistency with State law exists will be made by publication of a notice in the Federal Register.

(4) A specific preemption of conflicting State laws regarding notices and disclosures of mortgage servicing transfers is set forth in § 1024.33(d).

(d)

Partial exemptions for certain mortgage loans.

(1) That is subject to the special disclosure requirements for certain consumer credit transactions secured by real property set forth in Regulation Z, 12 CFR 1026.19(e), (f), and (g); or

(2) That satisfies the criteria in Regulation Z, 12 CFR 1026.3(h).

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 10874, Feb. 14, 2013; 78 FR 44717, July 24,

2013; 78 FR 80104, Dec. 31, 2013; 80 FR 8775, Feb. 19, 2015]

Subpart BMortgage Settlement and Escrow Accounts

§ 1024.6

Special information booklet at time of loan application.

(a)

Lender to provide special information booklet.

(1) The lender shall provide the special information booklet by delivering it or placing it in the mail to the applicant not later than three business days (as that term is defined in § 1024.2) after the application is received or prepared. However, if the lender denies the borrower's application for credit before the end of the three-business-day period, then the lender need not provide the booklet to the borrower. If a borrower uses a mortgage broker, the mortgage broker shall distribute the special information booklet and the lender need not do so. The intent of this provision is that the applicant receive the special information booklet at the earliest possible date.

(2) In the case of a federally related mortgage loan involving an open-ended credit plan, as defined in Regulation Z, 12 CFR 1026.2(a)(20), a lender or mortgage broker that provides the borrower with a copy of the brochure entitled *When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit*, or any successor brochure issued by the Bureau, is deemed to be in compliance with this section.

(3) In the categories of transactions set forth at the end of this paragraph, the lender or mortgage broker does not have to provide the booklet to the borrower. Under the authority of section 19(a) of RESPA (12 U.S.C. 2617(a)), the Bureau may issue a revised or separate special information booklet that deals with these transactions, or the Bureau may choose to endorse the forms or booklets of other Federal agencies. In such an event, the requirements for delivery by lenders and the availability of the booklet or alternate materials for these transactions will be set forth in a Notice in the

Federal Register.

- (i) Refinancing transactions;
- (ii) Closed-end loans, as defined in 12 CFR 1026.2(a)(10) of Regulation Z, when the lender takes a subordinate lien;
- (iii) Reverse mortgages; and
- (iv) Any other federally related mortgage loan whose purpose is not the purchase of a 1- to 4-family residential property.

(b)

Revision.

Federal Register.

(c)

Reproduction.

(d)

Permissible changes.

Public Guidance Documents

(2) The cover of the booklet may be in any form and may contain any drawings, pictures, or artwork, provided that the words settlement costs are used in the title. Names, addresses and telephone numbers of the lender or others and similar information may appear on the cover, but no discussion of the matters covered in the booklet shall appear on the cover.

(3) The special information booklet may be translated into languages other than English.

[76 FR 78981, Dec. 20, 2011, as amended at 81 FR 72370, Oct. 19, 2016]

§ 1024.7

Good faith estimate.

(a)

Lender to provide.

(2) The lender must provide the GFE to the loan applicant by hand delivery, by placing it in the mail, or, if the applicant agrees, by fax, email, or other electronic means.

(3) The lender is not required to provide the applicant with a GFE if, before the end of the 3-business-day period:

(i) The lender denies the application; or

(ii) The applicant withdraws the application.

(4) The lender is not permitted to charge, as a condition for providing a GFE, any fee for an appraisal, inspection, or other similar settlement service. The lender may, at its option, charge a fee limited to the cost of a credit report. The lender may not charge additional fees until after the applicant has received the GFE and indicated an intention to proceed with the loan covered by that GFE. If the GFE is mailed to the applicant, the applicant is considered to have received the GFE 3 calendar days after it is mailed, not including Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(5) The lender may at any time collect from the loan applicant any information that it requires in addition to the required application information. However, the lender is not permitted to require, as a condition for providing a GFE, that an applicant submit supplemental documentation to verify the information provided on the application.

(b)

Mortgage broker to provide.

(2) The mortgage broker must provide the GFE by hand delivery, by placing it in the mail, or, if the applicant agrees, by fax, email, or other electronic means.

(3) The mortgage broker is not required to provide the applicant with a GFE if, before the end of the 3-business-day period:

(i) The mortgage broker or lender denies the application; or

(ii) The applicant withdraws the application.

(4) The mortgage broker is not permitted to charge, as a condition for providing a GFE, any fee for an appraisal, inspection, or other similar settlement service. The mortgage broker may, at its option, charge a fee limited to the cost of a credit report. The mortgage broker may not charge additional

fees until after the applicant has received the GFE and indicated an intention to proceed with the loan covered by that GFE. If the GFE is mailed to the applicant, the applicant is considered to have received the GFE 3 calendar days after it is mailed, not including Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(5) The mortgage broker may at any time collect from the loan applicant any information that it requires in addition to the required application information. However, the mortgage broker is not permitted to require, as a condition for providing a GFE, that an applicant submit supplemental documentation to verify the information provided on the application.

(c)

Availability of GFE terms.

(d)

Content and form of GFE.

(e)

Tolerances for amounts included on GFE.

(i) The origination charge;

(ii) While the borrower's interest rate is locked, the credit or charge for the interest rate chosen;

(iii) While the borrower's interest rate is locked, the adjusted origination charge; and

(iv) Transfer taxes.

(2) Except as provided in paragraph (f) of this section, the sum of the charges at settlement for the following services may not be greater than 10 percent above the sum of the amounts included on the GFE:

(i) Lender-required settlement services, where the lender selects the third party settlement service provider;

(ii) Lender-required services, title services and required title insurance, and owner's title insurance, when the borrower uses a settlement service provider identified by the loan originator; and

(iii) Government recording charges.

(3) The amounts charged for all other settlement services included on the GFE may change at settlement.

(f)

Binding GFE.

(1)

Changed circumstances affecting settlement costs.

(2)

Changed circumstances affecting loan.

(3)

Borrower-requested changes.

(4)

Expiration of GFE.

(5)

Interest rate-dependent charges and terms.

(6)

New construction home purchases.

(g)

GFE is not a loan commitment.

(h)

Open-end lines of credit (home-equity plans) under Truth in Lending Act.

(i)

Violations of section 5 of RESPA (12 U.S.C. 2604).

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 10875, Feb. 14, 2013]

§ 1024.8

Use of HUD-1 or HUD-1A settlement statements.

(a)

Use by settlement agent.

(b)

Charges to be stated.

(1)

In general.

(2)

Use of average charge.

(ii) The settlement service provider shall define the particular class of transactions for purposes of calculating the average charge as all transactions involving federally related mortgage loans for:

(A) A period of time as determined by the settlement service provider, but not less than 30 calendar days and not more than 6 months;

(B) A geographic area as determined by the settlement service provider; and

(C) A type of loan as determined by the settlement service provider.

(iii) A settlement service provider may use an average charge in the same class of transactions for which the charge was calculated. If the settlement service provider uses the average charge for any transaction in the class, the settlement service provider must use the same average charge in every transaction within that class for which a GFE was provided.

(iv) The use of an average charge is not permitted for any settlement service if the charge for the service is based on the loan amount or property value. For example, an average charge may not be used for transfer taxes, interest charges, reserves or escrow, or any type of insurance, including mortgage insurance, title insurance, or hazard insurance.

(v) The settlement service provider must retain all documentation used to calculate the average charge for a particular class of transactions for at least 3 years after any settlement for which that average charge was used.

(c)

Violations of section 4 of RESPA (12 U.S.C. 2603).

§ 1024.9

Reproduction of settlement statements.

(a)

Permissible changes HUD-1.

(1) The person reproducing the HUD-1 may insert its business name and logo in section A and may rearrange, but not delete, the other information that appears in section A.

(2) The name, address, and other information regarding the lender and settlement agent may be printed in sections F and H, respectively.

(3) Reproduction of the HUD-1 must conform to the terminology, sequence, and numbering of line items as presented in lines 100-1400. However, blank lines or items listed in lines 100-1400 that are not used locally or in connection with mortgages by the lender may be deleted, except for the following: Lines 100, 120, 200, 220, 300, 301, 302, 303, 400, 420, 500, 520, 600, 601, 602, 603, 700, 800, 900, 1000, 1100, 1200, 1300, and 1400. The form may be shortened correspondingly. The number of a deleted item shall not be used for a substitute or new item, but the number of a blank space on the HUD-1 may be used for a substitute or new item.

(4) Charges not listed on the HUD-1, but that are customary locally or pursuant to the lender's practice, may be

(5) The following variations in layout and format are within the discretion of persons reproducing the HUD-1 and do not require prior Bureau approval: Size of pages; tint or color of pages; size and style of type or print; vertical spacing between lines or provision for additional horizontal space on lines (for example, to provide sufficient space for recording time periods used in prorations); printing of the HUD-1 contents on separate pages, on the front and back of a single page, or on one continuous page; use of multicopy tear-out sets; printing on rolls for computer purposes; reorganization of sections B through I, when necessary to accommodate computer printing; and manner of placement of the HUD number, but not the OMB approval number, neither of which may be deleted. The expiration date associated with the OMB number listed on the form may be deleted.

Any changes in the HUD number or OMB approval number may be announced by notice in the Federal Register,

(6) The borrower's information and the seller's information may be provided on separate pages.

(7) Signature lines may be added.

(8) The HUD-1 may be translated into languages other than English.

(9) An additional page may be attached to the HUD-1 for the purpose of including customary recitals and information used locally in real estate settlements; for example, breakdown of payoff figures, a breakdown of the borrower's total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between buyer and seller, and the date funds are transferred. If space permits, such information may be added at the end of the HUD-1.

(10) As required by HUD/FHA in FHA-insured loans.

(11) As allowed by § 1024.17, relating to an initial escrow account statement.

(b)

Permissible changes HUD-1A.

(c)

Written approval.

Public Guidance Documents

[76 FR 78981, Dec. 20, 2011, as amended at 81 FR 72370, Oct. 19, 2016]

§ 1024.10

One-day advance inspection of HUD-1 or HUD-1A settlement statement; delivery; recordkeeping.

(a)

Inspection one day prior to settlement upon request by the borrower.

(b)

Delivery.

(c)

Waiver.

(d)

Exempt transactions.

(e)

Recordkeeping.

§ 1024.11

Mailing.

The provisions of this part requiring or permitting mailing of documents shall be deemed to be satisfied by placing the document in the mail (whether or not received by the addressee) addressed to the addresses stated in the loan application or in other information submitted to or obtained by the lender at the time of loan application or submitted or obtained by the lender or settlement agent, except that a revised address shall be used where the lender or settlement agent has been expressly informed in writing of a change in address.

§ 1024.12

No fee.

No fee shall be imposed or charge made upon any other person, as a part of settlement costs or otherwise, by a lender in connection with a federally related mortgage loan made by it (or a loan for the purchase of a manufactured home), or by a servicer (as that term is defined under 12 U.S.C. 2605(i)(2)) for or on account of the preparation and distribution of the HUD-1 or HUD-1A settlement statement, escrow account statements required pursuant to section 10 of RESPA (12 U.S.C. 2609), or statements required by the Truth in Lending Act (15 U.S.C. 1601 et seq.

§ 1024.13

[Reserved]

§ 1024.14

Prohibition against kickbacks and unearned fees.

(a)

Section 8 violation.

(b)

No referral fees.

(c)

No split of charges except for actual services performed.

(d)

Thing of value.

(e)

Agreement or understanding.

(f)

Referral.

(2) A referral also occurs whenever a person paying for a settlement service or business incident thereto is required to use (see § 1024.2, required use) a particular provider of a settlement service or business incident thereto.

(g)

Fees, salaries, compensation, or other payments.

(i) A payment to an attorney at law for services actually rendered;

(ii) A payment by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance;

(iii) A payment by a lender to its duly appointed agent or contractor for services actually performed in the origination, processing, or funding of a loan;

(iv) A payment to any person of a

bona fide

(v) A payment pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and real estate brokers. (The statutory exemption restated in this paragraph refers only to fee divisions within real estate brokerage arrangements when all parties are acting in a

real estate brokerage capacity, and has no applicability to any fee arrangements between real estate brokers and mortgage brokers or between mortgage brokers.);

(vi) Normal promotional and educational activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto; or

(vii) An employer's payment to its own employees for any referral activities.

(2) The Bureau may investigate high prices to see if they are the result of a referral fee or a split of a fee. If the payment of a thing of value bears no reasonable relationship to the market value of the goods or services provided, then the excess is not for services or goods actually performed or provided. These facts may be used as evidence of a violation of section 8 and may serve as a basis for a RESPA investigation. High prices standing alone are not proof of a RESPA violation. The value of a referral (

i.e.,

(3)

Multiple services.

(h)

Recordkeeping.

(i)

Appendix B of this part.

§ 1024.15

Affiliated business arrangements.

(a)

General.

(b)

Violation and exemption.

(1) The person making each referral has provided to each person whose business is referred a

written disclosure, in the format of the Affiliated Business Arrangement Disclosure Statement set forth in appendix D of this part, of the nature of the relationship (explaining the ownership and financial interest) between the provider of settlement services (or business incident thereto) and the person making the referral and of an estimated charge or range of charges generally made by such provider (which describes the charge using the same terminology, as far as practical, as section L of the HUD-1 settlement statement). The disclosures must be provided on a separate piece of paper no later than the time of each referral or, if the lender requires use of a particular provider, the time of loan application, except that:

(i) Where a lender makes the referral to a borrower, the condition contained in paragraph (b)(1) of this section may be satisfied at the time that the good faith estimate or a statement under § 1024.7(d) is provided; and

(ii) Whenever an attorney or law firm requires a client to use a particular title insurance agent, the attorney or law firm shall provide the disclosures no later than the time the attorney or law firm is engaged by the client.

(iii) Failure to comply with the disclosure requirements of this section may be overcome if the person making a referral can prove by a preponderance of the evidence that procedures reasonably adopted to result in compliance with these conditions have been maintained and that any failure to comply with these conditions was unintentional and the result of a

bona fide

bona fide

(2) No person making a referral has required (as defined in § 1024.2, required use) any person to use any particular provider of settlement services or business incident thereto, except if such person is a lender, for requiring a buyer, borrower or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the

(3) The only thing of value that is received from the arrangement other than payments listed in § 1024.14(g) is a return on an ownership interest or franchise relationship.

(i) In an affiliated business arrangement:

(A)

Bona fide

(B)

Bona fide

(ii) A return on an ownership interest does not include:

(A) Any payment which has as a basis of calculation no apparent business motive other than distinguishing among recipients of payments on the basis of the amount of their actual, estimated or anticipated referrals;

(B) Any payment which varies according to the relative amount of referrals by the different recipients of similar payments; or

(C) A payment based on an ownership, partnership or joint venture share which has been adjusted on the basis of previous relative referrals by recipients of similar payments.

(iii) Neither the mere labeling of a thing of value, nor the fact that it may be calculated pursuant to a corporate or partnership organizational document or a franchise agreement, will determine whether it is a

bona fide

(iv) A return on franchise relationship may be a payment to or from a franchisee but it does not include any payment which is not based on the franchise agreement, nor any payment which varies according to the number or amount of referrals by the franchisor or franchisee or which is based on a franchise agreement which has been adjusted on the basis of a previous number or amount of referrals by the franchiser or franchisees. A franchise agreement may not be constructed to insulate against kickbacks or referral fees.

(c)

Definitions.

Associate

Affiliate relationship

Beneficial ownership

Control,

(i) Is a general partner, officer, director, or employer of another person;

(ii) Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interests of another person;

(iii) Affirmatively influences in any manner the election of a majority of the directors of another person; or

(iv) Has contributed more than 20 percent of the capital of the other person.

Direct ownership

Franchise

Franchisor

Franchisee

FTC

Person who is in a position to refer settlement service business

(d)

Recordkeeping.

(e)

Appendix B of this part.

§ 1024.16

Title companies.

No seller of property that will be purchased with the assistance of a federally related mortgage loan shall violate section 9 of RESPA (12 U.S.C. 2608). Section 1024.2 defines required use of a provider of a settlement service.

§ 1024.17

Escrow accounts.

(a)

General.

(b)

Definitions.

Aggregate (or) composite analysis,

aggregate analysis,

Annual escrow account statement

Cushion or reserve

Deficiency

Delivery

Disbursement date

Escrow account

Escrow account analysis

(1) Determine the appropriate target balances;

(2) Compute the borrower's monthly payments for the next escrow account computation year and any deposits needed to establish or maintain the account; and

(3) Determine whether shortages, surpluses or deficiencies exist.

Escrow account computation year

Escrow account item

separate item

Initial escrow account statement

Installment payment

Payment due date

Penalty

Pre-accrual

Shortage

Single-item analysis

Submission

Surplus

System of recordkeeping

Target balance

Trial running balance

(c)

Limits on payments to escrow accounts.

(i)

Charges at settlement or upon creation of an escrow account.

1/6

(ii)

Charges during the life of the escrow account.

1/12

1/6

(2)

Escrow analysis at creation of escrow account.

(3)

Subsequent escrow account analyses.

(4)

Aggregate accounting required.

(5)

Cushion.

1/6

(6)

Restrictions on pre-accrual.

(7)

Servicer estimates of disbursement amounts.

(8)

Provisions in federally related mortgage documents.

(9)

Assessments for periods longer than one year.

(d)

Methods of escrow account analysis.

(2)

Aggregate analysis.

(A) The servicer first projects a trial balance for the account as a whole over the next computation year (a trial running balance). In doing so the servicer assumes that it will make estimated disbursements on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. The servicer does

(B) The servicer then examines the monthly trial balances and adds to the first monthly balance an amount just sufficient to bring the lowest monthly trial balance to zero, and adjusts all other monthly balances accordingly.

(C) The servicer then adds to the monthly balances the permissible cushion. The cushion is two months of the borrower's escrow payments to the servicer or a lesser amount specified by state law or the mortgage document (net of any increases or decreases because of prior year shortages or surpluses, respectively).

(ii)

Lowest monthly balance.

(e)

Transfer of servicing.

(i) Where a new servicer provides an initial escrow account statement upon the transfer of servicing, the new servicer shall use the effective date of the transfer of servicing to establish the new escrow account computation year.

(ii) Where the new servicer retains the monthly payments and accounting method used by the transferor servicer, then the new servicer may continue to use the escrow account computation year established by the transferor servicer or may choose to establish a different computation year using a short-year statement. At the completion of the escrow account computation year or any short year, the new servicer shall perform an escrow analysis and provide the borrower with an annual escrow account statement.

(2) The new servicer shall treat shortages, surpluses and deficiencies in the transferred escrow account according to the procedures set forth in § 1024.17(f).

(f)

Shortages, surpluses, and deficiencies requirements

Escrow account analysis.

(i) As noted in § 1024.17(c)(2) and (3), the servicer shall conduct an escrow account analysis upon establishing an escrow account and at completion of the escrow account computation year.

(ii) The servicer may conduct an escrow account analysis at other times during the escrow computation year. If a servicer advances funds in paying a disbursement, which is not the result of a borrower's payment default under the underlying mortgage document, then the servicer shall conduct an escrow account analysis to determine the extent of the deficiency before seeking repayment of the funds from the borrower under this paragraph (f).

(2)

Surpluses.

(ii) These provisions regarding surpluses apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30

days of the payment due date, then the servicer may retain the surplus in the escrow account pursuant to the terms of the federally related mortgage loan documents.

(iii) After an initial or annual escrow analysis has been performed, the servicer and the borrower may enter into a voluntary agreement for the

(3)

Shortages.

(A) The servicer may allow a shortage to exist and do nothing to change it;

(B) The servicer may require the borrower to repay the shortage amount within 30 days; or

(C) The servicer may require the borrower to repay the shortage amount in equal monthly payments over at least a 12-month period.

(ii) If an escrow account analysis discloses a shortage that is greater than or equal to one month's escrow account payment, then the servicer has two possible courses of action:

(A) The servicer may allow a shortage to exist and do nothing to change it; or

(B) The servicer may require the borrower to repay the shortage in equal monthly payments over at least a 12-month period.

(4)

Deficiency.

(i) If the deficiency is less than one month's escrow account payment, then the servicer:

(A) May allow the deficiency to exist and do nothing to change it;

(B) May require the borrower to repay the deficiency within 30 days; or

(C) May require the borrower to repay the deficiency in 2 or more equal monthly payments.

(ii) If the deficiency is greater than or equal to 1 month's escrow payment, the servicer may allow the deficiency to exist and do nothing to change it or may require the borrower to repay the deficiency in two or more equal monthly payments.

(iii) These provisions regarding deficiencies apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30

days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may recover the deficiency pursuant to the terms of the federally related mortgage loan documents.

(5)

Notice of shortage or deficiency in escrow account.

(g)

Initial escrow account statement

Submission at settlement, or within 45 calendar days of settlement.

(i) The initial escrow account statement shall include the amount of the borrower's monthly mortgage payment and the portion of the monthly payment going into the escrow account and shall itemize the estimated taxes, insurance premiums, and other charges that the servicer reasonably anticipates to be paid from the escrow account during the escrow account computation year and the anticipated disbursement dates of those charges. The initial escrow account statement shall indicate the amount that the servicer

(ii) Pursuant to § 1024.17(h)(2), the servicer may incorporate the initial escrow account statement into the HUD-1 or HUD-1A settlement statement. If the servicer does not incorporate the initial escrow account statement into the HUD-1 or HUD-1A settlement statement, then the servicer shall submit the initial escrow account statement to the borrower as a separate document.

(2)

Time of submission of initial escrow account statement for an escrow account established after settlement.

(h)

Format for initial escrow account statement.

Public Guidance Documents

(2)

Incorporation of initial escrow account statement into HUD-1 or HUD-1A settlement statement.

(3)

Identification of payees.

etc.

e.g.,

etc.

(i)

Annual escrow account statements.

(1)

Contents of annual escrow account statement.

(i) The amount of the borrower's current monthly mortgage payment and the portion of the monthly payment going into the escrow account;

(ii) The amount of the past year's monthly mortgage payment and the portion of the monthly payment that went into the escrow account;

(iii) The total amount paid into the escrow account during the past computation year;

(iv) The total amount paid out of the escrow account during the same period for taxes, insurance premiums, and other charges (as separately identified);

(v) The balance in the escrow account at the end of the period;

(vi) An explanation of how any surplus is being handled by the servicer;

(vii) An explanation of how any shortage or deficiency is to be paid by the borrower; and

(viii) If applicable, the reason(s) why the estimated low monthly balance was not reached, as indicated by noting differences between the most recent account history and last year's projection.

Public Guidance Documents entitled Annual Escrow Account Disclosure StatementFormat and Annual Escrow Account Disclosure StatementExample set forth an acceptable format and methodology for conveying this information.

(2)

No annual statements in the case of default, foreclosure, or bankruptcy.

(3)

Delivery with other material.

(4)

Short year statements.

(i)

Effect of short year statement.

(ii)

Short year statement upon servicing transfer.

(iii)

Short year statement upon loan payoff.

(j)

Formats for annual escrow account statement.

(k)

Timely payments.

(2) The servicer must advance funds to make disbursements in a timely manner as long as the borrower's payment is not more than 30 days overdue. Upon advancing funds to pay a disbursement, the servicer may seek repayment from the borrower for the deficiency pursuant to paragraph (f) of this section.

(3) For the payment of property taxes from the escrow account, if a taxing jurisdiction offers a servicer a choice between annual and installment disbursements, the servicer must also comply with this paragraph (k)(3). If the taxing jurisdiction neither offers a discount for disbursements on a lump sum annual basis nor imposes any additional charge or fee for installment disbursements, the servicer must make disbursements on an installment basis. If, however, the taxing jurisdiction offers a discount for disbursements on a lump

(4) Notwithstanding paragraph (k)(3) of this section, a servicer and borrower may mutually agree, on an individual case basis, to a different disbursement basis (installment or annual) or disbursement

date for property taxes from that required under paragraph (k)(3) of this section, so long as the agreement meets the requirements of paragraphs (k)(1) and (k)(2) of this section. The borrower must voluntarily agree; neither loan approval nor any term of the loan may be conditioned on the borrower's agreeing to a different disbursement basis or disbursement date.

(5)

Timely payment of hazard insurance

In general.

(ii)

Inability to disburse funds

When inability exists.

(B)

When inability does not exist.

(C)

Recoupment of advances.

(iii)

Small servicers.

(I)

Discretionary payments.

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 10875, Feb. 14, 2013; 81 FR 72370, Oct. 19, 2016]

§§ 1024.18-1024.19

[Reserved]

§ 1024.20

List of homeownership counseling organizations.

(a)

Provision of list.

(i) The Web site maintained by the Bureau for lenders to use in complying with the requirements of this section; or

(ii) Data made available by the Bureau or HUD for lenders to use in complying with the requirements of this section, provided that the data is used in accordance with instructions provided with the data.

(2) The list of homeownership counseling organizations provided under this section may be combined and provided with other mortgage loan disclosures required pursuant to Regulation Z, 12 CFR part 1026, or this part unless prohibited by Regulation Z or this part.

(3) A mortgage broker or dealer may provide the list of homeownership counseling organizations required under this section to any loan applicant from whom it receives or for whom it prepares an application. If the mortgage broker or dealer has provided the required list of homeownership counseling organizations, the lender is not required to provide an additional list. The lender is responsible for ensuring that the list of homeownership counseling organizations is provided to a loan applicant in accordance with this section.

(4) If the lender, mortgage broker, or dealer does not provide the list of homeownership counseling organizations required under this section to the loan applicant in person, the lender must mail or deliver the list to the loan applicant by other means. The list may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. 7001 et seq.

(5) The lender is not required to provide the list of homeownership counseling organizations required under this section if, before the end of the three-business-day period provided in paragraph (a)(1) of this section, the lender denies the application or the loan applicant withdraws the application.

(6) If a mortgage loan transaction involves more than one lender, only one list of homeownership counseling organizations required under this section shall be given to the loan applicant and the lenders shall agree among themselves which lender will comply with the requirements that this section imposes on any or all of them. If there is more than one loan applicant, the required list of

homeownership counseling organizations may be provided to any loan applicant with primary liability on the mortgage loan obligation.

(b)

Open-end lines of credit (home-equity plans) under Regulation Z.

(c)

Exemptions

Reverse mortgage transactions.

(2)

Timeshare plans.

[78 FR 6961, Jan. 31, 2013]

Subpart CMortgage Servicing

Source:

78 FR 10876, Feb. 14, 2013, unless otherwise noted.

§ 1024.30

Scope.

(a)

In general.

(b)

Exemptions.

(1) A servicer that qualifies as a small servicer pursuant to 12 CFR 1026.41(e)(4);

(2) A servicer with respect to any reverse mortgage transaction as that term is defined in § 1024.31;
and

(3) A servicer with respect to any mortgage loan for which the servicer is a qualified lender as that term is defined in 12 CFR 617.7000.

(c)

Scope of certain sections.

(2) The procedures set forth in §§ 1024.39 through 1024.41 of this subpart only apply to a mortgage loan that is secured by a property that is a borrower's principal residence.

(d)

Successors in interest.

[78 FR 10876, Feb. 14, 2013, as amended at 78 FR 60437, Oct. 1, 2013; 78 FR 80104, Dec. 31, 2013; 81 FR 72370, Oct. 19, 2016]

§ 1024.31

Definitions.

For purposes of this subpart:

Confirmed successor in interest

Consumer reporting agency

COVID-19-related hardship

Day

Delinquency

Hazard insurance

Loss mitigation application

Loss mitigation option

Master servicer

Mortgage loan

Qualified written request

(1) States the reasons the borrower believes the account is in error; or

(2) Provides sufficient detail to the servicer regarding information relating

Reverse mortgage transaction

Service provider

Subservicer

Successor in interest

(1) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(2) A transfer to a relative resulting from the death of a borrower;

(3) A transfer where the spouse or children of the borrower become an owner of the property;

(4) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; or

(5) A transfer into an
inter vivos

Transferee servicer

Transferor servicer

[78 FR 10876, Feb. 14, 2013, as amended at 81 FR 72370, Oct. 19, 2016; 86 FR 34899, June 30, 2021]

§ 1024.32

General disclosure requirements.

(a)

Disclosure requirements

Form of disclosures.

(2)

Foreign language disclosures.

(b)

Additional information; disclosures required by other laws.

et seq.

et seq.

(c)

Successors in interest

Optional notice with acknowledgment form.

(i) The servicer has confirmed the successor in interest's identity and ownership interest in the property;

(ii) Unless the successor in interest assumes the mortgage loan obligation under State law, the successor in interest is not liable for the mortgage debt and cannot be required to use the successor in interest's assets to pay the mortgage debt, except that the lender has a security interest in the property and a right to foreclose on the property, when permitted by law and authorized under the mortgage loan contract;

(iii) The successor in interest may be entitled to receive certain notices and communications about the mortgage loan if the servicer is not providing them to another confirmed successor in interest or borrower on the account;

(iv) In order to receive such notices and communications, the successor in interest must execute and provide to the servicer an acknowledgment form that:

(A) Requests receipt of such notices and communications if the servicer is not providing them to another confirmed successor in interest or borrower on the account; and

(B) Indicates that the successor in interest understands that such notices do not make the successor in interest liable for the mortgage debt and that the successor in interest is only liable for the mortgage debt if the successor in interest assumes the mortgage loan obligation under State law; and

(C) Informs the successor in interest that there is no time limit to return the acknowledgment but that the servicer will not begin sending such notices and communications to the confirmed successor in interest until the acknowledgment is returned; and

(v) Whether or not the successor in interest executes the acknowledgment described in paragraph (c)(1)(iv) of this section, the successor in interest is entitled to submit notices of error under § 1024.35, requests for information under § 1024.36, and requests for a payoff statement under § 1026.36 with respect to the mortgage loan account, with a brief explanation of those rights and how

to exercise them, including appropriate address information.

(2)

Effect of failure to execute acknowledgment.

(3)

Additional copies of acknowledgment form.

(4)

Multiple notices unnecessary.

[78 FR 10876, Feb. 14, 2013, as amended at 81 FR 72371, Oct. 19, 2016]

§ 1024.33

Mortgage servicing transfers.

(a)

Servicing disclosure statement.

(b)

Notices of transfer of loan servicing

Requirement for notice.

(2)

Certain transfers excluded.

(A) A transfer between affiliates;

(B) A transfer that results from mergers or acquisitions of servicers or subservicers;

(C) A transfer that occurs between master servicers without changing the subservicer;

(ii) The Federal Housing Administration (FHA) is not required to provide to the borrower a notice of transfer where a mortgage insured under the National Housing Act is assigned to the FHA.

(3)

Time of notice

In general.

(ii)

Extended time.

- (A) Termination of the contract for servicing the loan for cause;
- (B) Commencement of proceedings for bankruptcy of the servicer;
- (C) Commencement of proceedings by the FDIC for conservatorship or receivership of the servicer or an entity that owns or controls the servicer; or
- (D) Commencement of proceedings by the NCUA for appointment of a conservator or liquidating agent of the servicer or an entity that owns or controls the servicer.

(iii)

Notice provided at settlement.

(4)

Contents of notice.

- (i) The effective date of the transfer of servicing;
- (ii) The name, address, and a collect call or toll-free telephone number for an employee or department of the transferee servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries;
- (iii) The name, address, and a collect call or toll-free telephone number for an employee or department of the transferor servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries;
- (iv) The date on which the transferor servicer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments. These dates shall either be the same or consecutive days;
- (v) Whether the transfer will affect the terms or the continued availability of mortgage life or disability insurance, or any other type of optional insurance, and any action the borrower must take to maintain such coverage; and
- (vi) A statement that the transfer of servicing does not affect any term or condition of the mortgage loan other than terms directly related to the servicing of the loan.

(c)

Borrower payments during transfer of servicing

Payments not considered late.

(2)

Treatment of payments.

(i) Transfer the payment to the transferee servicer for application to a borrower's mortgage loan account, or

(ii) Return the payment to the person that made the payment and notify such person of the proper recipient of the payment.

(d)

Preemption of State laws.

[78 FR 10876, Feb. 14, 2013, as amended at 78 FR 80104, Dec. 31, 2013]

§ 1024.34

Timely escrow payments and treatment of escrow account balances.

(a)

Timely escrow disbursements required.

(b)

Refund of escrow balance

In general.

(2)

Servicer may credit funds to a new escrow account.

(i) Was also the lender to whom the prior mortgage loan was initially payable;

(ii) Is the owner or assignee of the prior mortgage loan; or

(iii) Uses the same servicer that serviced the prior mortgage loan to service the new mortgage loan.

§ 1024.35

Error resolution procedures.

(a)

Notice of error.

(b)

Scope of error resolution.

(1) Failure to accept a payment that conforms to the servicer's written requirements for the borrower to follow in making payments.

(2) Failure to apply an accepted payment to principal, interest, escrow, or other charges under the terms of the mortgage loan and applicable law.

(3) Failure to credit a payment to a borrower's mortgage loan account as of the date of receipt in violation of 12 CFR 1026.36(c)(1).

(4) Failure to pay taxes, insurance premiums, or other charges, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay, in a timely manner as required by § 1024.34(a), or to refund an escrow account balance as required by § 1024.34(b).

(5) Imposition of a fee or charge that the servicer lacks a reasonable basis to impose upon the borrower.

(6) Failure to provide an accurate payoff balance amount upon a borrower's request in violation of section 12 CFR 1026.36(c)(3).

(7) Failure to provide accurate information to a borrower regarding loss mitigation options and foreclosure, as required by § 1024.39.

(8) Failure to transfer accurately and timely information relating to the servicing of a borrower's mortgage loan account to a transferee servicer.

(9) Making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process in violation of § 1024.41(f) or (j).

(10) Moving for foreclosure judgment or order of sale, or conducting a foreclosure sale in violation of § 1024.41(g) or (j).

(11) Any other error relating to the servicing of a borrower's mortgage loan.

(c)

Contact information for borrowers to assert errors.

(d)

Acknowledgment of receipt.

(e)

Response to notice of error

Investigation and response requirements

In general.

(A) Correcting the error or errors identified by the borrower and providing the borrower with a written notification of the correction, the effective date of the correction, and contact information, including a telephone number, for further assistance; or

(B) Conducting a reasonable investigation and providing the borrower with a written notification that includes a statement that the servicer has determined that no error occurred, a statement of the reason or reasons for this determination, a statement of the borrower's right to request documents relied upon by the servicer in reaching its determination, information regarding how the borrower can request such documents, and contact information, including a telephone number, for further assistance.

(ii)

Different or additional error.

(2)

Requesting information from borrower.

(i) Require a borrower to provide such information as a condition of investigating an asserted error; or

(ii) Determine that no error occurred because the borrower failed to provide any requested information without conducting a reasonable investigation pursuant to paragraph (e)(1)(i)(B) of this section.

(3)

Time limits

In general.

(A) Not later than seven days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the notice of error for errors asserted under paragraph (b)(6) of this section.

(B) Prior to the date of a foreclosure sale or within 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the notice of error, whichever is earlier, for errors asserted under paragraphs (b)(9) and (10) of this section.

(C) For all other asserted errors, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the applicable notice of error.

(ii)

Extension of time limit.

(4)

Copies of documentation.

(5)

Omissions in responses to requests for documentation.

(i) The information pertains to a potential or confirmed successor in interest who is not the requester;
or

(ii) The requester is a confirmed successor in interest and the information pertains to any borrower who is not the requester.

(f)

Alternative compliance

Early correction.

(2)

Error asserted before foreclosure sale.

(g)

Requirements not applicable

In general.

(i)

Duplicative notice of error.

(ii)

Overbroad notice of error.

(iii)

Untimely notice of error.

(A) Servicing for the mortgage loan that is the subject of the asserted error was transferred from the servicer receiving the notice of error to a transferee servicer; or

(B) The mortgage loan is discharged.

(2)

Notice to borrower.

(h)

Payment requirements prohibited.

(i)

Effect on servicer remedies

Adverse information.

(2)

Remedies permitted.

[78 FR 10876, Feb. 14, 2013, as amended at 78 FR 60437, Oct. 1, 2013; 81 FR 72371, Oct. 19, 2016]

§ 1024.36

Requests for information.

(a)

Information request.

(b)

Contact information for borrowers to request information.

(c)

Acknowledgment of receipt.

(d)

Response to information request

Investigation and response requirements.

(i) Providing the borrower with the requested information and contact information, including a telephone number, for further assistance in writing; or

(ii) Conducting a reasonable search for the requested information and providing the borrower with a written notification that states that the servicer has determined that the requested information is not available to the servicer, provides the basis for the servicer's determination, and provides contact information, including a telephone number, for further assistance.

(2)

Time limits

In general.

(A) Not later than 10 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives an information request for the identity of, and address or other relevant contact information for, the owner or assignee of a mortgage loan; and

(B) For all other requests for information, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the information request.

(ii)

Extension of time limit.

(3)

Omissions in responses to requests.

(i) The information pertains to a potential or confirmed successor in interest who is not the requester;

or

(ii) The requester is a confirmed successor and the information pertains to any borrower who is not the requester.

(e)

Alternative compliance.

(f)

Requirements not applicable

In general.

(i)

Duplicative information.

(ii)

Confidential, proprietary or privileged information.

(iii)

Irrelevant information.

(iv)

Overbroad or unduly burdensome information request.

(v)

Untimely information request.

(A) Servicing for the mortgage loan that is the subject of the information request was transferred from the servicer receiving the request for information to a transferee servicer; or

(B) The mortgage loan is discharged.

(2)

Notice to borrower.

(g)

Payment requirement limitations

Fees prohibited.

(2)

Fee permitted.

(h)

Servicer remedies.

(i)

Potential successors in interest.

(2) If a written request under paragraph (i)(1) of this section does not provide sufficient information to enable the servicer to identify the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property, the servicer may provide a response that includes examples of documents typically accepted to establish identity and ownership interest in a property; indicates that the person may obtain a more individualized description of required documents by providing additional information; specifies what additional information is required to enable the servicer to identify the required documents; and provides contact information, including a telephone

(3) In responding to a request under paragraph (i)(1) of this section prior to confirmation, the servicer is not required to provide any information other than the information specified in paragraphs (i)(1) and (2) of this section. In responding to a written request under paragraph (i)(1) that requests other information, the servicer must indicate that the potential successor in interest may resubmit any request for information once confirmed as a successor in interest.

(4) If a servicer has established an address that a borrower must use to request information pursuant to paragraph (b) of this section, a servicer must comply with the requirements of paragraph (i)(1) of this section only for requests received at the established address.

[78 FR 10876, Feb. 14, 2013, as amended at 78 FR 60437, Oct. 1, 2013; 81 FR 72371, Oct. 19, 2016]

§ 1024.37

Force-placed insurance.

(a)

Definition of force-placed insurance

In general.

(2)

Types of insurance not considered force-placed insurance.

(i) Hazard insurance required by the Flood Disaster Protection Act of 1973.

(ii) Hazard insurance obtained by a borrower but renewed by the borrower's servicer as described in § 1024.17(k)(1), (2), or (5).

(iii) Hazard insurance obtained by a borrower but renewed by the borrower's servicer at its discretion, if the borrower agrees.

(b)

Basis for charging borrower for force-placed insurance.

(c)

Requirements before charging borrower for force-placed insurance

In general.

(i) Deliver to a borrower or place in the mail a written notice containing the information required by paragraph (c)(2) of this section at least 45 days before a servicer assesses on a borrower such charge or fee;

(ii) Deliver to the borrower or place in the mail a written notice in accordance with paragraph (d)(1) of this section; and

(iii) By the end of the 15-day period beginning on the date the written notice described in paragraph (c)(1)(ii) of this section was delivered to the borrower or placed in the mail, not have received, from the borrower or otherwise, evidence demonstrating that the borrower has had in place, continuously, hazard insurance coverage that complies with the loan contract's requirements to maintain hazard insurance.

(2)

Content of notice.

- (i) The date of the notice;
- (ii) The servicer's name and mailing address;
- (iii) The borrower's name and mailing address;
- (iv) A statement that requests the borrower to provide hazard insurance information for the borrower's property and identifies the property by its physical address;
- (v) A statement that:
 - (A) The borrower's hazard insurance is expiring, has expired, or provides insufficient coverage, as applicable;
 - (B) The servicer does not have evidence that the borrower has hazard insurance coverage past the expiration date or evidence that the borrower has hazard insurance that provides sufficient coverage, as applicable; and
 - (C) If applicable, identifies the type of hazard insurance for which the servicer lacks evidence of coverage;
- (vi) A statement that hazard insurance is required on the borrower's property, and that the servicer has purchased or will purchase, as applicable, such insurance at the borrower's expense;
- (vii) A statement requesting the borrower to promptly provide the servicer with insurance information;
- (viii) A description of the requested insurance information and how the borrower may provide such information, and if applicable, a statement that the requested information must be in writing;
- (ix) A statement that insurance the servicer has purchased or purchases:
 - (A) May cost significantly more than hazard insurance purchased by the borrower;
 - (B) Not provide as much coverage as hazard insurance purchased by the borrower;
- (x) The servicer's telephone number for borrower inquiries; and
- (xi) If applicable, a statement advising the borrower to review additional information provided in the same transmittal.

(3)

Format.

(4)

Additional information.

(d)

Reminder notice

In general.

(2)

Content of the reminder notice

Servicer receiving no insurance information.

(A) The date of the notice;

(B) A statement that the notice is the second and final notice;

(C) The information required by paragraphs (c)(2)(ii) through (xi) of this section; and

(D) The cost of the force-placed insurance, stated as an annual premium, except if a servicer does not know the cost of force-placed insurance, a reasonable estimate shall be disclosed and identified as such.

(ii)

Servicer lacking evidence of continuous coverage.

(A) The date of the notice;

(B) The information required by paragraphs (c)(2)(ii) through (iv) and (ix) through (xi) and (d)(2)(i)(B) and (D) of this section;

(C) A statement that the servicer has received the hazard insurance information that the borrower provided;

(D) A statement that requests the borrower to provide the information that is missing;

(E) A statement that the borrower will be charged for insurance the servicer has purchased or purchases for the period of time during which the servicer is unable to verify coverage;

(3)

Format.

(4)

Additional information.

(5)

Updating notice with borrower information.

(e)

Renewing or replacing force-placed insurance

In general.

(i) Deliver to the borrower or place in the mail a written notice containing the information set forth in paragraph (e)(2) of this section at least 45 days before assessing on a borrower such charge or fee; and

(ii) By the end of the 45-day period beginning on the date the written notice required by paragraph (e)(1)(i) of this section was delivered to the borrower or placed in the mail, not have received, from the borrower or otherwise, evidence demonstrating that the borrower has purchased hazard insurance coverage that complies with the loan contract's requirements to maintain hazard insurance.

(iii)

Charging a borrower before end of notice period.

(2)

Content of renewal notice.

(i) The date of the notice;

(ii) The servicer's name and mailing address;

(iii) The borrower's name and mailing address;

(iv) A statement that requests the borrower to update the hazard insurance information for the borrower's property and identifies the borrower's property by its physical address;

(v) A statement that the servicer previously purchased insurance on the borrower's property and assessed the cost of the insurance to the borrower because the servicer did not have evidence that the borrower had hazard insurance coverage for the property;

(vi) A statement that:

(A) The insurance the servicer purchased previously has expired or is expiring, as applicable; and

(B) Because hazard insurance is required on the borrower's property, the servicer intends to maintain insurance on the property by renewing or replacing the insurance it previously purchased;

(vii) A statement informing the borrower:

(A) That insurance the servicer purchases may cost significantly more than hazard insurance purchased by the borrower;

(B) That such insurance may not provide as much coverage as hazard insurance purchased by the borrower; and

(C) The cost of the force-placed insurance, stated as an annual premium, except if a servicer does not know the cost of force-placed insurance, a reasonable estimate shall be disclosed and identified as such.

(viii) A statement that if the borrower purchases hazard insurance, the borrower should promptly provide the servicer with insurance information.

(ix) A description of the requested insurance information and how the borrower may provide such information, and if applicable, a statement that the requested information must be in writing;

(x) The servicer's telephone number for borrower inquiries; and

(xi) If applicable, a statement advising a borrower to review additional information provided in the same transmittal.

(3)

Format.

(4)

Additional information.

(5)

Frequency of renewal notices.

(f)

Mailing the notices.

(g)

Cancellation of force-placed insurance.

(1) Cancel the force-placed insurance the servicer purchased to insure the borrower's property; and

(2) Refund to such borrower all force-placed insurance premium charges and related fees paid by such borrower for any period of overlapping insurance coverage and remove from the borrower's account all force-placed insurance charges and related fees for such period that the servicer has assessed to the borrower.

(h)

Limitations on force-placed insurance charges

In general.

(2)

Bona fide and reasonable charge.

(i)

Relationship to Flood Disaster Protection Act of 1973.

[78 FR 10876, Feb. 14, 2013, as amended at 81 FR 72372, Oct. 19, 2016]

§ 1024.38

General servicing policies, procedures, and requirements.

(a)

Reasonable policies and procedures.

(b)

Objectives

Accessing and providing timely and accurate information.

- (i) Provide accurate and timely disclosures to a borrower as required by this subpart or other applicable law;
- (ii) Investigate, respond to, and, as appropriate, make corrections in response to complaints asserted by a borrower;
- (iii) Provide a borrower with accurate and timely information and documents in response to the borrower's requests for information with respect to the borrower's mortgage loan;
- (iv) Provide owners or assignees of mortgage loans with accurate and current information and documents about all mortgage loans they own;
- (v) Submit documents or filings required for a foreclosure process, including documents or filings required by a court of competent jurisdiction, that reflect accurate and current information and that comply with applicable law; and
- (vi)(A) Upon receiving notice of the death of a borrower or of any transfer of the property securing a mortgage loan, promptly facilitate communication with any potential or confirmed successors in interest regarding the property;
- (B) Upon receiving notice of the existence of a potential successor in interest, promptly determine the documents the servicer reasonably requires to confirm that person's identity and ownership interest in the property and promptly provide to the potential successor in interest a description of those documents and how the person may submit a written request under § 1024.36(i) (including the appropriate address); and
- (C) Upon the receipt of such documents, promptly make a confirmation determination and promptly notify the person, as applicable, that the servicer has confirmed the person's status, has determined that additional documents are required (and what those documents are), or has determined that the person is not a successor in interest.

(2)

Properly evaluating loss mitigation applications.

- (i) Provide accurate information regarding loss mitigation options available to a borrower from the

owner or assignee of the borrower's mortgage loan;

(ii) Identify with specificity all loss mitigation options for which borrowers may be eligible pursuant to any requirements established by an owner or assignee of the borrower's mortgage loan;

(iii) Provide prompt access to all documents and information submitted by a borrower in connection with a loss mitigation option to servicer personnel that are assigned to assist the borrower pursuant to § 1024.40;

(iv) Identify documents and information that a borrower is required to submit to complete a loss mitigation application and facilitate compliance with the notice required pursuant to § 1024.41(b)(2)(i)(B); and

(v) Properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options for which the borrower may be eligible pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan and, where applicable, in accordance with the requirements of § 1024.41.

(vi) Promptly identify and obtain documents or information not in the

(3)

Facilitating oversight of, and compliance by, service providers.

(i) Provide appropriate servicer personnel with access to accurate and current documents and information reflecting actions performed by service providers;

(ii) Facilitate periodic reviews of service providers, including by providing appropriate servicer personnel with documents and information necessary to audit compliance by service providers with the servicer's contractual obligations and applicable law; and

(iii) Facilitate the sharing of accurate and current information regarding the status of any evaluation of a borrower's loss mitigation application and the status of any foreclosure proceeding among appropriate servicer personnel, including any personnel assigned to a borrower's mortgage loan account as described in § 1024.40, and appropriate service provider personnel, including service provider personnel responsible for handling foreclosure proceedings.

(4)

Facilitating transfer of information during servicing transfers.

(i) As a transferor servicer, timely transfer all information and documents in the possession or control of the servicer relating to a transferred mortgage loan to a transferee servicer in a form and manner that ensures the accuracy of the information and documents transferred and that enables a transferee servicer to comply with the terms of the transferee servicer's obligations to the owner or assignee of the mortgage loan and applicable law; and

(ii) As a transferee servicer, identify necessary documents or information that may not have been transferred by a transferor servicer and obtain such documents from the transferor servicer.

(iii) For the purposes of this paragraph (b)(4), transferee servicer means a servicer, including a master servicer or a subservicer, that performs or will perform servicing of a mortgage loan and transferor servicer means a servicer, including a master servicer or a subservicer, that transfers or will transfer the servicing of a mortgage loan.

(5)

Informing borrowers of the written error resolution and information request procedures.

(c)

Standard requirements

Record retention.

(2)

Servicing file.

(i) A schedule of all transactions credited or debited to the mortgage loan account, including any escrow account as defined in § 1024.17(b) and any suspense account;

(ii) A copy of the security instrument that establishes the lien securing the mortgage loan;

(iii) Any notes created by servicer personnel reflecting communications with the borrower about the mortgage loan account;

(iv) To the extent applicable, a report of the data fields relating to the borrower's mortgage loan

account created by the servicer's electronic systems in connection with servicing practices; and

(v) Copies of any information or documents provided by the borrower to the servicer in accordance with the

[78 FR 10876, Feb. 14, 2013, as amended at 81 FR 72372, Oct. 19, 2016]

§ 1024.39

Early intervention requirements for certain borrowers.

(a)

Live contact.

(b)

Written notice

Notice required.

(2)

Content of the written notice.

(i) A statement encouraging the borrower to contact the servicer;

(ii) The telephone number to access servicer personnel assigned pursuant to § 1024.40(a) and the servicer's mailing address;

(iii) If applicable, a statement providing a brief description of examples of loss mitigation options that may be available from the servicer;

(iv) If applicable, either application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from the servicer; and

(v) The Web site to access either the Bureau list or the HUD list of homeownership counselors or counseling organizations, and the HUD toll-free telephone number to access homeownership counselors or counseling organizations.

(3)

Model clauses.

(c)

Borrowers in bankruptcy

Partial exemption.

- (i) Is exempt from the requirements of paragraph (a) of this section;
- (ii) Is exempt from the requirements of paragraph (b) of this section if no loss mitigation option is available, or if any borrower on the mortgage loan has provided a notification pursuant to the Fair Debt Collection Practices Act (FDCPA) section 805(c) (15 U.S.C. 1692c(c)) with respect to that mortgage loan as referenced in paragraph (d) of this section; and
- (iii) If the conditions of paragraph (c)(1)(ii) of this section are not met, must comply with the requirements of paragraph (b) of this section, as modified by this paragraph (c)(1)(iii):
 - (A) If a borrower is delinquent when the borrower becomes a debtor in bankruptcy, a servicer must provide the written notice required by paragraph (b) of this section not later than the 45th day after the borrower files a bankruptcy petition under title 11 of the United States Code. If the borrower is not delinquent when the borrower files a bankruptcy petition, but subsequently becomes delinquent while a debtor in bankruptcy, the servicer must provide the written notice not later than the 45th day of the borrower's delinquency. A servicer must
 - (B) The written notice required by paragraph (b) of this section may not contain a request for payment.
 - (C) A servicer is not required to provide the written notice required by paragraph (b) of this section more than once during a single bankruptcy case.

(2)

Resuming compliance.

- (A) The bankruptcy case is dismissed;
 - (B) The bankruptcy case is closed; and
 - (C) The borrower reaffirms personal liability for the mortgage loan.
- (ii) With respect to a mortgage loan for which the borrower has discharged personal liability pursuant to 11 U.S.C. 727, 1141, 1228, or 1328, a servicer:

(A) Is not required to resume compliance with paragraph (a) of this section; and

(B) Must resume compliance with paragraph (b) of this section if the borrower has made any partial or periodic payment on the mortgage loan after the commencement of the borrower's bankruptcy case.

(d)

Fair Debt Collection Practices Act

partial exemption.

(1) Is exempt from the requirements of paragraph (a) of this section;

(2) Is exempt from the requirements of paragraph (b) of this section if no loss mitigation option is available, or while any borrower on that mortgage loan is a debtor in bankruptcy under title 11 of the United States Code as referenced in paragraph (c) of this section; and

(3) If the conditions of paragraph (d)(2) of this section are not met, must comply with the requirements of paragraph (b) of this section, as modified by this paragraph (d)(3):

(i) In addition to the information required pursuant to paragraph (b)(2) of this section, the written notice must include a statement that the servicer may or intends to invoke its specified remedy of foreclosure. Model clause MS-4(D) in appendix MS-4 to this part may be used to comply with this requirement.

(ii) The written notice may not contain a request for payment.

(iii) A servicer is prohibited from providing the written notice more than once during any 180-day period. If a borrower is 45 days or more delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 190 days after the provision of the prior written notice. If a borrower is less than 45 days delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 45 days after the payment due date for which the borrower remains delinquent or 190 days after the provision of the prior written notice, whichever is later.

(e)

Temporary COVID-19-related live contact.

(1)

Borrowers not in forbearance programs at the time of live contact.

(i) That forbearance programs are available for borrowers experiencing a COVID-19-related hardship and, unless the borrower states that they are not interested in receiving information

(ii) At least one way that the borrower can find contact information for homeownership counseling services, such as referencing the borrower's periodic statement.

(2)

Borrowers in forbearance programs at the time of live contact.

(i) The date the borrower's current forbearance program is scheduled to end;

(ii) A list and brief description of each of the types of forbearance extension, repayment options, and other loss mitigation options made available to the borrower by the owner or assignee of the borrower's mortgage loan at the time of the live contact, and the actions the borrower must take to be evaluated for such loss mitigation options; and

(iii) At least one way that the borrower can find contact information for homeownership counseling services, such as referencing the borrower's periodic statement.

[78 FR 10876, Feb. 14, 2013, as amended at 78 FR 60437, Oct. 1, 2013; 78 FR 63004, Oct. 23, 2013; 81 FR 72373, Oct. 19, 2016; 82 FR 47957, Oct. 16, 2017; 86 FR 34899, June 30, 2021]

§ 1024.40

Continuity of contact.

(a)

In general.

(1) Assign personnel to a delinquent borrower by the time the servicer provides the borrower with the written notice required by § 1024.39(b), but in any event, not later than the 45th day of the borrower's delinquency.

(2) Make available to a delinquent borrower, via telephone, personnel assigned to the borrower as described in paragraph (a)(1) of this section to respond to the borrower's inquiries, and as applicable, assist the borrower with available loss mitigation options until the borrower has made, without incurring a late charge, two consecutive mortgage payments in accordance with the terms of a permanent loss mitigation agreement.

(3) If a borrower contacts the personnel assigned to the borrower as described in paragraph (a)(1) of this section and does not immediately receive a live response from such personnel, ensure that the servicer can provide a live response in a timely manner.

(b)

Functions of servicer personnel.

(1) Provide the borrower with accurate information about:

(i) Loss mitigation options available to the borrower from the owner or assignee of the borrower's mortgage loan;

(ii) Actions the borrower must take to be evaluated for such loss mitigation options, including actions the borrower must take to submit a complete loss mitigation application, as defined in § 1024.41, and, if applicable, actions the borrower must take to appeal the servicer's determination to deny a borrower's loss mitigation application for any trial or permanent loan modification program offered by the servicer;

(iii) The status of any loss mitigation application that the borrower has submitted to the servicer;

(iv) The circumstances under which the servicer may make a referral to foreclosure; and

(v) Applicable loss mitigation deadlines established by an owner or assignee of the borrower's mortgage loan or § 1024.41.

(2) Retrieve, in a timely manner:

(i) A complete record of the borrower's payment history; and

(ii) All written information the borrower has provided to the servicer, and if applicable, to prior servicers, in connection with a loss mitigation application;

(3) Provide the documents and information identified in paragraph (b)(2) of this section to other persons required to evaluate a borrower for loss mitigation options made available by the servicer, if applicable; and

(4) Provide a delinquent borrower with information about the procedures for submitting a notice of error pursuant to § 1024.35 or an information request pursuant to § 1024.36.

§ 1024.41

Loss mitigation procedures.

(a)

Enforcement and limitations.

(b)

Receipt of a loss mitigation application

Complete loss mitigation application.

(2)

Review of loss mitigation application submission

Requirements.

(A) Promptly upon receipt of a loss mitigation application, review the loss mitigation application to determine if the loss mitigation application is complete; and

(B) Notify the borrower in writing within 5 days (excluding legal public holidays, Saturdays, and Sundays) after receiving the loss mitigation application that the servicer acknowledges receipt of the loss mitigation application and that the servicer has determined that the loss mitigation application is either complete or incomplete. If a loss mitigation application is incomplete, the notice shall state the additional documents and information the borrower must submit to make the loss mitigation application complete and the applicable date pursuant to paragraph (b)(2)(ii) of this section. The notice to the borrower shall include a statement that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options.

(ii)

Time period disclosure.

(3)

Determining protections.

(c)

Evaluation of loss mitigation applications

Complete loss mitigation application.

(i) Evaluate the borrower for all loss mitigation options available to the borrower; and

(ii) Provide the borrower with a notice in writing stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage. The servicer shall include in this notice the amount

(2)

Incomplete loss mitigation application evaluation

In general.

(ii)

Reasonable time.

(iii)

Short-term loss mitigation options.

(iv)

Facially complete application.

(v)

Certain COVID-19-related loss mitigation options.

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(B) Once the borrower accepts an offer made pursuant to paragraph (c)(2)(v)(A) of this section, the servicer is not required to comply with paragraph (b)(1) or (2) of this section with regard to any loss mitigation application the borrower submitted prior to the servicer's offer of the loss mitigation option described in paragraph (c)(2)(v)(A) of this section.

(vi)

Certain COVID-19-related loan modification options.

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(B) Once the borrower accepts an offer made pursuant to paragraph

(3)

Notice of complete application.

(A) That the loss mitigation application is complete;

(B) The date the servicer received the complete application;

(C) That the servicer expects to complete its evaluation within 30 days of the date it received the complete application;

(D) That the borrower is entitled to certain foreclosure protections because the servicer has received the complete application, and, as applicable, either:

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(E) That the servicer may need additional information at a later date to evaluate the application, in which case the servicer will request that information from the borrower and give the borrower a reasonable opportunity to submit it, the evaluation process may take longer, and the foreclosure protections could end if the servicer does not receive the information as requested; and

(F) That the borrower may be entitled to additional protections under State or Federal law.

(ii) A servicer is not required to provide a notice pursuant to paragraph (c)(3)(i) of this section if:

(A) The servicer has already provided the borrower a notice under paragraph (b)(2)(i)(B) of this section informing the borrower that the application is complete and the servicer has not subsequently requested additional information or a corrected version of a previously submitted document from the borrower pursuant to paragraph (c)(2)(iv) of this section;

(B) The application was not complete or facially complete more than 37 days before a foreclosure sale; or

(C) The servicer has already provided the borrower a notice regarding the application under paragraph (c)(1)(ii) of this section.

(4)

Information not in the borrower's control

Reasonable diligence.

(ii)

Effect in case of delay.

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(B) If a servicer is unable to make a determination within the 30-day period identified in paragraph (c)(1) of this section as to which loss mitigation options, if any, it will offer to the borrower because the servicer lacks required documents or information from a party other than the borrower or the servicer, the servicer must, within such 30-day period or promptly thereafter, provide the borrower a written notice, informing the borrower:

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(C) If a servicer must provide a notice required by paragraph (c)(4)(ii)(B) of this section, the servicer must not provide the borrower a written notice pursuant to paragraph (c)(1)(ii) of this section until the servicer receives the required documents or information referenced in paragraph (c)(4)(ii)(B)(

2

2

(d)

Denial of loan modification options.

(e)

Borrower response

In general.

(2)

Rejection

In general.

(ii)

Trial Loan Modification Plan.

(iii)

Interaction with appeal process.

(f)

Prohibition on foreclosure referral

Pre-foreclosure review period.

(i) A borrower's mortgage loan obligation is more than 120 days delinquent;

(ii) The foreclosure is based on a borrower's violation of a due-on-sale clause; or

(iii) The servicer is joining the foreclosure action of a superior or subordinate lienholder.

(2)

Application received before foreclosure referral.

(i) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied;

(ii) The borrower rejects all loss mitigation options offered by the servicer; or

(iii) The borrower fails to perform under an agreement on a loss mitigation option.

(3)

Temporary Special COVID-19 Loss Mitigation Procedural Safeguards

In general.

(A) The borrower's mortgage loan obligation became more than 120 days delinquent on or after March 1, 2020; and

(B) The statute of limitations applicable to the foreclosure action being taken in the laws of the State where the property securing the mortgage loan is located expires on or after January 1, 2022.

(ii)

Procedural safeguards.

(A)

Complete loss mitigation application evaluated.

(B)

Abandoned property.

(C)

Unresponsive borrower.

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(iii)

Sunset date.

(g)

Prohibition on foreclosure sale.

(1) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of

this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied;

(2) The borrower rejects all loss mitigation options offered by the servicer; or

(3) The borrower fails to perform under an agreement on a loss mitigation option.

(h)

Appeal process

Appeal process required for loan modification denials.

(2)

Deadlines.

(3)

Independent evaluation.

(4)

Appeal determination.

(i)

Duplicative requests.

(j)

Small servicer requirements.

(k)

Servicing transfers

In general

Timing of compliance.

(ii)

Transfer date defined.

(2)

Acknowledgment notices

Transferee servicer timeframes.

(ii)

Prohibitions.

(A) Shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process until a date that is after the reasonable date disclosed to the borrower pursuant to paragraph (b)(2)(ii) of this section, notwithstanding paragraph (f)(1) of this section. For purposes of paragraph (f)(2) of this section, a borrower who submits a complete loss mitigation application on or before the reasonable date disclosed to the borrower pursuant to paragraph (b)(2)(ii) of this section shall be treated as having done so during the pre-foreclosure review period set forth in paragraph (f)(1) of this section.

(B) Shall comply with paragraphs (c), (d), and (g) of this section if the borrower submits a complete loss mitigation application to the transferee or transferor servicer 37 or fewer days before the foreclosure sale but on or before the reasonable date disclosed to the borrower pursuant to paragraph (b)(2)(ii) of this section.

(3)

Complete loss mitigation applications pending at transfer.

(4)

Applications subject to appeal process.

(i)

Determining appeal.

(ii)

Servicer unable to determine appeal.

(5)

Pending loss mitigation offers.

[78 FR 10876, Feb. 14, 2013, as amended at 78 FR 60437, Oct. 1, 2013; 81 FR 72373, Oct. 19, 2016; 85 FR 39065, June 30, 2020; 86 FR 34899, June 30, 2021]

Pt. 1024, App. A

Appendix A to Part 1024 Instructions for Completing HUD-1 and HUD-1a Settlement Statements; Sample HUD-1 and HUD-1a Statements

The following are instructions for completing the HUD-1 settlement statement, required under section 4 of RESPA and 12 CFR part 1024 (Regulation X) of the Bureau of Consumer Financial Protection (Bureau) regulations. This form is to be used as a statement of actual charges and adjustments paid by the borrower and the seller, to be given to the parties in connection with the settlement. The instructions for completion of the HUD-1 are primarily for the benefit of the settlement agents who prepare the statements and need not be transmitted to the parties as an integral part of the HUD-1. There is no objection to the use of the HUD-1 in transactions in which its use is not legally required. Refer to the definitions section of the regulations (12 CFR 1024.2) for specific definitions of many of the terms that are used in these instructions.

General Instructions

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to the Bureau's regulations (Regulation X) regarding rules applicable to reproduction of the HUD-1 for the purpose of including customary recitals and information used locally in settlements; for example, a breakdown of payoff figures, a breakdown of the Borrower's total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between Borrower and Seller, and the date funds are transferred.

The settlement agent shall complete the HUD-1 to itemize all charges imposed upon the Borrower and the Seller by the loan originator and all sales commissions, whether to be paid at settlement or outside of settlement, and any other charges which either the Borrower or the Seller will pay at settlement. Charges for loan origination and title services should not be itemized except as provided in these instructions. For each separately identified settlement service in connection with the transaction, the name of the person ultimately receiving the payment must be shown together with the total amount paid to such person. Items paid to and retained by a loan originator are disclosed

as required in the instructions for lines in the 800-series of the HUD-1 (and for per diem interest, in the 900-series of the HUD-1).

As a general rule, charges that are paid for by the seller must be shown in the seller's column on page 2 of the HUD-1 (unless paid outside closing), and charges that are paid for by the borrower must be shown in the borrower's column (unless paid outside closing). However, in order to promote comparability between the charges on the GFE and the charges on the HUD-1, if a seller pays for a charge that was included on the GFE, the charge should be listed in the borrower's column on page 2 of the HUD-1. That charge should also be offset by listing a credit in that amount to the borrower on lines 204-209 on page 1 of the HUD-1, and by a charge to the seller in lines 506-509 on page 1 of the HUD-1. If a loan originator (other than for no-cost loans), real estate agent, other settlement service provider, or other person pays for a charge that was included on the GFE, the charge should be listed in the borrower's column on page 2 of the HUD-1, with an offsetting credit reported on page 1 of the HUD-1, identifying the party paying the charge.

Charges paid outside of settlement by the borrower, seller, loan originator, real estate agent, or any other person, must be included on the HUD-1 but marked P.O.C. for Paid Outside of Closing (settlement) and must

In the case of no cost loans where no cost encompasses third party fees as well as the upfront payment to the loan originator, the third party services covered by the no cost provisions must be itemized and listed in the borrower's column on the HUD-1/1A with the charge for the third party service. These itemized charges must be offset with a negative adjusted origination charge on Line 803 and recorded in the columns.

Blank lines are provided in section L for any additional settlement charges. Blank lines are also provided for additional insertions in sections J and K. The names of the recipients of the settlement charges in section L and the names of the recipients of adjustments described in section J or K should be included on the blank lines.

Lines and columns in section J which relate to the Borrower's transaction may be left blank on the

copy of the HUD-1 which will be furnished to the Seller. Lines and columns in section K which relate to the Seller's transaction may be left blank on the copy of the HUD-1 which will be furnished to the Borrower.

Line Item Instructions

Instructions for completing the individual items on the HUD-1 follow.

Section A.

Section B.

Section C.

Sections D and E.

Section F.

Section G.

Section H.

Section I.

Section J. Summary of Borrower's Transaction.

Line 102 is for the sales price of any items of tangible personal property excluded from Line 101. Personal property could include such items as carpets, drapes, stoves, refrigerators, etc.

Line 103 is used to record the total charges to Borrower detailed in section L and totaled on Line 1400.

Lines 104 and 105 are for additional amounts owed by the Borrower, such as charges that were not listed on the GFE or items paid by the Seller prior to settlement but reimbursed by the Borrower at settlement. For example, the balance in the Seller's reserve account held in connection with an existing loan, if assigned to the Borrower in a loan assumption case, will be entered here. These lines will also be used when a tenant in the property being sold has not yet paid the rent, which the Borrower will collect, for a period of time prior to the settlement. The lines will also be used to indicate the treatment for any tenant security deposit. The Seller will be credited on Lines 404-405.

Lines 106 through 112 are for items which the Seller had paid in advance, and for which the Borrower must therefore reimburse the Seller. Examples of items for which adjustments will be made may include taxes and assessments paid in advance for an entire year or other period, when settlement occurs prior to the expiration of the year or other period for which they were paid. Additional examples include flood and hazard insurance premiums, if the Borrower is being substituted as an insured under the same policy; mortgage insurance in loan assumption cases; planned unit development or condominium association assessments paid in advance; fuel or other supplies on hand, purchased by the Seller, which the Borrower will use when Borrower takes possession of the property; and ground rent paid in advance.

Line 120 is for the total of Lines 101 through 112.

Line 201 is for any amount paid against the sales price prior to settlement.

Line 202 is for the amount of the new loan made by the Lender when a loan to finance construction of a new structure constructed for sale is used as or converted to a loan to

Line 203 is used for cases in which the Borrower is assuming or taking title subject to an existing loan or lien on the property.

Lines 204-209 are used for other items paid by or on behalf of the Borrower. Lines 204-209 should be used to indicate any financing arrangements or other new loan not listed in Line 202. For example, if the Borrower is using a second mortgage or note to finance part of the purchase price, whether from the same lender, another lender or the Seller, insert the principal amount of the loan with a brief explanation on Lines 204-209. Lines 204-209 should also be used where the Borrower receives a credit from the Seller for closing costs, including seller-paid GFE charges. They may also be used in cases in which a Seller (typically a builder) is making an allowance to the Borrower for items that the Borrower is to purchase separately. For reverse mortgages, the amount of any initial draw at settlement is disclosed on Line 204.

Lines 210 through 219 are for items which have not yet been paid, and which the Borrower is expected to pay, but which are attributable in part to a period of time prior to the settlement. In

jurisdictions in which taxes are paid late in the tax year, most cases will show the proration of taxes in these lines. Other examples include utilities used but not paid for by the Seller, rent collected in advance by the Seller from a tenant for a period extending beyond the settlement date, and interest on loan assumptions.

Line 220 is for the total of Lines 201 through 219.

Lines 301 and 302 are summary lines for the Borrower. Enter total in Line 120 on Line 301. Enter total in Line 220 on Line 302.

Line 303 must indicate either the cash required from the Borrower at settlement (the usual case in a purchase transaction), or cash payable to the Borrower at settlement (if, for example, the Borrower's earnest money exceeds the Borrower's cash obligations in the transaction or there is a cash-out refinance). Subtract Line 302 from Line 301 and enter the amount of cash due to or from the Borrower at settlement on Line 303. The appropriate box should be checked. If the Borrower's earnest money is applied toward the charge for a settlement service, the amount so applied should not be included on Line 303 but instead should be shown on the appropriate line for the settlement service, marked P.O.C. (Borrower), and must not be included in computing totals.

Section K. Summary of Seller's Transaction.

Line 501 is used if the Seller's real estate broker or other party who is not the settlement agent has received and holds a deposit against the sales price (earnest money) which exceeds the fee or commission owed to that party. If that party will render the excess deposit directly to the Seller, rather than through the settlement agent, the amount of excess deposit should be entered on Line 501 and the amount of the total deposit (including commissions) should be entered on Line 201.

Line 502 is used to record the total charges to the Seller detailed in section L and totaled on Line 1400.

Line 503 is used if the Borrower is assuming or taking title subject to existing liens which are to be deducted from sales price.

Lines 504 and 505 are used for the amounts (including any accrued interest) of any first and/or

second loans which will be paid as part of the settlement.

Line 506 is used for deposits paid by the Borrower to the Seller or other party who is not the settlement agent. Enter the amount of the deposit in Line 201 on Line 506 unless Line 501 is used or the party who is not the settlement agent transfers all or part of the deposit to the settlement agent, in which case the settlement agent will note in parentheses on Line 507 the amount of the deposit that is being disbursed as proceeds and enter in the column for Line 506 the amount retained by the above-described party for settlement services. If the settlement agent holds the deposit, insert a note in Line 507 which indicates that the deposit is being disbursed as proceeds.

Lines 506 through 509 may be used to list additional liens which must be paid off through the settlement to clear title to the property. Other Seller obligations should be shown on Lines 506-509, including charges that were disclosed on the GFE but that are actually being paid for by the Seller. These Lines may also be used to indicate funds to be held by the settlement agent for the payment of either repairs, or water, fuel, or other utility bills that cannot be prorated between the parties at settlement because

Instructions for the use of Lines 510 through 519 are the same as those for Lines 210 to 219 above.

Line 520 is for the total of Lines 501 through 519.

Lines 601 and 602 are summary lines for the Seller. Enter the total in Line 420 on Line 601. Enter the total in Line 520 on Line 602.

Line 603 must indicate either the cash required to be paid to the Seller at settlement (the usual case in a purchase transaction), or the cash payable by the Seller at settlement. Subtract Line 602 from Line 601 and enter the amount of cash due to or from the Seller at settlement on Line 603. The appropriate box should be checked.

Section L. Settlement Charges.

Line 700 is used to enter the sales commission charged by the sales agent or real estate broker.

Lines 701-702 are to be used to state the split of the commission where the settlement agent disburses portions of the commission to two or more sales agents or real estate brokers.

Line 703 is used to enter the amount of sales commission disbursed at settlement. If the sales agent or real estate broker is retaining a part of the deposit against the sales price (earnest money) to apply towards the sales agent's or real estate broker's commission, include in Line 703 only that part of the commission being disbursed at settlement and insert a note on Line 704 indicating the amount the sales agent or real estate broker is retaining as a P.O.C. item.

Line 704 may be used for additional charges made by the sales agent or real estate broker, or for a sales commission charged to the Borrower, which will be disbursed by the settlement agent.

Line 801 is used to record Our origination charge, which includes all charges received by the loan originator, except any charge for the specific interest rate chosen (points). This number must not be listed in either the buyer's or seller's column. The amount shown in Line 801 must include any amounts received for origination services, including administrative and processing services, performed by or on behalf of the loan originator.

Line 802 is used to record Your credit or charge (points) for the specific interest rate chosen, which states the charge or credit adjustment as applied to Our origination charge, if applicable. This number must not be listed in either column or shown on page one of the HUD-1.

For a mortgage broker originating a loan in its own name, the amount shown on Line 802 will be the difference between the initial loan amount and the total payment to the mortgage broker from the lender. The total payment to the mortgage broker will be the sum of the price paid for the loan by the lender and any other payments to the mortgage broker from the lender, including any payments based on the loan amount or loan terms, and any flat rate payments. For a mortgage broker originating a loan in another entity's name, the amount shown on Line 802 will be the sum of all payments to the mortgage broker from the lender, including any payments based on the loan amount or loan terms, and any flat rate payments.

In either case, when the amount paid to the mortgage broker exceeds the initial loan amount, there is a credit to the borrower and it is entered as a negative amount. When the initial loan amount exceeds the amount paid to the mortgage broker, there is a charge to the borrower and it is entered

as a positive amount. For a lender, the amount shown on Line 802 may include any credit or charge (points) to the Borrower.

Line 803 is used to record Your adjusted origination charges, which states the net amount of the loan origination charges, the sum of the amounts shown in Lines 801 and 802. This amount must be listed in the columns as either a positive number (for example, where the origination charge shown in Line 801 exceeds any credit for the interest rate shown in Line 802 or where there is an origination charge in Line 801 and a charge for the interest rate (points) is shown on Line 802) or as a negative number (for example, where the credit for the interest rate shown in Line 802 exceeds the origination charges shown in Line 801).

In the case of no cost loans, where no cost refers only to the loan originator's fees, the amounts shown in Lines 801 and 802 should offset, so that the charge shown on Line 803 is zero. Where no cost includes third party settlement services, the credit shown in Line 802 will more than offset the amount shown in Line 801. The amount shown in Line 803 will be a negative number to offset the settlement charges paid indirectly through the loan originator.

Lines 804-808 may be used to record each of the Required services that we select. Each settlement service provider must be identified by name and the amount paid recorded either inside the columns or as paid to the provider outside closing (P.O.C.), as described in the General Instructions.

Line 804 is used to record the appraisal fee.

Line 805 is used to record the fee for all credit reports.

Line 806 is used to record the fee for any tax service.

Line 807 is used to record any flood certification fee.

Lines 808 and additional sequentially numbered lines, as needed, are used to record other third party services required by the loan originator. These Lines may also be used to record other required disclosures from the loan originator. Any such disclosures must be listed outside the columns.

Lines 901-904. This series is used to record the items which the Lender requires to be paid at the

time of settlement, but which are not necessarily paid to the lender (

e.g.,

Line 901 is used if interest is collected at settlement for a part of a month or other period between settlement and the date from which interest will be collected with the first regular monthly payment. Enter that amount here and include the per diem charges. If such interest is not collected until the first regular monthly payment, no entry should be made on Line 901.

Line 902 is used for mortgage insurance premiums due and payable at settlement, including any monthly amounts due at settlement and any upfront mortgage insurance premium, but not including any reserves collected by the Lender and recorded in the 1000-series. If a lump sum mortgage insurance premium paid at settlement is included on Line 902, a note should indicate that the premium is for the life of the loan.

Line 903 is used for homeowner's insurance premiums that the Lender requires to be paid at the time of settlement, except reserves collected by the Lender and recorded in the 1000-series.

Lines 904 and additional sequentially numbered lines are used to list additional items required by the Lender (except for reserves collected by the Lender and recorded in the 1000-series), including premiums for flood or other insurance. These lines are also used to list amounts paid at settlement for insurance not required by the Lender.

Lines 1000-1007. This series is used for amounts collected by the Lender from the Borrower and held in an account for the future payment of the obligations listed as they fall due. Include the time period (number of months) and the monthly assessment. In many jurisdictions this is referred to as an escrow, impound, or trust account. In addition to the property taxes and insurance listed, some Lenders may require reserves for flood insurance, condominium owners' association assessments, etc.

After itemizing individual deposits in the 1000 series, the servicer shall make an adjustment based on aggregate accounting. This adjustment equals the difference between the deposit required under aggregate accounting and the sum of the itemized deposits. The computation steps for aggregate

accounting are set out in 12 CFR 1024.17(d). The adjustment will always be a negative number or zero (-0-), except for amounts due to rounding. The settlement agent shall enter the aggregate adjustment amount outside the columns on a final line of the 1000 series of the HUD-1 or HUD-1A statement. Appendix E to this part sets out an example of aggregate analysis.

Lines 1100-1108. This series covers title charges and charges by attorneys and closing or settlement agents. The title charges include a variety of services performed by title companies or others, and include fees directly related to the transfer of title (title examination, title search, document preparation), fees for title insurance, and fees for conducting the closing. The legal charges include fees for attorneys representing the lender, seller, or borrower, and any attorney preparing title work. The series also includes any settlement, notary, and delivery fees related to the services covered in this series. Disbursements to third parties must be broken out in the appropriate lines or in blank lines in the series, and amounts paid to these third parties must be shown outside of the columns if included in Line 1101. Charges not included in Line 1101 must be listed in the columns.

Line 1101 is used to record the total for the category of Title services and lender's title insurance. This amount must be listed in the columns.

Line 1102 is used to record the settlement or closing fee.

Line 1103 is used to record the charges for the owner's title insurance and related endorsements. This amount must be listed in the columns.

Line 1104 is used to record the lender's title insurance premium and related endorsements.

Line 1105 is used to record the amount of the lender's title policy limit. This amount is recorded outside of the columns.

Line 1106 is used to record the amount of the owner's title policy limit. This amount is recorded outside of the columns.

Line 1107 is used to record the amount of the total title insurance premium, including endorsements, that is retained by the title agent. This amount is recorded outside of the columns.

Line 1108 used to record the amount of the total title insurance premium, including endorsements, that is retained by the title underwriter. This amount is recorded outside of the columns.

Additional sequentially numbered lines in the 1100-series may be used to itemize title charges paid to other third parties, as identified by name and type of service provided.

Lines 1200-1206. This series covers government recording and transfer charges. Charges paid by the borrower must be listed in the columns as described for lines 1201 and 1203, with itemizations shown outside the columns. Any amounts that are charged to the seller and that were not included on the Good Faith Estimate must be listed in the columns.

Line 1201 is used to record the total Government recording charges, and the amount must be listed in the columns.

Line 1202 is used to record, outside of the columns, the itemized recording charges.

Line 1203 is used to record the transfer taxes, and the amount must be listed in the columns.

Line 1204 is used to record, outside of the columns, the amounts for local transfer taxes and stamps.

Line 1205 is used to record, outside of the columns, the amounts for state transfer taxes and stamps.

Line 1206 and additional sequentially numbered lines may be used to record specific itemized third party charges for government recording and transfer services, but the amounts must be listed outside the columns.

Line 1301 and additional sequentially numbered lines must be used to record required services that the borrower can shop for, such as fees for survey, pest inspection, or other similar inspections. These lines may also be used to record additional itemized settlement charges that are not included in a specific category, such as fees for structural and environmental inspections; pre-sale inspections of heating, plumbing or electrical equipment; or insurance or warranty coverage. The amounts must be listed in either the borrower's or seller's column.

Line 1400 must state the total settlement charges as calculated by adding the amounts within each

column.

Page 3

Comparison of Good Faith Estimate (GFE) and HUD-1/1A Charges

The HUD-1/1-A is a statement of actual charges and adjustments. The comparison chart on page 3 of the HUD-1 must be prepared using the exact information and amounts for the services that were purchased or provided as part of the transaction, as that information and those amounts are shown on the GFE and in the HUD-1. If a service that was listed on the GFE was not obtained in connection with the transaction, pages 1 and 2 of the HUD-1 should not include any amount for that service, and the estimate on the GFE of the charge for the service should not be included in any amounts shown on the comparison chart on Page 3 of the HUD-1. The comparison chart is comprised of three sections: Charges That Cannot Increase, Charges That Cannot Increase More Than 10%, and Charges That Can Change.

Charges That Cannot Increase. The amounts shown in Blocks 1 and 2, in Line A, and in Block 8 on the borrower's GFE must be entered in the appropriate line in the Good Faith Estimate column. The amounts shown on Lines 801, 802, 803 and 1203 of the HUD-1/1A must be entered in the corresponding line in the HUD-1/1A column. The HUD-1/1A column must include any amounts shown on page 2 of the HUD-1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower. If there is a credit in Block 2 of the GFE or Line 802 of the HUD-1/1A, the credit should be entered as a negative number.

Charges That Cannot Increase More Than 10%. A description of each charge included in Blocks 3 and 7 on the borrower's GFE must be entered on separate lines in this section, with the amount shown on the borrower's GFE for each charge entered in the corresponding line in the Good Faith Estimate column. For each charge included in Blocks 4, 5 and 6 on the borrower's GFE for which the loan originator selected the provider or for which the borrower selected a provider identified by the loan originator, a description must be entered on a separate line in this section, with the amount shown on the borrower's GFE for each charge entered in the corresponding line in the Good Faith

Estimate column. The loan originator must identify any third party settlement services for which the borrower selected a provider other than one identified by the loan originator so that the settlement agent can include those charges in the appropriate category. Additional lines may be added if necessary. The amounts shown on the HUD-1/1A for each line must be entered in the HUD-1/1A column next to the corresponding charge from the GFE, along with the appropriate HUD-1/1A line number. The HUD-1/1A column must include any amounts shown on page 2 of the HUD-1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower.

The amounts shown in the Good Faith Estimate and HUD-1/1A columns for this section must be separately totaled and entered in the designated line. If the total for the HUD-1/1A column is greater than the total for the Good Faith Estimate column, then the amount of the increase must be entered both as a dollar amount and as a percentage increase in the appropriate line.

Charges That Can Change. The amounts shown in Blocks 9, 10 and 11 on the borrower's GFE must be entered in the appropriate lines in the Good Faith Estimate column. Any third party settlement services for which the borrower selected a provider other than one identified by the loan originator

Loan Terms

This section must be completed in accordance with the information and instructions provided by the lender. The lender must provide this information in a format that permits the settlement agent to simply enter the necessary information in the appropriate spaces, without the settlement agent having to refer to the loan documents themselves. For reverse mortgages, the initial monthly amount owed for principal, interest, and any mortgage insurance must read N/A and the loan term is disclosed as N/A when the loan term is conditioned upon the occurrence of a specified event, such as the death of the borrower or the borrower no longer occupying the property for a certain period of time. Additionally, for reverse mortgages the question Even if you make payments on time, can your loan balance rise? must be answered as Yes and the maximum amount disclosed as Unknown.

For reverse mortgages that establish an arrangement for the payment of property taxes,

homeowner's insurance, or other recurring charges through draws from the principal limit, the second box in the Total monthly amount owed including escrow payments section must be checked. The blank following the first \$ must be completed with 0 and an asterisk, and all items that will be paid using draws from the principal limit, such as for property taxes, must also be indicated. An asterisk must also be placed in this section with the following statement: Paid by or through draws from the principal limit. Reverse mortgage transactions are not considered to be balloon transactions for the purposes of the loan terms disclosed on page 3 of the HUD-1.

Instructions for Completing HUD-1A

Note:

The HUD-1A is an optional form that may be used for refinancing and subordinate-lien federally related mortgage loans, as well as for any other one-party transaction that does not involve the transfer of title to residential real property. The HUD-1 form may also be used for such transactions, by utilizing the borrower's side of the HUD-1 and following the relevant parts of the instructions as set forth above. The use of either the HUD-1 or HUD-1A is not mandatory for open-end lines of credit (home-equity plans), as long as the provisions of Regulation Z are followed.

Background

The HUD-1A settlement statement is to be used as a statement of actual charges and adjustments to be given to the borrower at settlement, as defined in this part. The instructions for completion of the HUD-1A are for the benefit of the settlement agent who prepares the statement; the instructions are not a part of the statement and need not be transmitted to the borrower. There is no objection to using the HUD-1A in transactions in which it is not required, and its use in open-end lines of credit transactions (home-equity plans) is encouraged. It may not be used as a substitute for a HUD-1 in any transaction that has a seller.

Refer to the definitions section (§ 1024.2) of 12 CFR part 1024 (Regulation X) for specific definitions of terms used in these instructions.

General Instructions

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to 12 CFR 1024.9 regarding rules for reproduction of the HUD-1A. Additional pages may be attached to the HUD-1A for the inclusion of customary recitals and information used locally for settlements or if there are insufficient lines on the HUD-1A. The settlement agent shall complete the HUD-1A in accordance with the instructions for the HUD-1 to the extent possible, including the instructions for disclosing items paid outside closing and for no cost loans.

Blank lines are provided in section L for any additional settlement charges. Blank lines are also provided in section M for recipients of all or portions of the loan proceeds. The names of the recipients of the settlement charges in section L and the names of the recipients of the loan proceeds in section M should be set forth on the blank lines.

Line-Item Instructions

Page 1

The identification information at the top of the HUD-1A should be completed as follows: The borrower's name and address is entered in the space provided. If the property securing the loan is different from the borrower's address, the address or other location information on the property should be entered in the space provided. The loan number is the lender's identification number for the loan. The settlement date is the date of settlement in accordance with 12 CFR 1024.2, not the end of any applicable rescission period. The name and address of the lender should be entered in the space provided.

Section L. Settlement Charges.

Line 1400 in the HUD-1A is for the total settlement charges charged to the borrower. Enter this total on line 1601. This total should include section L amounts from additional pages, if any are attached to this HUD-1A.

Section M. Disbursement to Others.

For example, in a refinancing transaction, the loan proceeds are used to pay off an existing loan.

The name of the lender for the loan being paid off and the pay-off balance would be entered in section M. In a home improvement transaction when the proceeds are to be paid to the home improvement contractor, the name of the contractor and the amount paid to the contractor would be entered in section M. In a consolidation loan, or when part of the loan proceeds is used to pay off other creditors, the name of each creditor and the amount paid to that creditor would be entered in section M. If the proceeds are to be given directly to the borrower and the borrower will use the proceeds to pay off existing obligations, this would not be reflected in section M.

Section N. Net Settlement.

Line 1602 is the total amount from line 1400.

Line 1603 is the total amount from line 1520.

Line 1604 is the amount disbursed to the borrower. This is determined by adding together the amounts for lines 1600 and 1601, and then subtracting any amounts listed on lines 1602 and 1603.

Page 2

This section of the HUD-1A is similar to page 3 of the HUD-1. The instructions for page 3 of the HUD-1 should be followed insofar as possible. The HUD-1/1A Column should include any amounts shown on page 1 of the HUD-1A in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by the borrower. Inapplicable charges should be ignored.

ER20DE11.001

ER20DE11.002

ER20DE11.003

ER20DE11.004

ER20DE11.005

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 80104, Dec. 31, 2013]

Pt. 1024, App. B

Appendix B to Part 1024 Illustrations of Requirements of RESPA

The following illustrations provide additional guidance on the meaning and coverage of the

provisions of RESPA. Other provisions of Federal or state law may also be applicable to the practices and payments discussed in the following illustrations.

1.

Facts:

Comments:

2.

Facts:

Comments:

3.

Facts:

Comments:

4.

Facts:

Comments:

5.

Facts:

Comments:

bona fide

6.

Facts.

Comments:

7.

Facts:

Comments:

8.

Facts:

Comments:

9.

Facts:

Comments:

e.g.,

10.

Facts:

Comments:

11.

Facts:

e.g.,

etc.

Comments:

12.

Facts.

Comment.

13.

Facts.

Comments.

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 80105, Dec. 31, 2013]

Pt. 1024, App. C

Appendix C to Part 1024 Instructions for Completing Good Faith Estimate (GFE) Form

The following are instructions for completing the GFE required under section 5 of RESPA and 12 CFR 1024.7 of the Bureau regulations. The standardized form set forth in this Appendix is the required GFE form and must be provided exactly as specified; provided, however, preparers may replace HUD's OMB approval number listed on the form with the Bureau's OMB approval number

when they reproduce the GFE form. The instructions for completion of the GFE are primarily for the benefit of the loan originator who prepares the form and need not be transmitted to the borrower(s) as an integral part of the GFE. The required standardized GFE form must be prepared completely and accurately. A separate GFE must be provided for each loan where a transaction will involve more than one mortgage loan.

General Instructions

The loan originator preparing the GFE may fill in information and amounts on the form by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Under these instructions, the form refers to the required standardized GFE form. Although the standardized GFE is a prescribed form, Blocks 3, 6, and 11 on page 2 may be adapted for use in particular loan situations, so that additional lines may be inserted there, and unused lines may be deleted.

All fees for categories of charges shall be disclosed in U.S. dollar and cent amounts.

Specific Instructions

Page 1

Top of the Form

Purpose.

Shopping for your loan.

Important dates.

Summary of your loan

- (i) The initial loan amount;
- (ii) The loan term; and
- (iii) The initial interest rate.

For reverse mortgage transactions:

- (i) The initial loan amount disclosed on the GFE is the amount of the initial principal limit of the loan;
- (ii) The loan term is disclosed as N/A when the loan term is conditioned upon the occurrence of a specified event, such as the death of the borrower or the borrower no longer occupying the property for a certain period of time; and
- (iii) The initial interest rate is the interest rate indicated on the legal obligation.

The loan originator must fill in the initial monthly amount owed for principal, interest, and any mortgage insurance. The amount shown must be the greater of: (1) The required monthly payment for principal and interest for the first regularly scheduled payment, plus any monthly mortgage insurance payment; or (2) the accrued interest for the first regularly scheduled payment, plus any monthly mortgage insurance payment. For reverse mortgage transactions where there are no regular payment periods, the loan originator must disclose Not Applicable or N/A for the initial monthly amount owed for principal, interest, and any mortgage insurance.

The loan originator must indicate whether the interest rate can rise, and, if it can, must insert the maximum rate to which it can rise over the life of the loan. The loan originator must also indicate the period of time after which the interest rate can first change.

The loan originator must indicate whether the loan balance can rise even if the borrower makes payments on time, for example in the case of a loan with negative amortization. If it can, the loan originator must insert the maximum amount to which the loan balance can rise over the life of the loan. For Federal, State, local, or tribal housing programs that provide payment assistance, any repayment of such program assistance should be excluded from consideration in completing this item. If the loan balance will increase only because escrow items are being paid through the loan balance, the loan originator is not required to check the box indicating that the loan balance can rise. For reverse mortgage transactions, the loan originator must indicate that the loan balance can rise even if the borrower makes payments on time and the maximum amount to which the loan balance can rise must be disclosed as Unknown.

The loan originator must indicate whether the monthly amount owed for principal, interest, and any mortgage insurance can rise even if the borrower makes payments on time. If the monthly amount owed can rise even if the borrower makes payments on time, the loan originator must indicate the period of time after which the monthly amount owed can first change, the maximum amount to which the monthly amount owed can rise at the time of the first change, and the maximum amount to which the monthly amount owed can rise over the life of the loan. The amount used for the monthly amount owed must be the greater of: (1) The required monthly payment for principal and interest for that month, plus any monthly mortgage insurance payment; or (2) the accrued interest for that month, plus any monthly mortgage insurance payment. For reverse mortgage transactions, the loan originator must disclose that the monthly amount owed for principal, interest, and any mortgage insurance cannot rise.

The loan originator must indicate whether the loan includes a prepayment penalty, and, if so, the maximum amount that it could be.

The loan originator must indicate whether the loan requires a balloon payment and, if so, the amount of the payment and in how many years it will be due. Reverse mortgage transactions are not considered to be balloon transactions for the purposes of this disclosure on the GFE.

Escrow account information.

Summary of your settlement charges.

Page 2

Understanding your estimated settlement charges.

Your Adjusted Origination Charges

Block 1,

Our origination charge.

i.e.,

Block 2,

Your credit or charge (points) for the specific interest rate chosen.

For transactions without a mortgage broker, the lender may choose not to separately disclose in this block any credit or charge for the interest rate chosen on the loan; however, if this block does not include any positive or negative figure, the lender must check the first box to indicate that The credit or charge for the interest rate you have chosen is included in Our origination charge above (see Block 1 instructions above), must insert the interest rate, and must also insert 0 in Block 2. Only one of the boxes may be checked; a credit and charge cannot occur together in the same transaction.

For a mortgage broker, the credit or charge for the specific interest rate chosen is the net payment to the mortgage broker from the lender (

i.e.,

i.e.,

The amount stated in Block 2 is subject to zero tolerance while the interest rate is locked,

i.e.,

Note:

Line A,

Your Adjusted Origination Charges.

In the case of no cost loans, where no cost refers only to the loan originator's fees, Line A must show a zero charge as the adjusted origination charge. In the case of no cost loans where no cost encompasses third party fees as well as the upfront payment to the loan originator, all of the third party fees listed in Block 3 through Block 11 to be paid for by the loan originator (or borrower, if any) must be itemized and listed on the GFE. The credit for the interest rate chosen must be large enough that the total for Line A will result in a negative number to cover the third party fees.

Your Charges for All Other Settlement Services

There is a 10 percent tolerance applied to the sum of the prices of each service listed in Block 3,

Block 4, Block 5, Block 6, and Block 7, where the loan originator requires the use of a particular provider or the borrower uses a provider selected or identified by the loan originator. Any services in Block 4, Block 5, or Block 6 for which the borrower selects a provider other than one identified by the loan originator are not subject to any tolerance and, at settlement, would not be included in the sum of the charges on which the 10 percent tolerance is based. Where a loan originator permits a borrower to shop for third party settlement services, the loan originator must provide the borrower with a written list of settlement services providers at the time of the GFE, on a separate sheet of paper.

Block 3,

Required services that we select.

Block 4,

Title services and lender's title insurance.

Block 5,

Owner's title insurance.

Block 6,

Required services that you can shop for.

e.g.,

Block 7,

Government recording charge.

Block 8,

Transfer taxes.

Block 9,

Initial deposit for your escrow account.

Block 10,

Daily interest charges.

Block 11,

Homeowner's insurance.

Line B,

Your Charges for All Other Settlement Services.

Line A + B,

Total Estimated Settlement Charges.

Page 3

Instructions

Understanding which charges can change at settlement.

Using the tradeoff table.

Using the shopping chart.

If your loan is sold in the future.

ER20DE11.006

ER20DE11.007

ER20DE11.008

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 80105, Dec. 31, 2013]

Pt. 1024, App. D

Appendix D to Part 1024 Affiliated Business Arrangement Disclosure Statement Format Notice

To:

From:

(Entity Making Statement)

Property:

Date:

This is to give you notice that [

referring party

settlement services provider(s)

referring party

[A.] Set forth below is the estimated charge or range of charges for the settlement services listed.

You are NOT required to use the listed provider(s) as a condition for [settlement of your loan on] [or]

[purchase, sale, or refinance of] the subject property. THERE ARE FREQUENTLY OTHER

SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE

TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND

THE BEST RATE FOR THESE SERVICES.

[

provider and settlement service

[

charge or range of charges

[B.] Set forth below is the estimated charge or range of charges for the settlement services of an

attorney, credit reporting agency, or real estate appraiser that we, as your lender, will require you to

use, as a condition of your loan on this property, to represent our interests in the transaction.

[

provider and settlement service

[

charge or range of charges

ACKNOWLEDGMENT

I/we have read this disclosure form, and understand that

referring party

Signature

[INSTRUCTIONS TO PREPARER:] [Use paragraph A for referrals other than those by a lender to

an attorney, a credit reporting agency, or a real estate appraiser that a lender is requiring a borrower to use to represent the lender's interests in the transaction. Use paragraph B for those referrals to an attorney, credit reporting agency, or real estate appraiser that a lender is requiring a borrower to use to represent the lender's interests in the transaction. When applicable, use both paragraphs. Specific timing rules for delivery of the affiliated business disclosure statement are set forth in 12 CFR 1024.15(b)(1) of Regulation X). These INSTRUCTIONS TO PREPARER should not appear on the statement.]

Pt. 1024, App. E

Appendix E to Part 1024Arithmetic Steps

I. Example Illustrating Aggregate Analysis

Assumptions

Disbursements:

\$360 for school taxes disbursed on September 20

\$1,200 for county property taxes:

\$500 disbursed on July 25

\$700 disbursed on December 10

Cushion: One-sixth of estimated annual disbursements

Settlement: May 15

First Payment: July 1

Step 1Initial Trial Balance

Aggregate

pmt

disb

bal

Jun

0

0

0

Jul

130

500

370

Aug

130

0

240

Sep

130

360

470

Oct

130

0

340

Nov

130

0

210

Dec

130

700

780

Jan

130

0

650

Feb

130

0

520

Mar

130

0

390

Apr

130

0

260

May

130

0

130

Jun

130

0

0

Step 2Adjusted Trial Balance

[Increase monthly balances to eliminate negative balances]

Aggregate

pmt

disb

bal

Jun

0

0

780

Jul

130

500

410

Aug

130

0

540

Sep

130

360

310

Oct

130

0

440

Nov

130

0

570

Dec

130

700

0

Jan

130

0

130

Feb

130

0

260

Mar

130

0

390

Apr

130

0

520

May

130

0

650

Jun

130

0

780

Step 3 Trial Balance With Cushion

Aggregate

pmt

disb

bal

Jun

0

0

1040

Jul

130

500

670

Aug

130

0

800

Sep

130

360

570

Oct

130

0

700

Nov

130

0

830

Dec

130

700

260

Jan

130

0

390

Feb

130

0

520

Mar

130

0

650

Apr

130

0

780

May

130

0

910

Jun

130

0

1040

II. Example Illustrating Single-Item Analysis

Assumptions

Disbursements:

\$360 for school taxes disbursed on September 20

\$1,200 for county property taxes:

\$500 disbursed on July 25

\$700 disbursed on December 10

Cushion: One-sixth of estimated annual disbursements

Settlement: May 15

First Payment: July 1

Step 1 Initial Trial Balance

Single-item

Taxes

pmt

disb

bal

School taxes

pmt

disb

bal

June

0

0

0

0

0

0

July

100

500

400

30

0

30

August

100

0

300

30

0

60

September

100

0

200

30

360

270

October

100

0

100

30

0

240

November

100

0

0

30

0

210

December

100

700

600

30

0

180

January

100

0

500

30

0

150

February

100

0

400

30

0

120

March

100

0

300

30

0

90

April

100

0

200

30

0

60

May

100

0

100

30

0

30

June

100

0

0

30

0

0

Step 2Adjusted Trial Balance

[Increase monthly balances to eliminate negative balances]

Single-item

Taxes

pmt

disb

bal

School taxes

pmt

disb

bal

Jun

0

0

600

0

0

270

Jul

100

500

200

30

0

300

Aug

100

0

300

30

0

330

Sep

100

0

400

30

360

0

Oct

100

0

500

30

0

30

Nov

100

0

600

30

0

60

Dec

100

700

0

30

0

90

Jan

100

0

100

30

0

120

Feb

100

0

200

30

0

150

Mar

100

0

300

30

0

180

Apr

100

0

400

30

0

210

May

100

0

500

30

0

240

Jun

100

0

600

30

0

270

Step 3Trial Balance With Cushion

Single-item

Taxes

pmt

disb

bal

School taxes

pmt

disb

bal

Jun

0

0

800

0

0

330

Jul

100

500

400

30

0

360

Aug

100

0

500

30

0

390

Sep

100

0

600

30

360

60

Oct

100

0

700

30

0

90

Nov

100

0

800

30

0

120

Dec

100

700

200

30

0

150

Jan

100

0

300

30

0

180

Feb

100

0

400

30

0

210

Mar

100

0

500

30

0

240

Apr

100

0

600

30

0

270

May

100

0

700

30

0

300

Jun

100

0

800

30

0

330

Pt. 1024, App. MS

Appendix MS to Part 1024Mortgage Servicing

Pt. 1024, App. MS-1

Appendix MS-1 to Part 1024

[Sample language; use business stationery or similar heading]

[Date]

SERVICING DISCLOSURE STATEMENT NOTICE TO FIRST LIEN MORTGAGE LOAN
APPLICANTS: THE RIGHT TO COLLECT YOUR MORTGAGE LOAN PAYMENTS MAY BE
TRANSFERRED

You are applying for a mortgage loan covered by the Real Estate Settlement Procedures Act
(RESPA) (12 U.S.C. 2601

et seq.

Servicing Transfer Information

[We may assign, sell, or transfer the servicing of your loan while the loan is outstanding.]

[or]

[We do not service mortgage loans of the type for which you applied. We intend to assign, sell, or transfer the servicing of your mortgage loan before the first payment is due.]

[or]

[The loan for which you have applied will be serviced at this financial institution and we do not intend to sell, transfer, or assign the servicing of the loan.]

[INSTRUCTIONS TO PREPARER: Insert the date and select the appropriate language under Servicing Transfer Information. The model format may be annotated with further information that clarifies or enhances the model language.]

Pt. 1024, App. MS-2

Appendix MS-2 to Part 1024

Notice of Servicing Transfer

The servicing of your mortgage loan is being transferred, effective [Date]. This means that after this date, a new servicer will be collecting your mortgage loan payments from you. Nothing else about your mortgage loan will change.

[Name of present servicer] is now collecting your payments. [Name of present servicer] will stop accepting payments received from you after [Date].

[Name of new servicer] will collect your payments going forward. Your new servicer will start accepting payments received from you on [Date].

Send all payments due on or after [Date] to [Name of new servicer] at this address: [New servicer address].

If you have any questions for either your present servicer, [Name of present servicer] or your new servicer [Name of new servicer], about your mortgage loan or this transfer, please contact them using the information below:

Current Servicer:

New Servicer:

[Name of present servicer]

[Name of new servicer]

[Individual or Department]

[Individual or Department]

[Telephone Number]

[Telephone Number]

[Address]

[Address]

[Use this paragraph if appropriate; otherwise omit.] Important note about insurance: If you have mortgage life or disability insurance or any other type of optional insurance, the transfer of servicing rights may affect your insurance in the following way:

You should do the following to maintain coverage:

Under Federal law, during the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer on or before its due date may not be treated by the new servicer as late, and a late fee may not be imposed on you.

[NAME OF PRESENT SERVICER]

Date

[and] [or]

[NAME OF NEW SERVICER]

Date

[78 FR 10886, Feb. 14, 2013]

Pt. 1024, App. MS-3

Appendix MS-3 to Part 1024

Model Force-Placed Insurance Notice Forms

Table of Contents

MS-3(A)Model Form for Force-Placed Insurance Notice Containing Information Required by § 1024.37(c)(2)

MS-3(B)Model Form for Force-Placed Insurance Notice Containing Information Required by §
1024.37(d)(2)(i)

MS-3(C)Model Form for Force-Placed Insurance Notice Containing Information Required by §
1024.37(d)(2)(ii)

MS-3(D)Model Form for Force-Placed Insurance Notice Containing Information Required by §
1024.37(e)(2)

MS-3(A)Model Form for Force-Placed Insurance Notice Containing Information Required by §
1024.37(c)(2)

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

Subject:

Please provide insurance information for

Dear [Borrower's Name]:

Our records show that your [hazard] [Insurance Type] insurance [is expiring] [expired] [provides
insufficient coverage], and we do not have evidence that you have obtained new coverage.

Because [hazard] [Insurance Type] insurance is required on your property, [we bought insurance for
your property] [we plan to buy insurance for your property].

You should immediately provide us with your insurance information. [Describe the insurance
information the borrower must provide]. [The information must be provided in writing.]

The insurance we [bought] [buy]:

May be significantly more expensive than the insurance you can buy yourself.

May not provide as much coverage as an insurance policy you buy yourself.

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in

the same transmittal.]

MS-3(B)Model Form for Force-Placed Insurance Notice Containing Information Required by §
1024.37(d)(2)(i)

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

Subject:

Second and final noticeplease provide insurance information for

Dear [Borrower's Name]:

This is your second and final notice that our records show that your [hazard] [Insurance Type]
insurance [is expiring] [expired] [provides insufficient coverage], and we do not have evidence that
you have obtained new coverage.

Because [hazard] [Insurance Type] insurance is required on your property, [we bought insurance for
your property] [we plan to buy insurance for your property].

You should immediately provide us with your insurance information. [Describe the insurance
information the borrower must provide]. [The information must be provided in writing.]

The insurance we [bought] [buy]:

[Costs \$[premium charge]] [Will cost an estimated \$[premium charge]] annually, which may be
significantly more expensive than insurance you can buy yourself.

May not provide as much coverage as an insurance policy you buy yourself.

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in
the same transmittal.]

MS-3(C)Model Form for Force-Placed Insurance Notice Containing Information Required by §
1024.37(d)(2)(ii)

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

Subject:

Second and final notice please provide insurance information for

Dear [Borrower's Name]:

We received the insurance information you provided, but we are unable to verify coverage from [Date Range].

Please provide us with insurance information for [Date Range] immediately.

We will charge you for insurance we [bought] [plan to buy] for [Date Range] unless we can verify that you have insurance coverage for [Date Range].

The insurance we [bought] [buy]:

[Costs \$[premium charge]] [Will cost an estimated \$[premium charge]] annually, which may be significantly more expensive than insurance you can buy yourself.

May not provide as much coverage as an insurance policy you buy yourself.

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

MS-3(D)Model Form for Force-Placed Insurance Notice Containing Information Required by § 1024.37(e)(2)

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

Subject:

Please update insurance information for

Dear [Borrower's Name]:

Because we did not have evidence that you had [hazard] [Insurance Type] insurance on the property listed above, we bought insurance on your property and added the cost to your mortgage loan account.

The policy that we bought [expired] [is scheduled to expire].

Because [hazard][Insurance Type] insurance] is required on your property, we intend to maintain insurance on your property by renewing or replacing the insurance we bought.

The insurance we buy:

[Costs \$[premium charge]] [Will cost an estimated \$[premium charge]] annually, which may be significantly more expensive than insurance you can buy yourself.

May not provide as much coverage as an insurance policy you buy yourself.

If you buy [hazard] [Insurance Type] insurance, you should immediately provide us with your insurance information.

[Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

[81 FR 72376, Oct. 19, 2016]

Pt. 1024, App. MS-4

Appendix MS-4 to Part 1024Model Clauses for the Written Early Intervention Notice

MS-4(A)Statement Encouraging the Borrower To Contact the Servicer and Additional Information About Loss Mitigation Options (§ 1024.39(

b

i

ii

iv

Call us today to learn more about your options and instructions for how to apply. [The longer you wait, or the further you fall behind on your payments, the harder it will be to find a solution.]

[Servicer Name]

[Servicer Address]

[Servicer Telephone Number]

[For more information, visit [Servicer Web site] [and][or] [Email Address]].

MS-4(B)Available Loss Mitigation Options (§ 1024.39(

b

iii

[If you need help, the following options may be possible (most are subject to lender approval):]

[Refinance your loan with us or another lender;]

[Modify your loan terms with us;]

[Payment forbearance temporarily gives you more time to pay your monthly payment;] [or]

[If you are not able to continue paying your mortgage, your best option may be to find more affordable housing. As an alternative to foreclosure, you may be able to sell your home and use the proceeds to pay off your current loan.]

MS-4(C)Housing Counselors (§ 1024.39(

b

v

For help exploring your options, the Federal government provides contact information for housing counselors, which you can

MS-4(D)Written Early Intervention Notice for Servicers Subject to FDCPA (§ 1024.39(

d

iii

This is a legally required notice. We are sending this notice to you because you are behind on your mortgage payment. We want to notify you of possible ways to avoid losing your home. We have a right to invoke foreclosure based on the terms of your mortgage contract. Please read this letter carefully.

[78 FR 10887, Feb. 14, 2013, as amended at 81 FR 72376, Oct. 19, 2016; 82 FR 30948, July 5, 2017]

Pt. 1024, Supp. I

Supplement I to Part 1024 Official Bureau Interpretations

Introduction

1. Official status.
2. Requests for official interpretations.
3. Unofficial oral interpretations.
4. Rules of construction.

(b) Throughout the commentary, reference to this section or this paragraph means the section or paragraph in the regulation that is the subject of the comment.

5. Comment designations.

Subpart A General Provisions

Section 1024.5 Coverage of RESPA

5(c) Relation to State laws.

Paragraph 5(c)(1).

1. State laws that are inconsistent with the requirements of RESPA or Regulation X may be preempted by RESPA or Regulation X. State laws that give greater protection to consumers are not inconsistent with and are not preempted by RESPA or Regulation X. In addition, nothing in RESPA or Regulation X should be construed to preempt the entire field of regulation of the practices covered by RESPA or Regulation X, including the regulations in Subpart C with respect to mortgage servicers or mortgage servicing.

Subpart BMortgage Settlement and Escrow Accounts [Reserved]

Section 1024.17 Escrow Accounts

17(k) Timely payments.

17(k)(5) Timely payment of hazard insurance.

17(k)(5)(ii) Inability to disburse funds.

17(k)(5)(ii)(A) When inability exists.

1.

Examples of reasonable basis to believe that a policy has been cancelled or not renewed.

i. A borrower notifies a servicer that the borrower has cancelled the hazard insurance

ii. A servicer receives a notification of cancellation or non-renewal from the borrower's insurance company before payment is due on the borrower's hazard insurance.

iii. A servicer does not receive a payment notice by the expiration date of the borrower's hazard insurance policy.

17(k)(5)(ii)(C) Recoupment for advances.

1.

Month-to-month advances.

Subpart CMortgage Servicing

§ 1024.30 Scope

30(b) Exemptions.

1.

Exemption for Farm Credit System institutions.

Paragraph 30(c)(2).

1.

Principal residence.

30(d) Successors in interest.

1.

Treatment of confirmed successors in interest.

2.

Assumption of the mortgage loan obligation.

3.

Treatment of transferor borrowers.

§ 1024.31 Definitions

Delinquency.

1.

Length of delinquency.

2.

Application of funds.

3.

Payment tolerance.

4.

Creditor's contract rights.

Loss mitigation application.

1.

Borrower's representative.

Loss mitigation option.

1.

Types of loss mitigation options.

2.

Available through the servicer.

Qualified written request.

1. A qualified written request is a written notice a borrower provides to request a servicer either correct an error relating to the servicing of a mortgage loan or to request information relating to the

servicing of the mortgage loan. A qualified written request is not required to include both types of requests. For example, a qualified written request may request information relating to the servicing of a mortgage loan but not assert that an error relating to the servicing of a loan has occurred.

2. A qualified written request is just one form that a written notice of error or information request may take. Thus, the error resolution and information request requirements in §§ 1024.35 and 1024.36 apply as set forth in those sections irrespective of whether the servicer receives a qualified written request.

Service provider.

1. Service providers may include attorneys retained to represent a servicer or an owner or assignee of a mortgage loan in a foreclosure proceeding, as well as other professionals retained to provide appraisals or inspections of properties.

Successor in interest.

1.

Joint tenants and tenants by the entirety.

2.

Beneficiaries of

trusts.

inter vivos

inter vivos

inter vivos

inter vivos

§ 1024.32 General Disclosure Requirements.

32(c) Confirmed successors in interest.

32(c)(1) Optional notice with acknowledgment form.

1. A servicer may identify in the acknowledgment form examples of the types of notices and communications identified in § 1024.32(c)(1)(iii), such as periodic statements and mortgage

servicing transfer notices. Any examples provided should be the types of notices or communications that would be available to a confirmed successor in interest if the confirmed successor in interest executed the acknowledgment and returned it to the servicer.

32(c)(2) Effect of failure to execute acknowledgment.

1.

No time limit to return acknowledgment.

2.

Effect of revocation of acknowledgment.

32(c)(4) Multiple notices unnecessary.

1.

Specific written disclosure.

§ 1024.33Mortgage Servicing Transfers

33(a) Servicing disclosure statement.

1.

Terminology.

2.

Delivery to co-applicants.

3.

Lender servicing.

33(b) Notices of transfer of loan servicing.

Paragraph 33(b)(3).

1.

Delivery.

33(c) Borrower payments during transfer of servicing.

33(c)(1) Payments not considered late.

1.

Late fees prohibited.

See

2.

Compliance with § 1024.39.

§ 1024.34 Timely Escrow Payments and Treatment of Escrow Balances

Paragraph 34(b)(1).

1.

Netting of funds.

Paragraph 34(b)(2).

1.

Refund always permissible.

2.

Borrower agreement.

§ 1024.35 Error Resolution Procedures

35(a) Notice of error.

1.

Borrower's representative.

2.

Information request.

35(b) Scope of error resolution.

1.

Noncovered errors.

i. An error relating to the origination of a mortgage loan;

ii. An error relating to the underwriting of a mortgage loan;

iii. An error relating to a subsequent sale or securitization of a mortgage loan;

iv. An error relating to a determination to sell, assign, or transfer the servicing of a mortgage loan.

However, an error relating to the failure to transfer accurately and timely information relating to the servicing of a borrower's mortgage loan account to a transferee servicer is an error for purposes of § 1024.35.

2.

Unreasonable basis.

i. A late fee for a payment that was not late;

ii. A charge imposed by a service provider for a service that was not actually rendered;

iii. A default property management fee for borrowers that are not in a delinquency status that would justify the charge; or

iv. A charge for force-placed insurance in a circumstance not permitted by § 1024.37.

35(c) Contact information for borrowers to assert errors.

1.

Exclusive address not required.

2.

Notice of an exclusive address.

i. The written notice designating the specific address, required pursuant to § 1024.35(c) and § 1024.36(b).

ii. Any periodic statement or coupon book required pursuant to 12 CFR 1026.41.

iii. Any Web site the servicer maintains in connection with the servicing of the loan.

iv. Any notice required pursuant to §§ 1024.39 or .41 that includes contact information for assistance.

3.

Multiple offices.

4.

Internet intake of notices of error.

35(e) Response to notice of error.

35(e)(1) Investigation and response requirements.

Paragraph 35(e)(1)(i).

1.

Notices alleging multiple errors; separate responses permitted.

Paragraph 35(e)(1)(ii).

1.

Different or additional errors; separate responses permitted.

35(e)(3) Time limits.

35(e)(3)(i) In general.

Paragraph 35(e)(3)(i)(B).

1.

Foreclosure sale timing.

35(e)(3)(ii) Extension of time limit.

1.

Notices alleging multiple errors; extension of time.

35(e)(4) Copies of documentation.

1.

Types of documents to be provided.

35(g) Requirements not applicable.

35(g)(1) In general.

Paragraph 35(g)(1)(i).

1.

New and material information.

Paragraph 35(g)(1)(ii).

1.

Examples of overbroad notices of error.

- i. Assertions of errors regarding substantially all aspects of a mortgage loan, including errors relating to all aspects of mortgage origination, mortgage servicing, and foreclosure, as well as errors relating to the crediting of substantially every borrower payment and escrow account transaction;
- ii. Assertions of errors in the form of a judicial action complaint, subpoena, or discovery request that purports to require servicers to respond to each numbered paragraph; and
- iii. Assertions of errors in a form that is not reasonably understandable or is included with voluminous tangential discussion or requests for information, such that a servicer cannot reasonably identify from the notice of error any error for which § 1024.35 requires a response.

35(h) Payment requirements prohibited.

1.

Borrower obligation to make payments.

§ 1024.36 Requests for Information

36(a) Information request.

1.

Borrower's representative.

2.

Owner or assignee of a mortgage loan.

ii. When the loan is held in a trust for which an appointed trustee receives payments on behalf of the trust, a servicer complies with § 1024.36(d) by responding to a borrower's request for information regarding the owner, assignee, or trust of the mortgage

A. For any request for information where the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is not the owner of the loan or the trustee of the securitization trust in which the loan is held: The name of the trust, and the name, address, and appropriate contact information for the trustee. Assume, for example, a mortgage loan is owned by Mortgage Loan Trust, Series ABC-1, for which XYZ Trust Company is the trustee. The servicer complies with § 1024.36(d) by identifying the owner as Mortgage Loan Trust, Series ABC-1, and providing the

name, address, and appropriate contact information for XYZ Trust Company as the trustee.

B. If the request for information did not expressly request the name or number of the trust or pool and the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is the owner of the loan or the trustee of the securitization trust in which the loan is held: The name and contact information for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, as applicable, without also providing the name of the trust.

C. If the request for information did expressly request the name or number of the trust or pool and the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is the owner of the loan or the trustee of the securitization trust in which the loan is held: The name of the trust, and the name, address, and appropriate contact information for the trustee, as in comment 36(a)-2.ii.A above.

36(b) Contact information for borrowers to request information.

1.

Exclusive address not required.

2.

Notice of an exclusive address.

i. The written notice designating the specific address, required pursuant to § 1024.35(c) and § 1024.36(b).

ii. Any periodic statement or coupon book required pursuant to 12 CFR 1026.41.

iii. Any Web site the servicer maintains in connection with the servicing of the loan.

iv. Any notice required pursuant to §§ 1024.39 or .41 that includes contact information for assistance.

3.

Multiple offices.

4.

Internet intake of information requests.

36(d) Response to information request.

36(d)(1) Investigation and response requirements.

Paragraph 36(d)(1)(ii).

1.

Information not available.

i. The information is not in the servicer's control or possession, or

ii. The information cannot be retrieved in the ordinary course of business through reasonable efforts.

2.

Examples.

i. A borrower requests a copy of a telephonic communication with a servicer. The servicer's personnel have access in the ordinary course of business to audio recording files with organized recordings or transcripts of borrower telephone calls and can identify the communication referred to by the borrower through reasonable business efforts. The information requested by the borrower is available to the servicer.

ii. A borrower requests information stored on electronic back-up media. Information on electronic back-up media is not accessible by the servicer's personnel in the ordinary course of business without undertaking extraordinary efforts to identify and restore the information from the electronic back-up media. The information requested by the borrower is not available to the servicer.

iii. A borrower requests information stored at an offsite document storage facility. A servicer has a right to access documents at the offsite document storage facility and servicer personnel can access those documents through reasonable efforts in the ordinary course of business. The information requested by the borrower is available to the servicer assuming that the information can be found within the offsite documents with reasonable efforts.

36(f) Requirements not applicable.

36(f)(1) In general.

Paragraph 36(f)(1)(i).

1. A borrower's request for a type of information that can change over time is not substantially the same as a previous information request for the same type of information if the subsequent request covers a different time period than the prior request.

Paragraph 36(f)(1)(ii).

1.

Confidential, proprietary or privileged information.

i. Information regarding management or profitability of a servicer, including information provided to investors in the servicer.

ii. Compensation, bonuses, or personnel actions relating to servicer personnel, including personnel responsible for servicing a borrower's mortgage loan account;

iii. Records of examination reports, compliance audits, borrower complaints, and internal investigations or external investigations; or

iv. Information protected by the attorney-client privilege.

Paragraph 36(f)(1)(iii).

1.

Examples of irrelevant information.

i. Information that relates to the servicing of mortgage loans other than a borrower's mortgage loan, including information reported to the owner of a mortgage loan regarding individual or aggregate collections for mortgage loans owned by that entity;

ii. The servicer's training program for servicing personnel;

iii. The servicer's servicing program guide; or

iv. Investor instructions or requirements for servicers regarding criteria for negotiating or approving any program with a borrower, including any loss mitigation option.

Paragraph 36(f)(1)(iv).

1.

Examples of overbroad or unduly burdensome requests for information.

- i. Requests for information that seek documents relating to substantially all aspects of mortgage origination, mortgage servicing, mortgage sale or securitization, and foreclosure, including, for example, requests for all mortgage loan file documents, recorded mortgage instruments, servicing information and documents, and sale or securitization information and documents;
- ii. Requests for information that are not reasonably understandable or are included with voluminous tangential discussion or assertions of errors;
- iii. Requests for information that purport to require servicers to provide information in specific formats, such as in a transcript, letter form in a columnar format, or spreadsheet, when such information is not ordinarily stored in such format; and
- iv. Requests for information that are not reasonably likely to assist a borrower with the borrower's account, including, for example, a request for copies of the front and back of all physical payment instruments (such as checks, drafts, or wire transfer confirmations) that show payments made by the borrower to the servicer and payments made by a servicer to an owner or assignee of a mortgage loan.

36(i) Potential successors in interest.

1.

Requests that indicate that the person may be a successor in interest.

2.

Time limits.

3.

Potential successor in interest's representative.

§ 1024.37 Force-Placed Insurance

37(a) Definition of force-placed insurance.

37(a)(2) Types of insurance not considered force-placed insurance.

Paragraph 37(a)(2)(iii).

1.

Servicer's discretion.

37(b) Basis for charging force-placed insurance.

1.

Reasonable basis to believe.

37(c) Requirements before charging borrower for force-placed insurance.

37(c)(1) In general.

Paragraph 37(c)(1)(i).

1.

Assessing premium charge or fee.

Paragraph 37(c)(1)(iii).

1.

Extension of time.

2.

Evidence demonstrating insurance.

Paragraph 37(c)(2)(v).

1.

Identifying type of hazard insurance.

37(d) Reminder notice.

37(d)(1) In general.

1. When a servicer is required to deliver or place in the mail the written notice pursuant to § 1024.37(d)(1), the content of the reminder notice will be different depending on the insurance information the servicer has received from the borrower. For example:

i. Assume that, on June 1, the servicer places in the mail the written notice required by § 1024.37(c)(1)(i) to Borrower A. The servicer does not receive any insurance information from Borrower A. The servicer must deliver to Borrower A or place in the mail a reminder notice, with the information required by § 1024.37(d)(2)(i), at least 30 days after June 1 and at least 15 days before

the servicer charges Borrower A for force-placed insurance.

ii. Assume the same example, except that Borrower A provides the servicer with insurance information on June 18, but the servicer cannot verify that Borrower A has hazard insurance in place continuously based on the information Borrower A provided (

e.g.,

37(d)(2) Content of reminder notice.

37(d)(2)(i) Servicer receiving no insurance information.

Paragraph 37(d)(2)(i)(D).

1.

Reasonable estimate of the cost of force-placed insurance.

37(d)(5) Updating notice with borrower information.

1.

Reasonable time.

37(e) Renewal or replacing force-placed insurance.

37(e)(1) In general.

1. For purposes of § 1024.37(e)(1), as evidence that the borrower has purchased hazard insurance coverage that complies with the loan contract's requirements, a servicer may require a borrower to provide a form of written confirmation as described in comment 37(c)(1)(iii)-2, and may reject evidence of coverage submitted by the borrower for the reasons described in comment 37(c)(1)(iii)-2.

37(e)(1)(iii) Charging before end of notice period.

1.

Example.

Paragraph 37(e)(2)(vii).

1.

Reasonable estimate of the cost of force-placed insurance.

37(g) Cancellation of force-placed insurance.

Paragraph 37(g)(2).

1.

Period of overlapping insurance coverage.

Section 1024.38 General servicing policies, procedures, and requirements.

38(a) Reasonable policies and procedures.

1.

Policies and procedures.

2.

Procedures used.

38(b) Objectives.

38(b)(1) Accessing and providing timely and accurate information.

Paragraph 38(b)(1)(ii).

1.

Errors committed by service providers.

Paragraph 38(b)(1)(iv).

1.

Accurate and current information for owners or assignees of mortgage loans relating to loan modifications.

Paragraph 38(b)(1)(vi).

1.

Identification of potential successors in interest.

2.

Documents reasonably required.

3.

Examples of reasonable requirements.

i.

Tenancy by the entirety or joint tenancy.

e.g.,

ii.

Affidavits of heirship.

iii.

Divorce or legal separation.

iv.

Living spouses or parents.

4.

Additional documentation required for confirmation determination.

5.

Prompt confirmation and loss mitigation.

38(b)(2) Properly evaluating loss mitigation applications.

Paragraph 38(b)(2)(ii).

1.

Means of identifying all available loss mitigation options.

e.g.,

Paragraph 38(b)(2)(v).

1.

Owner or assignee requirements.

38(b)(3) Facilitating oversight of, and compliance by, service providers.

Paragraph 38(b)(3)(iii).

1.

Sharing information with service provider personnel handling foreclosure proceedings.

38(b)(4) Facilitating transfer of information during servicing transfers.

Paragraph 38(b)(4)(i).

1.

Electronic document transfers.

2.

Loss mitigation documents.

Paragraph 38(b)(4)(ii).

1.

Missing loss mitigation documents and information.

38(b)(5) Informing borrowers of written error resolution and information request procedures.

1.

Manner of informing borrowers.

2.

Oral complaints and requests.

3.

Notices of error incorrectly sent to addresses associated with submission of loss mitigation applications or the continuity of contact.

38(c) Standard requirements.

38(c)(1) Record retention.

1. Methods of retaining records.

38(c)(2) Servicing file.

1.

Timing.

2.

Borrower requests for servicing file.

Paragraph 38(c)(2)(iv).

1.

Report of data fields.

§ 1024.39 Early Intervention Requirements for Certain Borrowers

39(a) Live Contact

1.

Delinquency.

i. Assume a mortgage loan obligation with a monthly billing cycle and monthly payments of \$2,000 representing principal, interest, and escrow due on the first of each month.

A. The borrower fails to make a payment of \$2,000 on, and makes no payment during the 36-day period after, January 1. The servicer must establish or make good faith efforts to establish live contact not later than 36 days after January 1

i.e.,

B. The borrower makes no payments during the period January 1 through April 1, although payments of \$2,000 each on January 1, February 1, and March 1 are due. Assuming it is not a leap year; the borrower is 90 days delinquent as of April 1. The servicer may time its attempts to establish live contact such that a single attempt will meet the requirements of § 1024.39(a) for two missed payments. To illustrate, the servicer complies with § 1024.39(a) if the servicer makes a good faith effort to establish live contact with the borrower, for example, on February 5 and again on March 25. The February 5 attempt meets the requirements of § 1024.39(a) for both the January 1 and February 1 missed payments. The March 25 attempt meets the requirements of § 1024.39(a) for the March 1 missed payment.

ii. A borrower who is performing as agreed under a loss mitigation option designed to bring the borrower current on a previously missed payment is not delinquent for purposes of § 1024.39.

iii. During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage loan, a borrower is not delinquent for purposes of § 1024.39 if the transferee servicer learns that the borrower has made a timely payment that has been misdirected to the transferor servicer and the transferee servicer documents its files accordingly.

See

iv. A servicer need not establish live contact with a borrower unless the borrower is delinquent during the 36 days after a payment due date. If the borrower satisfies a payment in full before the end of the 36-day period, the servicer need not establish live contact with the borrower. For example, if a borrower misses a January 1 due date but makes that payment on February 1, a servicer need not establish or make good faith efforts to establish live contact by February 6.

2.

Establishing live contact.

3.

Good faith efforts.

4.

Promptly inform if appropriate.

i.

Servicer's determination.

A. A servicer provides information about the availability of loss mitigation options to a borrower who notifies a servicer during live contact of a material adverse change in the borrower's financial circumstances that is likely to cause the borrower to experience a long-term delinquency for which loss mitigation options may be available.

B. A servicer does not provide information about the availability of loss mitigation options to a borrower who has missed a January 1 payment and notified the servicer that full late payment will be transmitted to the servicer by February 15.

ii.

Promptly inform.

5.

Borrower's representative.

6.

Relationship between live contact and loss mitigation procedures.

39(b) Written notice.

39(b)(1) Notice required.

1.

Delinquency.

i.e.,

2.

Frequency of the written notice.

i.e.,

i. If the borrower is 45 days or more delinquent on October 12, the date that is 180 days after the prior provision of the written notice, the servicer is required to provide the written notice again on October 12.

ii. If the borrower is less than 45 days delinquent on October 12, the servicer must again provide the written notice 45 days after the payment due date for which the borrower remains delinquent. For example, if the borrower becomes delinquent on October 1, and the amount due is not fully paid during the 45 days after October 1, the servicer will need to provide the written notice again no later than 45 days after October 1

i.e.,

3.

Borrower's representative.

4.

Relationship to § 1024.39(a).

5.

Servicing transfers.

i.e.,

39(b)(2) Content of the written notice.

1.

Minimum requirements.

2.

Format.

3.

Delivery.

Paragraph 39(b)(2)(iii).

1.

Number of examples.

2.

Brief description.

Paragraph 39(b)(2)(iv).

1.

Explanation of how the borrower may obtain more information about loss mitigation options.

39(c) Borrowers in bankruptcy.

1.

Borrower's representative.

See

2.

Adapting requirements in bankruptcy.

39(c)(1) Borrowers in bankruptcyPartial exemption.

1.

Commencing a case.

Paragraph 39(c)(1)(ii).

1.

Availability of loss mitigation options.

2.

Fair Debt Collections Practices Act.

Exemption.

et seq.

ii.

Example.

Paragraph 39(c)(1)(iii).

1.

Joint obligors.

39(c)(2) Resuming compliance.

1.

Bankruptcy case revived.

39(d) Fair Debt Collection Practices Actpartial exemption.

1.

Availability of loss mitigation options.

2.

Early intervention communications under the FDCPA.

et seq.

Paragraph 39(d)(2).

1.

Borrowers in bankruptcy.

et seq.

§ 1024.40Continuity of Contact

40(a) In general.

1.

Delinquent borrower.

2.

Assignment of personnel.

3.

Delinquency.

§ 1024.41 Loss Mitigation Procedures

41(b) Receipt of a loss mitigation application.

1.

Successors in interest.

ii. If a servicer receives a loss mitigation application from a potential successor in interest and elects not to review and evaluate the loss mitigation application before confirming that person's identity and ownership interest in the property, the servicer must preserve the loss mitigation application and all documents submitted in connection with the application, and, upon such confirmation, the servicer must review and evaluate the loss mitigation application in accordance with the procedures set forth in § 1024.41 if the property is the confirmed successor in interest's principal residence and the procedures set forth in § 1024.41 are otherwise applicable. For purposes of § 1024.41, the servicer must treat the loss mitigation application as if it had been received on the date that the servicer confirmed the successor in interest's status. If the loss mitigation application is incomplete at the time of confirmation because documents submitted by the successor in interest became stale or invalid after they were submitted and confirmation is 45 days or more before a foreclosure sale, the servicer must identify the stale or invalid documents that need to be updated in a notice pursuant to § 1024.41(b)(2).

41(b)(1) Complete Loss Mitigation Application

1.

In general.

i. Assume a particular loss mitigation option is only available for borrowers whose mortgage loans were originated before a specific date. Once a servicer receives documents or information

confirming that a mortgage loan was originated after that date, the servicer may stop collecting documents or information from the borrower that the servicer would use to evaluate the borrower for that loss mitigation option, but the servicer must continue its efforts to obtain documents and information from the borrower that the servicer requires to evaluate the borrower for all other available loss mitigation options.

ii. Assume applicable requirements established by the owner or assignee of the mortgage loan provide that a borrower is ineligible for home retention loss mitigation options if the borrower states a preference for a short sale and provides evidence of another applicable hardship, such as military Permanent Change of Station orders or an employment transfer more than 50 miles away. If the borrower indicates a preference for a short sale or, more generally, not to retain the property, the servicer may not stop collecting documents and information from the borrower pertaining to available home retention options solely because the borrower has indicated such a preference, but the servicer may stop collecting such documents and information once the servicer receives information confirming that the borrower has an applicable hardship under requirements established by the owner or assignee, such as military Permanent Change of Station orders or employment transfer.

2.

When an inquiry or prequalification request becomes an application.

3.

Examples of inquiries that are not applications.

i. A borrower calls to ask about loss mitigation options and servicer personnel explain the loss mitigation options available to the borrower and the criteria for determining the borrower's eligibility for any such loss mitigation option. The borrower does not, however, provide any information that a servicer would consider for evaluating a loss mitigation application.

ii. A borrower calls to ask about the process for applying for a loss mitigation option but the borrower does not provide any information that a servicer would consider for evaluating a loss mitigation

application.

4. Although a servicer has flexibility to establish its own requirements regarding the documents and information necessary for a loss mitigation application, the servicer must act with reasonable diligence to collect information needed to complete the application. A servicer must request information necessary to make a loss mitigation application complete promptly after receiving the loss mitigation application. Reasonable diligence for purposes of § 1024.41(b)(1) includes, without limitation, the following actions:

i. A servicer requires additional information from the applicant, such as an address or a telephone number to verify employment; the servicer contacts the applicant promptly to obtain such information after receiving a loss mitigation application;

ii. Servicing for a mortgage loan is transferred to a servicer and the borrower makes an incomplete loss mitigation application to the transferee servicer after the transfer; the transferee servicer reviews documents provided by the transferor servicer to determine if information required to make the loss mitigation application complete is contained within documents transferred by the transferor servicer to the servicer; and

iii. A servicer offers a borrower a short-term payment forbearance program or a short-term repayment plan based on an evaluation of an incomplete loss mitigation application and provides the borrower the written notice pursuant to § 1024.41(c)(2)(iii). If the borrower remains in compliance with the short-term payment forbearance program or short-term repayment plan, and the borrower does not request further assistance, the servicer may suspend reasonable diligence efforts until near the end of the payment forbearance program or repayment plan. However, if the borrower fails to comply with the program or plan or requests further assistance, the servicer must immediately resume reasonable diligence efforts. Near the end of a short-term payment forbearance program offered based on an evaluation of an incomplete loss mitigation application pursuant to § 1024.41(c)(2)(iii), and prior to the end of the forbearance period, if the borrower remains delinquent, a servicer must contact the borrower to determine if the borrower wishes to complete the loss

mitigation application and proceed with a full loss mitigation evaluation.

iv. If the borrower is in a short-term payment forbearance program made available to borrowers experiencing a COVID-19-related hardship, including a payment forbearance program made pursuant to the Coronavirus Economic Stability Act, section 4022 (15 U.S.C. 9056), that was offered to the borrower based on evaluation of an incomplete application, and the borrower remains delinquent, a servicer must contact the borrower no later than 30 days before the scheduled end of the forbearance period to determine if the borrower wishes to complete the loss mitigation application and proceed with a full loss mitigation evaluation. If the borrower requests further assistance, the servicer must exercise reasonable diligence to complete the application before the end of the forbearance period.

5.

Information not in the borrower's control.

41(b)(2) Review of loss mitigation application submission.

41(b)(2)(i) Requirements.

1.

Foreclosure sale not scheduled.

Paragraph 41(b)(2)(i)(B).

1.

Later discovery of additional information required to evaluate application.

41(b)(2)(ii) Time period disclosure.

1.

Thirty days is generally reasonable.

2.

No later than the next milestone.

i. The date by which any document or information submitted by a borrower will be considered stale or invalid pursuant to any requirements applicable to any loss mitigation option available to the

borrower;

ii. The date that is the 120th day of the borrower's delinquency;

iii. The date that is 90 days before a foreclosure sale;

iv. The date that is 38 days before a foreclosure sale.

3.

Seven-day minimum.

41(b)(3) Determining Protections.

1.

Foreclosure sale not scheduled.

2.

Foreclosure sale re-scheduled.

41(c) Evaluation of loss mitigation applications.

41(c)(1) Complete loss mitigation application.

1.

Definition of evaluation.

2.

Loss mitigation options available to a borrower.

i. A servicer services mortgage loans for two different owners or assignees of mortgage loans. Those entities each have different loss mitigation programs. loss mitigation options not offered by the owner or assignee of the borrower's mortgage loan are not available to the borrower; or

ii. The owner or assignee of a borrower's mortgage loan has established pilot programs, temporary programs, or programs that are limited by the number of participating borrowers. Such loss mitigation options are available to a borrower. However, a servicer evaluates whether a borrower is eligible for any such program consistent with criteria established by an owner or assignee of a mortgage loan. For example, if an owner or assignee has limited a pilot program to a certain geographic area or to a limited number of participants, and the servicer determines that a borrower

is not eligible based on any such requirement, the servicer shall inform the borrower that the investor requirement for the program is the basis for the denial.

3.

Offer of a non-home retention option.

4.

Other notices.

41(c)(2) Incomplete loss mitigation application evaluation.

41(c)(2)(i) In general.

1.

Offer of a loss mitigation option without an evaluation of a loss mitigation application.

2. Servicer discretion.

41(c)(2)(ii) Reasonable time.

1.

Significant period of time.

41(c)(2)(iii) Short-term loss mitigation options.

1.

Short-term payment forbearance program.

2.

Short-term loss mitigation options and incomplete applications.

see

3.

Short-term loss mitigation options and complete applications.

4.

Short-term repayment plan.

5.

Specific payment terms and duration.

General requirement.

ii.

Disclosure of payment amounts that may change.

6.

Timing of notice.

41(c)(2)(iv) Facially complete application.

1.

Reasonable opportunity.

2.

Borrower fails to complete the application.

41(c)(3) Notice of complete application.

Paragraph 41(c)(3)(i).

1.

Completion date.

See

2.

First notice or filing.

1

2

3.

Additional notices.

See

41(c)(4) Information not in the borrower's control.

41(c)(4)(i) Diligence requirements.

1.

During the first 30 days following receipt of a complete loss mitigation application.

- i. Promptly upon determining that the servicer requires the documents or information to determine which loss mitigation options, if any, the servicer will offer the borrower; and
- ii. By a date that will enable the servicer to complete the evaluation within 30 days of receiving the complete loss mitigation application, as set forth in § 1024.41(c)(1), to the extent practicable.

2.

More than 30 days following receipt of a complete loss mitigation application.

41(c)(4)(ii) Effect in case of delay.

1.

Third-party delay.

2.

Offers not prohibited.

2

2

41(d) Denial of loan modification options.

1.

Investor requirements.

2.

Net present value calculation.

3.

Determination not to offer a loan modification option constitutes a denial.

4.

Reasons listed.

41(f) Prohibition on foreclosure referral.

1.

Prohibited activities.

- i. Where foreclosure procedure requires a court action or proceeding, a document is considered the

first notice or filing if it is the earliest document required to be filed with a court or other judicial body to commence the action or proceeding (e.g., a complaint, petition, order to docket, or notice of hearing).

ii. Where foreclosure procedure does not require an action or court proceeding, such

iii. Where foreclosure procedure does not require any court filing or proceeding, and also does not require any document to be recorded or published, a document is considered the first notice or filing if it is the earliest document that establishes, sets, or schedules a date for the foreclosure sale.

iv. A document provided to the borrower but not initially required to be filed, recorded, or published is not considered the first notice or filing on the sole basis that the document must later be included as an attachment accompanying another document that is required to be filed, recorded, or published to carry out a foreclosure.

41(f)(3)Temporary Special COVID-19 Loss Mitigation Procedural Safeguards

1.

Record retention.

41(f)(3)(ii)(C)Unresponsive Borrower

1.

Communication.

2.

Borrower's representative.

41(g) Prohibition on foreclosure sale.

1.

Dispositive motion.

2.

Proceeding with the foreclosure process.

3.

Interaction with foreclosure counsel.

4.

Loss mitigation applications submitted 37 days or less before foreclosure sale.

5.

Conducting a sale prohibited.

Paragraph 41(g)(3).

1.

Short sale listing period.

2.

Short sale agreement.

41(h) Appeal process.

Paragraph 41(h)(3).

1.

Supervisory personnel.

41(i) Duplicative requests.

1.

Applicability of loss mitigation protections.

2.

Servicing transfers.

41(k) Servicing transfers.

1.

Pending loss mitigation application.

41(k)(1) In general.

41(k)(1)(i) Timing of compliance.

1.

Obtaining loss mitigation documents and information.

ii. A transferee servicer must, in accordance with § 1024.41(b)(1), exercise reasonable diligence to

complete a loss mitigation application, including a facially complete application, received as a result of a transfer. In the transfer context, reasonable diligence includes ensuring that a borrower is informed of any changes to the application process, such as a change in the address to which the borrower should submit documents and information to complete the application, as well as ensuring that the borrower is informed about which documents and information are necessary to complete the application.

iii. A borrower may provide documents and information necessary to complete an application to a transferor servicer after the transfer date. Consistent with policies and procedures maintained pursuant to § 1024.38(b)(4), the transferor servicer must timely transfer, and the transferee servicer must obtain, such documents and information.

2.

Determination of rights and protections.

See

3.

Duplicative notices not required.

41(k)(1)(ii) Transfer date defined.

1.

Transfer date.

41(k)(2) Acknowledgment notices.

41(k)(2)(ii) Prohibitions.

1.

Examples of prohibitions.

i. If the transferor servicer receives the borrower's initial loss mitigation application when the borrower's mortgage loan is 101 days delinquent, the borrower's mortgage

ii. If the transferor servicer receives the borrower's initial loss mitigation application 55 days before the foreclosure sale, the date that the transferee servicer provides the notice required by §

1024.41(b)(2)(i)(B), October 23, is 33 days before the foreclosure sale. Pursuant to § 1024.41(k)(2)(ii)(B), the transferee servicer must comply with § 1024.41(c), (d), and (g) if the borrower submits a complete loss mitigation application on or before November 22, the reasonable date disclosed under § 1024.41(b)(2)(ii).

2.

Applicability of loss mitigation provisions.

3.

Reasonable date when no milestones remain.

41(k)(3) Complete loss mitigation applications pending at transfer.

1.

Additional information or corrections to a previously submitted document.

2.

Applications first complete upon transfer.

See

41(k)(4) Applications subject to appeal process.

1.

Obtaining appeal.

2.

Servicer unable to determine appeal.

41(k)(5) Pending loss mitigation offers.

1.

Obtaining evidence of borrower acceptance.

Appendix MS to Part 1024Mortgage Servicing Model Forms and Clauses

1.

In general.

2.

Permissible changes.

- i. Use of borrower and servicer instead of pronouns.
- ii. Substitution of the words lender and servicer for each other.
- iii. Addition of graphics or icons, such as the servicer's corporate logo.
- iv. Modifications to remove language that could suggest liability under the mortgage loan agreement if such language is not applicable. For example, in the case of a confirmed successor in interest who has not assumed the mortgage loan obligation under State law and is not otherwise liable on the mortgage loan obligation, this could include:
 - A. Use of the mortgage loan or this mortgage loan instead of your mortgage loan and the monthly payments instead of your monthly payments.
 - B. Use of Payments due on or after [Date] may be sent to instead of Send all payments due on or after [Date] to in notices of transfer.
 - C. Use of We will charge the loan account instead of You must pay us in notices relating to force-placed insurance.

Appendix MS-3Model Force-Placed Insurance Notice Forms

1. Where the model forms MS-3(A), MS-3(B), MS-3(C), and MS-3(D) use the term hazard insurance, the servicer may substitute hazard insurance with homeowners' insurance or property insurance.

Appendix MS-4Model Clauses for the Written Early Intervention Notice

1.
Model MS-4(A).
2.
Model MS-4(B).
3.
Model MS-4(C).

[78 FR 10887, Feb. 14, 2013, as amended at 78 FR 44717, July 24, 2013; 78 FR 60438, Oct. 1,

2013; 78 FR 63004, 63005, Oct. 23, 2013; 81 FR 72376, Oct. 19, 2016; 82 FR 30948, July 5, 2017; 86 FR 34900, June 30, 2021; 88 FR 16542, Mar. 20, 2023]

PART 1025 [RESERVED]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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