

Automobile Finance Examination Procedures

These Automobile Finance Examination Procedures (Procedures) consist of modules covering the various elements of the automobile life cycle, including the origination and servicing processes. Each module identifies specific matters for review. Examiners will use the Procedures in examinations of automobile lenders, lessors, and servicers. Before using the Procedures, examiners should complete a risk assessment and examination scope memorandum in accordance with general CFPB procedures. Depending on the scope, and in conjunction with the compliance management system review, including consumer complaint review, each examination will cover one or more of the following modules.

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

- Module 1 Company Business Model
- Module 2 Compliance Management System
- Module 3 Advertising and Marketing
- Module 4 Application and Origination
- Module 5 Payment Processing, Account Maintenance, and Optional Products
- Module 6 Collections, Debt Restructuring, Repossessions, and Accounts in Bankruptcy
- Module 7 Customer Complaints and Inquiries
- Module 8 Credit Reporting, Information Sharing, and Privacy
- Module 9 Examiner Conclusions and Wrap-up

Examination Objectives

1. To assess the quality of a supervised entity's compliance management system for preventing violations of Federal consumer financial law in its automobile loan or lease origination business or automobile servicing business.
2. To identify acts or practices that materially increase the risk of violations of Federal consumer financial law, and associated harm to consumers, in connection with an entity's automobile loan or lease origination business or automobile servicing business.
3. To gather facts that help determine whether a supervised entity engages in acts or practices that are likely to violate Federal consumer financial law in connection with its automobile loan or lease origination business or automobile servicing business.

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4. To determine, in accordance with CFPB internal consultation requirements, whether a violation of a Federal consumer financial law has occurred and whether further supervisory or enforcement actions are appropriate.

Background

This section of the Procedures provides background on the automobile finance business and the Federal consumer financial law requirements that apply.

The Dodd-Frank Act (12 U.S.C. 5514(a)(1)(B)) gave the Consumer Financial Protection Bureau (CFPB) supervisory authority over “larger participants” of certain markets for consumer financial products or services, as the CFPB defines by rule. In June 2015, the CFPB finalized its larger participant regulation in the market of automobile financing. The rule appears in 12 CFR 1090.108 and is effective 60 days after publication in the Federal Register. It provides that a nonbank covered person that engages in automobile financing is a larger participant of the automobile financing market if the person has at least 10,000 aggregate annual originations. Under the regulation, “automobile financing” generally includes grants of credit for the purchase of an automobile, refinancings of such obligations (and any subsequent refinancings thereof) that are secured by a vehicle, automobile leases, and purchases or acquisitions of any of the foregoing obligations. The rule provides that certain auto dealers do not qualify as larger participants¹.

Consumers can acquire a vehicle using cash, financing the vehicle with an auto loan (indirect or direct), or leasing the vehicle for a defined period of time. Auto loans are closed-end (non-revolving) amortizing consumer installment loans used for the purpose of acquiring a vehicle, usually a car, sport utility vehicle (SUV) or light-duty truck. Loan terms vary by the channel (indirect/direct), type of vehicle sought (new/used), and the credit profile of the consumer (credit score, debt-to-income ratio, bureau attributes). Leasing is acquiring a vehicle for a fixed period of time at an agreed amount of money.

Indirect Lending Channel

With indirect lending, dealers rather than consumers typically select the lender who will provide the financing. Upon completion of the vehicle selection process, the dealer usually collects basic information regarding the applicant and uses an automated system to forward that information to

¹ Under section 1029 of the Dodd-Frank Act, the Bureau may not exercise its authority over certain auto dealers, as outlined in that section. The final larger-participant rule also excludes certain dealers that extend retail credit or retail leases directly to consumers without routinely assigning them to unaffiliated third party finance or leasing sources, even though such dealers are not subject to the statutory exclusion of section 1029. Specifically, the larger-participant rule excludes those motor vehicle dealers that are identified in section 1029(b)(2) of the Dodd-Frank Act and are predominantly engaged in the sale and servicing of motor vehicles (as that term is defined in 12 U.S.C. 5519(f)(1)), the leasing and servicing of motor vehicles, or both. Thus, a typical Buy-Here-Pay-Here dealer would not be subject to the larger-participant rule, but a Buy-Here-Pay-Here finance company could a larger participant if it has at least 10,000 aggregate annual originations.

prospective indirect automobile lenders. Most consumers who finance the purchase of an automobile use the indirect channel.

After evaluating the applicant, indirect auto lenders may provide the dealer with purchase eligibility criteria or stipulations, including but not limited to a risk-based “buy rate” that establishes a minimum interest rate at which the lender is willing to purchase a retail installment sales contract executed between the consumer and the dealer for the purchase of the vehicle. A franchised dealer often can choose from a selection of funding sources. However, a franchised dealer that is affiliated with a manufacturer can be incentivized to use a captive finance company (captive) through mechanisms such as promotional discounts or limited-time financing offers that can be used to attract consumers. A captive is usually a subsidiary of the parent organization (in the auto market, the parent is usually the manufacturer) whose purpose is to provide financing to consumers buying the parent company’s products.

With the relevant eligibility criteria and stipulations, the dealer selects the indirect lender that will provide the financing and extends the credit through a retail installment sales contract that the indirect lender purchases or acquires. The dealer is typically compensated for arranging indirect financing. In the indirect lending model, the indirect automobile lender typically becomes responsible for servicing the retail installment sales contract and consumers will then make payments to the lender.

Most dealers use a standardized platform such as Dealer Track, Route One, or CUDL to collect credit application information in a single system. In turn, these platforms route the credit information to lenders based on the criteria provided, and the lenders make a preliminary decision to offer or not offer credit and provide approval terms to the dealers’ finance and insurance (F&I) departments. This method allows dealers to match customers with a lender who will accept the loan.

Direct Lending Channel

Consumers seek out and negotiate their loan terms with a finance company or bank of their choosing, either before or after shopping for a vehicle. Consumers typically use their pre-existing relationships with a bank or finance company to obtain financing through the direct channel method.

Auto Leasing

Depository institutions have long engaged in auto leasing activities, and nonbank entities are a major player in the leasing sector. It is an important and growing part of the auto financing market for consumers. While the auto financing market is largely made up of purchase loans, in recent years, consumers have begun to migrate more towards leasing agreements.

Unlike the purchase of a vehicle, the consumer does not actually own the vehicle with a lien against a title. Instead, the consumer makes payments for the lease term. Auto leases are typically 12 months to 48 months in length, and include a “money factor” rather than an annual percentage rate (APR). An APR can be calculated by dividing the money factor by 2400.

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At the end of the lease term, a consumer has the option to purchase the vehicle for a pre-negotiated balloon payment that is based on the residual value. The residual value is the dollar amount the consumer's leased vehicle is estimated to be worth at the end of the lease. The lender bears the risk that it has estimated the residual value correctly.

For consumers, leasing a vehicle requires an application process and an ongoing contractual obligation that are both financial in nature and similar to entering into a financial arrangement to purchase a vehicle. Like a consumer seeking to qualify for a loan to purchase a vehicle, a consumer seeking to lease a vehicle must provide basic financial information such as income and credit history. Though a consumer who leases an automobile need not finance the entire cost of the vehicle, the consumer still undertakes a major financial obligation in the form of a commitment to make a stream of payments over a significant period of time. The consumer must consider how much cash to use, if any, for a capitalized cost reduction (similar to a down payment), the preferred lease term, and the affordability of monthly payments and other costs, including maintenance, insurance, and state registration fees.

Buy Here Pay Here

Buy Here Pay Here (BHPH) finance companies are similar to captives in that they are associated with certain BHPH dealers. While BHPH dealers are mostly independently-owned entities that serve as the primary lender and receive payments directly from consumers, some larger BHPH dealers will sell or assign their contracts to specific BHPH finance companies once the contract has been consummated with the consumer. However, these BHPH finance companies do not focus on a particular auto manufacturer, unlike captives whose primary purpose is to extend credit to consumers who want to purchase or lease a specific manufacturer's vehicles.

Ancillary Products and Services

In addition to the actual vehicle, auto dealers and auto financers offer ancillary services and products at the time of vehicle purchase. These products can be distinguished by their association to either the vehicle purchase or the financing relationship.

- *GAP Insurance:* Also known as Guaranteed Auto Protection or Guaranteed Asset Protection, it is an insurance policy that covers the amount on a financing obligation that is the difference between the asset value and the amount covered by another insurance policy. In the event of total vehicle loss, the insurance policy covers the deficiency between the insurance settlement and the balance still owed. This insurance coverage is usually marketed for financing with small down payments, high interest rates, and/or extended terms (usually over 60 months).
- *Extended Warranty:* An extended warranty or vehicle service contract covers the costs of some types of repairs in addition to the manufacturer's warranty or after the manufacturer's warranty ends. These contracts typically exclude routine maintenance such as oil changes and tire replacement.

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- *Vehicle Add-Ons:* Also known as back-end products, these add-ons are other pieces of equipment or finishing items that can be purchased with the vehicle such as Lo-Jack systems, vehicle identification number etching (anti-theft precaution), and paint protection.

Applicable Laws/Regulations

Regardless of the channel or business model used by lenders to conduct business, the following Federal consumer financial laws may apply to an entity's auto financing activities:

- The Truth in Lending Act (TILA) and its implementing regulation, Regulation Z, require lenders to disclose loan terms and annual percentage rates. Regulation Z also requires lenders to provide advertising disclosures, credit payments properly, process credit balances in accordance with its requirements, and provide periodic disclosures.
- The Electronic Fund Transfer Act (EFTA) and its implementing regulation, Regulation E, protect consumers engaging in electronic fund transfers. Among other things, Regulation E prohibits lenders from requiring, as a condition of loan approval, a customer's authorization for loan repayment through a recurring electronic funds transfer (EFT) except in limited circumstances.
- The Fair Debt Collection Practices Act (FDCPA) governs collection activities conducted by third party collection agencies, as well as servicer collection activities if the servicer acquired the loan when it was already in default.
- The Fair Credit Reporting Act (FCRA) and its implementing regulation, Regulation V, require that furnishers of information to consumer reporting agencies ensure the accuracy of the data placed in the consumer reporting system. Additionally, the FCRA prohibits the use of consumer reports for impermissible purposes, and it requires users of consumer reports to provide certain disclosures to consumers. The FCRA also limits certain information sharing between affiliated companies.
- The Gramm-Leach-Bliley Act (GLBA) and its implementing regulation, Regulation P, require entities to provide privacy notices and limit information sharing in particular ways.
- The Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, set forth requirements for accepting applications and providing notice of any adverse action, and they prohibit discrimination against any borrower with respect to any aspect of a credit transaction:
 - On the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);
 - Because all or part of the applicant's income derives from any public assistance program; or

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- Because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.²

If examiners identify concerns related to ECOA, they should consult with the Offices of Fair Lending and Supervision Policy, as those issues, except as specifically described herein, are beyond the scope of these procedures.

- The Consumer Leasing Act and its implementing regulation, Regulation M, require lessors to provide specific disclosures prior to the consummation or delivery of the consumer product, including disclosures in advertising.
- To carry out the objectives set forth in the **Examination Objectives** section, the examination process also will include assessing other risks to consumers that are not governed by specific statutory or regulatory provisions. These risks may include potentially unfair, deceptive, or abusive acts or practices (UDAAPs) with respect to lenders' or servicers' interactions with consumers.³ Collecting information about risks to consumers, whether or not there are specific legal guidelines addressing such risks, can help inform the CFPB's policymaking. Generally, the standards the CFPB will use in assessing UDAAPs are as follows.
 - A representation, omission, act, or practice is deceptive when:
 - the representation, omission, act, or practice misleads or is likely to mislead the consumer;
 - the consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and
 - the misleading representation, omission, act, or practice is material.
 - An act or practice is unfair when:
 - it causes or is likely to cause substantial injury to consumers;
 - the injury is not reasonably avoidable by consumers; and
 - the injury is not outweighed by countervailing benefits to consumers or to competition.
 - An abusive act or practice:

² The Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.*, is the collection of federal statutes that protects consumers when applying for or receiving credit. The Act includes statutes that have dispute rights for consumers, such as the Fair Credit Reporting Act. The ECOA prohibits discriminating against an applicant who has exercised a dispute right pursuant to one of the statutes outlined in the Act.

³ Section 1036 of the Dodd-Frank Act, PL 111-203 (July 21, 2010).

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- materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
- takes unreasonable advantage of –
 - a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
 - the inability of the consumer to protect the consumer's interests in selecting or using a consumer financial product or service; or
 - the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

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

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

General Considerations

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

- organizational charts and process flowcharts;
- board minutes, annual reports, or the equivalent, to the extent available;
- relevant management reporting;
- policies and procedures;
- compensation structure and bonus programs for origination and servicing personnel;
- rate sheets;
- fee sheets;
- loan/lease applications and verification of information relied on in determining ability to repay;
- loan/lease account documentation, notes, disclosures, and all other contents of underwriting and closing files;

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- operating checklists, worksheets, and review documents;
- relevant computer program and system details;
- dealer agreements, due diligence and monitoring procedures, and origination (lending or leasing) procedures;
- underwriting guidelines;
- compensation policies;
- servicing related policies and procedures, such as those related to payment posting and payment allocation;
- service provider due diligence and monitoring procedures and service provider contracts;
- audit and compliance reports;
- management's responses to findings;
- training programs and materials;
- advertisements; and
- complaints.

Finally, examiners should obtain access to or a walkthrough of the entity's online origination interface and online applications; a walkthrough of the origination process to test the timeliness and completeness of disclosures; and a walkthrough and overview of the systems used for the servicing and collection of payments for automobile loans and leases, including any consumer interfaces.

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

Module 1 – Company Business Model

Conduct initial interviews for all relevant departments.

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

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2. Ascertain the product volume, mix, trends, and concentrations, including in any of the branches.

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

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

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Module 2 – Compliance Management System

Compliance Management System

1. Review the entity's compliance management system using the compliance management review section of the CFPB examination procedures.

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Service Provider Oversight

Entities may be responsible for the activities of service providers. Examiners should ensure that such entities appropriately manage their relationships with service providers. For more information, please refer to CFPB Bulletin 2012-03 (April 13, 2012) regarding service providers.⁴

Examiners should evaluate copies of any agreements between entities and service providers acting on behalf of the entity for purposes of assessing risks to consumers.

1. Evaluate whether the entity has compliance management controls for selecting and monitoring affiliates and/or service providers.

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2. Evaluate whether the entity takes steps to ensure that the service providers it uses are licensed or registered to the extent required.

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3. Evaluate whether the entity performs initial due diligence concerning the service providers' prior regulatory compliance history before entering into an agreement (i.e., determining the existence and extent of any prior enforcement actions against the service providers).

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4. Evaluate whether the entity monitors the screening, hiring, and training practices of service providers' employees who perform services on the lender's behalf.

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5. Evaluate whether the entity takes steps to ensure service providers' compliance with the entity's privacy policy with respect to data that the service providers receive from or on behalf of the entity.

⁴ http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf.

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6. Evaluate whether the entity conducts internal or external audits of the service providers' activities, reviews such audits in a timely manner, and responds appropriately to identified concerns.

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Module 3 – Advertising and Marketing

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

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

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2. Determine whether the lender's advertisements are consistent with the requirements of Regulation Z. Examiners should conduct the advertising review by following the closed-end advertising procedures in the TILA examination procedures, as applicable, focusing carefully on whether advertisements contain triggering terms and include required statements, information, and disclosures.

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3. Determine whether the lessor's advertisements are consistent with the requirements of Regulation M. Examiners should conduct the advertising review by following the advertising procedures in the Regulation M examination procedures, as applicable, focusing carefully on whether advertisements contain triggering terms and include required statements, information, and disclosures.

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4. Assess how the entity reaches its potential customers through its statements, advertising, or other marketing representations. Examiners should review:
 - a. Marketing and advertising materials, including signs or other displays and prescreened solicitations; and
 - b. The criteria used to determine the potential recipients of the particular solicitations.

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Truth in Lending Act/Regulation Z

Advertising (Closed-End)

1. Review a sample of advertising copy, including any electronic advertising, since the previous examination and verify that the terms of credit are actually available, and are accurate, clear, and conspicuous. Review advertising policies and procedures used by the entity to ensure that there are adequate controls and procedures to effect compliance.

If triggering terms are used, determine that the required disclosures are made, including the amount or percentage of any down payment; the terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment; and the "annual percentage rate" (using that term) and the increased annual percentage rate after consummation, if applicable. (12 CFR 1026.24)

- a. For advertisements for closed-end credit:
 - i. If a rate of finance charge was stated, determine that it was stated as an APR.
 - ii. If an APR will increase after consummation, verify that a statement to that fact is made.
 - iii. Determine whether there are deceptive statements or practices.

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Fair Credit Reporting Act/Regulation V

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

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

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2. Determine whether the entity uses consumer eligibility information received from an affiliate to make a solicitation for marketing purposes that is subject to the notice and opt-out requirements. If not, Subpart C of 12 CFR 1022 does not apply.

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

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4. If compliance risk management weaknesses or other risks requiring further investigation are noted, obtain and review a sample of notices to ensure compliance and a sample of opt-out requests from consumers to determine if the entity is honoring the opt-out requests.

- a. Determine whether the opt-out notices are clear, conspicuous, and concise and contain the required information, including the name of the affiliate(s) providing the notice, a general description of the types of eligibility information that may be used to make solicitations to the consumer, and the duration of the opt-out (12 CFR 1022.23(a)).

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- b. Review opt-out notices that are coordinated and consolidated with any other notice or disclosure that is required under other provisions of law for compliance with the affiliate marketing regulation (12 CFR 1022.23(b)).
- c. Determine whether the opt-out notices and renewal notices provide the consumer a reasonable opportunity to opt out and a reasonable and simple method to opt out (12 CFR 1022.24 and .25).
- d. Determine whether the opt-out notice and renewal notice are provided (by mail, delivery, or electronically) so that a consumer can reasonably be expected to receive that actual notice (12 CFR 1022.26).
- e. Determine whether, after an opt-out period expires, an entity provides a consumer a renewal notice prior to making solicitations based on eligibility information received.

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

1. Determine whether the entity obtained and used prescreened consumer reports in connection with offers of credit and/or insurance.
2. Evaluate the entity's policies and procedures to determine if a list of the criteria used for prescreened offers, including all post-application criteria, is maintained in the entity's files and the criteria are applied consistently when consumers respond to the offers.

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

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4. If procedural weaknesses or other risks requiring further investigation are noted, obtain and review a sample of approved and denied responses to the offers to ensure that criteria were appropriately followed.

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Consumer Leasing Act/Regulation M

Advertising

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

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2. Review a sample of the entity's advertisements. Determine the following:
 - a. Do the advertisements advertise terms that are usually and customarily available? (12 CFR 1013.7(a))
 - b. Are the disclosures contained in the advertisements clear and conspicuous? (12 CFR 1013.7(b))
 - c. Do catalogs, multiple page advertisements, and electronic advertisements comply with the page reference requirements? (12 CFR 1013.7(c))
 - d. When triggering terms are used, do the advertisements contain the additional required information? (12 CFR 1013.7(d))
 - e. Do merchandise tags that use triggering terms refer to a sign or display that contains the additional required disclosures? (12 CFR 1013.7(e))
 - f. If television or radio advertisements use triggering terms but do not contain the additional terms required by 12 CFR 1013.7(d)(2), do they use alternative disclosure methods (direct consumers to a toll-free number or written advertisement)? (12 CFR 1013.7(f))
 - g. For an advertisement accessed by the consumer in electronic form, are the disclosures required by 12 CFR 1013.7 provided to the consumer in electronic form in the advertisement? (12 CFR 1013.3(a))

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Other Risks to Consumers

1. Assess whether the entity clearly and prominently discloses the material terms of the auto loan or lease.

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

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3. Assess (i) whether the entity clearly and prominently discloses the costs and any other material terms for any additional products marketed to the consumer in connection with the auto financing; and (ii) whether, in a credit transaction, the lender clearly and prominently discloses that the additional products are or are not required to obtain credit and are or are not considered in decisions to grant credit. If the cross-marketed product is mandatory, under the TILA, it will need to be disclosed in the APR.

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

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Module 4 – Application and Origination

When entities take applications, evaluate applicants, and originate auto loans or leases, they are subject to the disclosure and other legal requirements discussed below. Examiners should identify acts, practices, or materials that indicate potential violations of Federal consumer financial laws and regulations.

Truth in Lending Act/Regulation Z

1. Determine whether the appropriate disclosures required for the loan type are being provided by the lender. Examiners should use the following examination procedures to evaluate the lender's compliance with the disclosure requirements of Regulation Z, as may be applicable depending on the products offered by the lender.

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Disclosure Forms

1. Determine if the entity has changed any TILA disclosure forms or if there are forms that have not been previously reviewed for accuracy. If so, verify the accuracy of each disclosure by reviewing the following:
 - a. Note and/or contract forms (including those furnished to dealers).
 - b. Standard closed-end credit disclosures (12 CFR 1026.17(a) and 1026.18).

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Closed-End Credit Disclosure Forms Review Procedures

1. Determine that the disclosures are clear, conspicuous, and grouped together or segregated as required, in a form the consumer may keep. The terms "Finance Charge" and "Annual Percentage Rate" and corresponding rates or amounts should be more conspicuous than other terms, except for the creditor's identity. (12 CFR 1026.17(a))

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2. Determine whether the required disclosures were made before consummation of the transaction.

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3. Determine whether the disclosures include the following as applicable. (12 CFR 1026.18)
 - a. Identity of the creditor
 - b. Brief description of the finance charge

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- c. Brief description of the APR
- d. Amount financed
- e. Itemization of amount financed
- f. Payment schedule
- g. Brief description of the total of payments
- h. Demand feature
- i. Description of total sales price in a credit sale
- j. Prepayment penalties or rebates
- k. Late payment amount or percentage
- l. Description for security interest
- m. Insurance conditions for finance charge exclusions (12 CFR 1026.4(d))
- n. Statement referring to the contract
- o. Statement regarding assumption of the note
- p. Statement regarding required deposits
- q. No-guarantee-to-refinance statement

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Electronic Fund Transfer Act/Regulation E

Depending on how the entity transfers funds to and from consumers, the lender may be required to comply with the requirements of the EFTA. If the entity has established electronic fund transfers from the borrower's account, examiners should use the following examination procedures to review the extent to which the entity is complying with the EFTA.

1. Determine if the agreement contemplates or involves initiating an electronic fund transfer (EFT) subject to EFTA/Regulation E. Consider if the entity is using methods subject to EFTA or using remotely created checks or other non-EFT methods that are not subject to EFTA (12 CFR 1005.3).
2. Determine whether the EFT is a single or a recurring EFT that is a preauthorized electronic transfer. To qualify as a preauthorized electronic fund transfer, the transfer is one that is authorized in advance to recur at substantially regular intervals (12 CFR 1005.3, 1005.2(k)).

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3. If the entity initiates preauthorized EFTs, assess the entity's compliance with the applicable advance authorization, disclosures, and other requirements relating to preauthorized electronic fund transfers under the EFTA and Regulation E (12 CFR 1005.10).
 - a. Does the entity obtain proper written authorization for preauthorized electronic fund transfers from a consumer's account and provide a copy of the authorization to the consumer (12 CFR 1005.10(b))?
 - b. Does a lender require compulsory use of EFTs and condition the extension of credit to consumers on the repayment of loans by preauthorized electronic debits (12 CFR 1005.10(e))?
 - i. Examine the agreement for terms requiring that the borrower agree to electronic payment. Such terms may violate the EFTA's prohibition on requiring repayment by means of preauthorized electronic fund transfers as a condition of the extension of credit, except as authorized.
 - ii. Determine if the lender offers the borrower an option to pay using a non-EFT method of payment.

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Equal Credit Opportunity Act/Regulation B

If examiners identify ECOA/Regulation B concerns in the course of the examination, contact the Office of Fair Lending and Supervision Policy points of contact.

Adverse Action Disclosures

In conjunction with the review of adverse action notices discussed in the FCRA section below, determine whether:

With respect to **consumer credit**, the creditor appropriately notified applicants as follows:

1. Within 30 days after receiving a **completed application**, the creditor notified applicants concerning the creditor's approval of, counteroffer to or adverse action on the application (*unless* the parties contemplated that the applicant would inquire about the status, the application was approved, and the applicant failed to inquire within 30 days after applying, in which case the creditor may treat the application as withdrawn); (12 CFR 1002.9(a)(1)(i) and 1002.9(e))

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2. Within 30 days after taking adverse action on an incomplete application, the creditor notified applicants of the adverse action in writing (*unless* written notice of incompleteness is

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provided within 30 days of receipt of the incomplete application, specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration being given to the application); (12 CFR 1002.9(a)(1)(ii) and 1002.9(c))

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3. Within 30 days after taking adverse action on an existing account, the creditor notified applicants of the adverse action in writing; (12 CFR 1002.9(a)(1)(iii))

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4. Within 90 days after notifying the applicant of a counteroffer, if the applicant does not expressly accept or use the credit offered, the creditor notified applicants of the adverse action taken in writing (unless the counteroffer was accompanied by the notice of adverse action on the credit terms originally sought); (12 CFR 1002.9(a)(1)(iv), Comment 1002.9(a)(1)-6)

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5. With respect to consumer credit, the creditor's notifications given to an applicant when an adverse action is taken are in writing, capable of being retained, and contain all of the following:

- a. A statement of the action taken;
- b. The name and address of the creditor;
- c. A statement of the provisions of Section 701(a) of the ECOA;
- d. The name and address of the federal agency that administers compliance with respect to the creditor; and
- e. Either:
 - i. A specific statement of principal reason(s) for the action taken (statements that the adverse action was based on the creditor's internal standards or policies or that the applicant, joint applicant, or similar party failed to achieve a qualifying score on the creditor's credit scoring system are insufficient); *or*
 - ii. A disclosure of the applicant's right to a statement of specific reasons within 30 days(which contains the name, address, and telephone number of the person or office from which the statement of reasons can be obtained), if the statement is requested within 60 days of the creditor's notification (and if, the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving the applicant's written request for confirmation). (12 CFR 1002.4(d)(1) and 1002.9(a)(2), (b)(1), (b)(2))

[Click&type]

Fair Credit Reporting Act/Regulation V

Lenders that obtain information from a consumer reporting agency to determine a consumer's creditworthiness must comply with the requirements of FCRA. When a lender does not offer a loan or provides a loan on materially less favorable terms to a consumer (e.g., charging a higher interest rate) because of the consumer report information it obtains, the lender must provide appropriate adverse action or risk-based pricing notices to the consumer.

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

1. Determine whether the policies and procedures adequately ensure that the creditor or other person provides the appropriate disclosures, including the consumer's credit score as appropriate, when it takes adverse action against consumers based in whole or in part on information contained in a consumer report or specified information received from third parties, including affiliates.

[Click&type]

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

[Click&type]

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

[Click&type]

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

1. Determine whether the creditor (or other person) uses consumer report information in consumer credit decisions. If yes, determine whether the creditor uses such information to provide credit on terms that are "materially less favorable" than the most favorable material terms available to a substantial proportion of its consumers. Relevant factors in determining the significance of differences in the cost of credit include the type of credit product, the term of the credit extension, and the extent of the difference. If yes, the creditor is subject to the risk-based pricing regulations.

[Click&type]

2. Determine the method the creditor uses to identify consumers who must receive a risk-based pricing notice and whether the method complies with the regulation (12 CFR 1022.72(b)).

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

[Click&type]

4. For creditors that use the credit score proxy method (12 CFR 1022.72(b)(1)):
 - a. determine whether the creditor calculates the cutoff score by considering the credit scores of all, or a representative sample of, consumers who have received credit for a specific type of credit product;
 - b. determine whether the creditor recalculates the cutoff score no less than every two years;
 - c. for new entrants into the credit business, for new products subject to risk-based pricing, or for acquired credit portfolios, determine whether the creditor recalculates the cutoff scores within time periods specified in the regulation;
 - d. for creditors using more than one credit score to set material terms, determine whether the creditor establishes a cutoff score according to the methods specified in the regulation; and
 - e. if no credit score is available for a consumer, determine whether the creditor provides the consumer a risk-based pricing notice.

[Click&type]

5. For creditors that use the tiered pricing method (12 CFR 1022.72(b)(2)):
 - a. when four or fewer pricing tiers are used, determine if the creditor sends risk-based pricing notices to consumers who do not qualify for the top, best-priced tier; or
 - b. when five or more pricing tiers are used, determine if the creditor provides risk-based pricing notices to consumers who do not qualify for the two top, best-priced tiers; and any other tier that, combined with the top two tiers, equal no less than the top 30 percent and no more than the top 40 percent of the total number of tiers.

[Click&type]

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

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7. Determine whether the risk based pricing notice contains (12 CFR 1022.73(a)(1)):

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- a. a statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;
- b. a statement that the terms offered, such as the APR, have been set based on information from a consumer report;
- c. a statement that the terms offered may be less favorable than the terms offered to consumers with better credit histories;
- d. a statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;
- e. the identity of each consumer reporting agency that furnished a consumer report used in the credit decision;
- f. a statement that federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;
- g. a statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;
- h. a statement directing consumers to the website of the Consumer Financial Protection Bureau (CFPB) to obtain more information about consumer reports; and
- i. if a credit score of the consumer to whom a person grants, extends, or otherwise provides credit is used in setting the material terms of credit:
 - i. a statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;
 - ii. the credit score used by the person in making the credit decision;
 - iii. the range of possible credit scores under the model used to generate the credit score;
 - iv. all of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of inquiries made with respect to the consumer report, the number of key factors shall not exceed five;
 - v. the date on which the credit score was created; and
 - vi. the name of the consumer reporting agency or other person that provided the credit score.

[Click&type]

8. If the creditor does not provide a risk-based pricing notice, determine if one of the following situations that qualify for a regulatory exception applies (12 CFR 1022.74(a)-(f)):
 - a. a consumer applies for specific terms of credit and receives them, unless those terms were specified by the creditor using a consumer report after the consumer applied for the credit and after the creditor obtained the consumer report;
 - b. a creditor provides a notice of adverse action;
 - c. a creditor makes a firm offer of credit in a prescreened solicitation (even if the person makes other firm offers of credit to other consumers on more favorable material terms);
 - d. a creditor generally provides a credit score disclosure to each consumer that requests a loan that is not or will not be secured by residential real property; or
 - e. a creditor that otherwise provides credit score disclosures to consumers that request loans provides a disclosure for when no credit score is available.

[Click&type]

9. For creditors that choose to provide a credit score disclosure to consumers that request a loan that is not or will not be secured by residential real property, determine whether the 12 CFR 1022.74(e) notice generally is provided to each consumer that requests such an extension of credit and that each notice contains:
 - a. a statement that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;
 - b. a statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;
 - c. a statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;
 - d. a statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;
 - e. a statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free report from each of the nationwide consumer reporting agencies once during any 12-month period;

- f. contact information for the centralized source from which consumers may obtain their free annual consumer reports;
- g. a statement directing consumers to the website of CFPB to obtain more information about consumer reports;
- h. the current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the consumer reporting agency for a purpose related to the extension of credit;
- i. the distribution of credit scores among consumers who are scored under the same scoring model that is used to generate the consumer's credit score; the distribution must:
 - i. use the same scale as that of the credit score provided to the consumer; and
 - ii. be presented:
 - A. in the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar;
 - B. by other clear and readily understandable graphical means; or
 - C. in a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers; the presentation may use a graph or statement obtained from the entity providing the credit score if it meets these requirements;
- j. the range of possible credit scores under the model used to generate the credit score;
- k. the date on which the credit score was created; and
- l. the name of the consumer reporting agency or other person that provided the credit score.

[Click&type]

10. For creditors that otherwise provide credit score disclosures to consumers that request loans, determine whether the 12 CFR 1022.74(f) notice is provided to the applicable consumers in situations where no credit score is available for the consumer, as required by 12 CFR 1022.74(f). Determine whether each notice contains:
- a. a statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;
 - b. a statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time in response to changes in the consumer's credit history;

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- c. a statement that credit scores are important because consumers with higher credit scores generally obtain more favorable credit terms;
- d. a statement that not having a credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;
- e. a statement that a credit score about the consumer was not available from a consumer reporting agency, which must be identified by name, generally due to insufficient information regarding the consumer's credit history;
- f. a statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report;
- g. a statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period;
- h. the contact information for the centralized source from which consumers may obtain their free annual consumer reports; and
- i. a statement directing consumers to the website of the CFPB to obtain more information about consumer reports.

[Click&type]

11. For creditors that provide credit score exception notices and that obtain multiple credit scores in setting material terms of credit, determine whether the score(s) is disclosed in a manner consistent with the regulation (12 CFR 1022.74(d)(4) and .74(e)(4)):

- a. if a creditor only relies upon one of those credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer (for example, by using the low, middle, high, or most recent score), determine whether the notice includes that credit score and the other information required by 12 CFR 1022.74(d); or
- b. if a creditor relies upon multiple credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer (for example, by computing the average of all the credit scores obtained), determine whether the notice includes one of those credit scores and the other information required by 12 CFR 1022.74(d).

[Click&type]

12. For all notices, determine whether the notices are clear and conspicuous and comply with the specific format requirements for the notices (12 CFR 1022.73(b), .74(d)(2), .74(e)(2), and .74(f)(3)).

[Click&type]

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

Risk-based pricing notices

- For closed-end credit, the notice generally must be provided to the consumer after the decision to approve a credit request is communicated to the consumer, but before consummation of the transaction.

Credit score disclosures for loans not secured by residential real property

- The notice generally must be provided to the consumer as soon as reasonably practicable after the credit score has been obtained, but in any event, at or before consummation in the case of closed-end credit.

Credit score exception notices when no credit score is available

- The notice generally must be provided to the consumer as soon as reasonably practicable after the creditor has requested the credit score, but in any event, not later than consummation of a transaction in the case of closed-end credit.

Application to certain automobile lending transactions

- For automobile lending transactions made through an auto dealer that is unaffiliated with the creditor, the creditor may provide a notice in the time periods described above. Alternatively, the creditor may arrange to have the auto dealer provide a notice to the consumer on its behalf within these time periods and maintain reasonable policies and procedures to verify that the auto dealer provides the notice to the consumer within the applicable time periods. If the creditor arranges to have the auto dealer provide a credit score disclosure for loans not secured by residential real property, the creditor complies if the consumer receives a notice containing a credit score obtained by the auto dealer within these time periods, even if a different credit score is obtained and used by the creditor.
- For all notices, determine whether the creditor follows the rules of construction pertaining to the number of notices provided to the consumer(s) (12 CFR 1022.75). In a transaction involving two or more consumers, a creditor must provide a risk-based notice to each consumer. If the consumers have the same address and the notice does not include a credit score(s), a person may satisfy the requirements by providing a single notice addressed to both consumers. However, if a notice includes a credit score(s), the person must provide a separate notice to each consumer whether the consumers have the same address or not. Each separate notice that includes a credit score(s) must contain only the credit score(s) of the consumer to whom the notice is provided, and not the credit score(s) of the other consumer. Similarly, for credit score disclosure exception notices, whether

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the consumers have the same address or not, the creditor must provide a separate notice to each consumer and each separate notice that includes a credit score(s) must contain only the credit score(s) of the consumer to whom the notices is provided.

- For all notices, determine whether the creditor uses the model forms in Appendix H of the regulation. If yes, determine that it does not modify the model form so extensively as to affect the substance, clarity, comprehensibility, or meaningful sequence of the forms in Appendix H.

[Click&type]

Consumer Leasing Act/Regulation M

1. Determine that lessees of personal property are given meaningful and accurate disclosures of lease terms.

[Click&type]

2. Determine if the limits of liability are clearly indicated to the lessees and correctly enforced by the entity.

[Click&type]

General Disclosure Requirements

1. Review the entity's procedures for providing disclosures to ensure that there are adequate controls and procedures to effect compliance.

[Click&type]

2. Review the disclosures provided by the entity.

- a. Are the disclosures clear, conspicuous, and provided in writing in a form the consumer may keep? For disclosures provided electronically (other than for advertising requirements), are the disclosures in electronic form provided in compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act)?
- b. Are the disclosures given in a dated statement and in the prescribed format? (12 CFR 1013.3(a)(1))
- c. Is the information required by 12 CFR 1013.4(b) through (f), (g)(2), (h)(3), (i)(1), (j), and (m)(1) segregated and in a form substantially similar to the model in Appendix A? (12 CFR 1013.3(a)(2))
- d. Are the disclosures timely? (12 CFR 1013.3(a)(3))

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- e. If the lease involves more than one lessee, are the disclosures provided to any lessee who is primarily liable? (12 CFR 1013.3(c))
- f. If additional information is provided, is it provided in a manner such that it does not mislead or confuse the lessee? (12 CFR 1013.3(b))
- g. Are all estimates clearly identified and reasonable? (12 CFR 1013.3(d))
- h. Are the disclosures accurate and do the disclosures contain the information required by 12 CFR 1013.4(a) through (t)? (12 CFR 1013.4)
- i. Are disclosures given to lessees when they “renegotiate” or “extend” their leases? (12 CFR 1013.5)

[Click&type]

Gramm-Leach-Bliley Act/Regulation P

Examiners should assess an entity’s compliance with the GLBA examination procedures.

- 1. Determine whether the entity’s information sharing practices are consistent with the requirements of the GLBA.

[Click&type]

- 2. Determine whether the entity accurately, and in a timely manner, discloses its sharing practices to consumers and customers.

[Click&type]

- 3. Determine whether the entity properly manages opt-out requests.

[Click&type]

Sharing nonpublic personal information with nonaffiliated third parties outside of the exceptions

- 1. Disclosure of Nonpublic Personal Information

- a. Select a sample of third-party relationships with nonaffiliated third parties and obtain a sample of data shared between the entity and the third party both inside and outside of the exceptions. Perform the following comparisons to evaluate the entity’s compliance with disclosure limitations.
 - i. Compare the categories of data shared and with whom the data were shared to those stated in the privacy notice and verify that what the entity tells consumers in its notices about its policies and practices in this regard and what the entity actually does are consistent (12 CFR 1016.6, 12 CFR 1016.10).

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- ii. Compare the data shared to a sample of opt-out directions and verify that only nonpublic personal information covered under the exceptions or from consumers who chose not to opt out is shared (12 CFR 1016.10).
- b. If the entity also shares information under Regulation P's Section 13, obtain and review contracts with nonaffiliated third parties that perform services for the entity not covered by the exceptions in Section 14 or 15. Determine whether the contracts prohibit the third party from disclosing or using the information other than to carry out the purposes for which the information was disclosed (12 CFR 1016.13(a)).

[Click&type]

2. Presentation, Content, and Delivery of Privacy Notices
 - a. Review the entity's initial, annual, and revised notices, as well as any short-form notices that the entity may use for consumers who are not customers. Determine whether or not these notices:
 - i. Are clear and conspicuous (12 CFR 1016.3(b), 4(a), 5(a)(1), 7(a)(1), 8(a)(1));
 - ii. Accurately reflect the policies and practices used by the entity (Sections 4(a), 5(a)(1), 8(a)(1)). NOTE: This includes practices disclosed in the notices that exceed regulatory requirements; and
 - iii. Include, and adequately describe, all required items of information and contain examples as applicable (Section 6). Note that if the entity shares under Section 13, the notice provisions for that section shall also apply.
 - iv. If the model privacy form is used, determine that it reflects the entity's policies and practices. For entities seeking a safe harbor for compliance with the content requirements of the regulation, verify that the notice has the proper content and is in the proper format as specified in the Appendix to the regulation.
 - b. Through discussions with management, review of the entity's policies and procedures, and a sample of electronic or written consumer records where available, determine if the entity has adequate procedures in place to provide notices to consumers, as appropriate. Assess the following:
 - i. Timeliness of delivery (12 CFR 1016. 4(a), 7(c), 8(a));
 - ii. Reasonableness of the method of delivery (e.g., by hand; by mail; electronically, if the consumer agrees; or as a necessary step of a transaction) (12 CFR 1016.9); and
 - iii. For customers only, review the timeliness of delivery (12 CFR 1016.4(d), 4(e), 5(a)), means of delivery of annual notice (12 CFR 1016.9(c)), and accessibility of or ability to retain the notice (12 CFR 1016.9(e)).

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3. Opt-Out Right

- a. Review the entity's opt-out notices. An opt-out notice may be combined with the entity's privacy notices. Regardless, determine whether the opt-out notices:
 - i. Are clear and conspicuous (12 CFR 1016.3(b) and 7(a)(1));
 - ii. Accurately explain the right to opt out (12 CFR 1016.7(a)(1));
 - iii. Include, and adequately describe, the three required items of information (the entity's policy regarding disclosure of nonpublic personal information, the consumer's opt-out right, and the means to opt out) (12 CFR 1016.7(a)(1)); and
 - iv. Describe how the entity treats joint consumers (customers and those who are not customers), as applicable (12 CFR 1016.7(d)).
- b. Through discussions with management, review of the entity's policies and procedures, and a sample of electronic or written records where available, determine if the entity has adequate procedures in place to provide the opt-out notice and comply with opt-out directions of consumers, as appropriate. Assess the following:
 - i. Timeliness of delivery (12 CFR 1016.10(a)(1));
 - ii. Reasonableness of the method of delivery (e.g., by hand; by mail; electronically, if the consumer agrees; or as a necessary step of a transaction) (12 CFR 1016.9);
 - iii. Reasonableness of the opportunity to opt out (the time allowed to and the means by which the consumer may opt out) (12 CFR 1016.10(a)(1)(iii), 10(a)(3)); and
 - iv. Adequacy of procedures to implement and track the status of a consumer's opt-out direction, including those of former customers (12 CFR 1016.7(e), (f), (g)).

[Click&type]

Sharing nonpublic personal information with nonaffiliated third parties under Sections 13, and 14 and/or 15, but not outside of these exceptions

1. Disclosure of Nonpublic Personal Information

- a. Select a sample of third-party relationships with nonaffiliated third parties and obtain a sample of data shared between the entity and the third party. The sample should include a cross-section of relationships but should emphasize those that are higher risk in nature as determined by the initial procedures. Perform the following comparisons to evaluate the entity's compliance with disclosure limitations.

- i. Compare the data shared and with whom the data were shared to ensure that the entity accurately categorized its information sharing practices and is not sharing nonpublic personal information outside the exceptions (12 CFR 1016.13, 14, 15).
 - ii. Compare the categories of data shared and with whom the data were shared to those stated in the privacy notice, and verify that what the entity tells consumers in its notices about its policies and practices in this regard and what the entity actually does are consistent (12 CFR 1016.6, 10).
 - iii. If the model privacy form is used, determine that it reflects the entity's policies and practices. For entities seeking a safe harbor for compliance with the content requirements of the regulation, verify that the notice has the proper content and is in the proper format as specified in the Appendix to the regulation.
- b. Review contracts with nonaffiliated third parties that perform services for the entity not covered by the exceptions in Section 14 or 15. Determine whether the contracts adequately prohibit the third party from disclosing or using the information other than to carry out the purposes for which the information was disclosed.

[Click&type]

2. Presentation, Content, and Delivery of Privacy Notices

- a. Review the entity's initial and annual privacy notices. Determine whether or not they:
 - i. Are clear and conspicuous (12 CFR 1016.3(b), 4(a), 5(a)(1));
 - ii. Accurately reflect the policies and practices used by the entity (12 CFR 1016. 4(a), 5(a)(1)).

NOTE: This includes practices disclosed in the notices that exceed regulatory requirements); and

- iii. Include, and adequately describe, all required items of information and contain examples as applicable (12 CFR 1016. 6, 13).
- b. Through discussions with management, review of the entity's policies and procedures, and a sample of electronic or written consumer records where available, determine if the entity has adequate procedures in place to provide notices to consumers, as appropriate. Assess the following:
 - i. Timeliness of delivery (12 CFR 1016. 4(a));
 - ii. Reasonableness of the method of delivery (e.g., by hand; by mail; electronically, if the consumer agrees; or as a necessary step of a transaction) (12 CFR 1016. 9); and

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- iii. For customers only, review the timeliness of delivery (12 CFR 1016.4(d), 4(e), and 5(a)), means of delivery of annual notice Section 9(c)), and accessibility of or ability to retain the notice (12 CFR 1016. 9(e)).

[Click&type]

Sharing nonpublic personal information with nonaffiliated third parties only under Sections 14 and/or 15

NOTE: This section applies only to customers.

1. Disclosure of Nonpublic Personal Information

- a. Select a sample of third-party relationships with nonaffiliated third parties and obtain a sample of data shared between the entity and the third party.
- b. Compare the data shared and with whom the data were shared to ensure that the entity accurately states its information sharing practices and is not sharing nonpublic personal information outside the exceptions.

[Click&type]

2. Presentation, Content, and Delivery of Privacy Notices

- a. Obtain and review the entity's initial and annual notices, as well as any simplified notice that the entity may use. Note that the entity may only use the simplified notice when it does not also share nonpublic personal information with affiliates outside of Section 14 and 15 exceptions. Determine whether or not these notices:
 - i. Are clear and conspicuous (12 CFR 1016.3(b), 4(a), 5(a)(1));
 - ii. Accurately reflect the policies and practices used by the entity (12 CFR 1016.4(a), 5(a)(1)) (NOTE: This this includes practices disclosed in the notices that exceed regulatory requirements);
 - iii. Include, and adequately describe, all required items of information (12 CFR 1016.6); and
 - iv. If the model privacy form is used, determine that it reflects the entity's policies and practices. For entities seeking a safe harbor for compliance with the content requirements of the regulation, verify that the notice has the proper content and is in the proper format as specified in the Appendix to the regulation.
- b. Through discussions with management, review of the entity's policies and procedures, and a sample of electronic or written customer records where available, determine if the entity has adequate procedures in place to provide notices to customers, as appropriate. Assess the following:

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- i. Timeliness of delivery (12 CFR 1016.4(a), 4(d), 4(e), 5(a)); and
- ii. Reasonableness of the method of delivery (e.g., by hand; by mail; electronically, if the customer agrees; or as a necessary step of a transaction) (12 CFR 1016.9); and accessibility of or ability to retain the notice (12 CFR 1016.9(e)).

[Click&type]

Reuse and redisclosure of nonpublic personal information received from a nonaffiliated financial institution

1. Through discussions with management and review of the entity's procedures, determine whether the entity has adequate practices to prevent the unlawful redisclosure and reuse of the information where the entity is the recipient of nonpublic personal information (12 CFR 1016.11(a)).

[Click&type]

2. Select a sample of data received from nonaffiliated entities to evaluate the entity's compliance with reuse and redisclosure limitations.
 - a. Verify that the entity's redisclosure of the information was only to affiliates of the entity from which the information was obtained or to the entity's own affiliates, except as otherwise allowed (12 CFR 1016.11(a)(1)(i) and (ii)).
 - b. Verify that the entity only uses and shares the data pursuant to an exception in Sections 14 and 15 (12 CFR 1016.11(a)(1)(iii)).

[Click&type]

Redisclosure of nonpublic personal information received from a nonaffiliated financial institution outside of Sections 14 and 15

1. Through discussions with management and review of the entity's procedures, determine whether the entity has adequate practices to prevent the unlawful redisclosure of the information where the entity is the recipient of nonpublic personal information (12 CFR 1016.11(b)).

[Click&type]

2. Select a sample of data received from nonaffiliated entities and shared with others to evaluate the entity's compliance with redisclosure limitations.
 - a. Verify that the entity's redisclosure of the information was only to affiliates of the entity from which the information was obtained or to the entity's own affiliates, except as otherwise described in step b, below (12 CFR 1016.11(b)(1)(i) and (ii)).

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- b. If the entity shares information with entities other than those described under step a, above, verify that the entity's information sharing practices conform to those in the nonaffiliated entity's privacy notice (12 CFR 1016 .11(b)(1)(iii)).
- c. Also, review the procedures used by the entity to ensure that the information sharing reflects the opt-out status of the consumers of the nonaffiliated entity (12 CFR 1016.10, 11(b)(1)(iii)).

[Click&type]

Other Risks to Consumers

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

[Click&type]

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

[Click&type]

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

[Click&type]

4. Evaluate communications related to vehicle financing and the financing of add-on sales, including any scripts.

[Click&type]

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

[Click&type]

Module 5 – Payment Processing, Account Maintenance, and Optional Products

Auto servicers collect money borrowers owe on their loan or lease—payments, late fees, nonsufficient funds (NSF) charges, and the like. To assess payment posting and fee practices, examiners should review the policies and procedures and a sample of servicing records for both loans and leases, if applicable. Examiners should begin by reviewing a sample of records from the servicer’s primary record system; if potential problems are found, examiners should review copies of relevant records outside the primary system, such as copies of consumer payment records and copies of bills from vendors documenting any services related to the consumer’s loan or lease account. If consumer complaints or document review indicate potential violations in these areas, examiners also may conduct interviews of consumers from the sample and ask questions relevant to each topic area below.

Payment Processing

Other Risks to Consumers

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

[Click&type]

2. Determine whether the servicer posts and credits the borrower’s accounts in a timely manner.

[Click&type]

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

[Click&type]

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

[Click&type]

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

[Click&type]

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6. In assessing risks to consumers associated with payment processing, examiners may find evidence of violations of—or an absence of compliance policies and procedures with respect to—other laws, such as the Servicemembers Civil Relief Act. In these circumstances, examiners should identify such matters for appropriate action, such as, where authorized, possible referral to federal or state regulators. For example, the Servicemembers Civil Relief Act requires a servicer to reduce the interest rate that a servicemember must pay on an auto loan to six percent upon receiving a written request and a copy of the servicemember’s military orders calling them into military service. The servicer must reduce the servicemember’s interest rate to six percent when:
 - a. The loan is a pre-service obligation (entered into prior to the borrower entering military service);
 - b. The borrower has submitted a written request to the servicer; and
 - c. The borrower has provided a copy of his or her military orders to the servicer.

[Click&type]

Assessment of Fees

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

[Click&type]

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

[Click&type]

3. Determine whether the servicer has levied or collected any delinquency charge on a payment when the only delinquency is attributable to the late fees or delinquency charges assessed on earlier installments and the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period (otherwise known as late fee pyramiding).

[Click&type]

Application of Payments

1. Determine whether the servicer adhered to the order of application specified in the loan or lease instruments when crediting payments.

[Click&type]

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

[Click&type]

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

[Click&type]

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

[Click&type]

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

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

[Click&type]

Prepayments

1. Determine whether the servicer restricts or refuses additional principal payments or imposes fees or undue burden on borrowers' attempts to pay additional principal.

[Click&type]

2. Assess whether the servicer credits additional payments to the borrower's principal balance or "pays ahead" the borrower's account without reducing principal.

[Click&type]

3. Determine whether information about how the servicer credits additional payments is clearly conveyed to the borrower.

[Click&type]

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4. Assess whether the servicer considers borrower instruction when applying the prepayment to the account and if the borrower may choose between the having additional payments applied to the borrower's principal balance or applied to pay ahead the borrower's account without reducing principal.

[Click&type]

Periodic Statements

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

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

[Click&type]

2. Determine how statements are provided to borrowers.

[Click&type]

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

[Click&type]

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

[Click&type]

Electronic Fund Transfer Act/Regulation E

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

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

[Click&type]

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

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[Click&type]

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

[Click&type]

4. If the servicer initiates preauthorized EFTs, assess the servicer's compliance with the applicable advance authorization, disclosures, and other requirements relating to preauthorized electronic fund transfers under the EFTA and Regulation E (12 CFR 1005.10).
 - a. Does the servicer obtain proper written authorization for recurring preauthorized electronic fund transfers from a consumer's account and provide a copy of the authorization to the consumer (12 CFR 1005.10(b), 1005.2(k))?
 - b. Will the preauthorized transfers vary in amount? If so, does the servicer, prior to each transfer, provide reasonable advance notice to the consumer, in accordance with applicable regulations, of the amount to be transferred and the scheduled date of transfer (12 CFR 1005.10(d))?

[Click&type]

Account Maintenance

Truth in Lending/Regulation Z

Treatment of Credit Balances

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

[Click&type]

Other Risks to Consumers

Servicing Transfers

1. Determine whether the servicer has transferred or acquired loans or leases to/from a different servicing technology platform or to/from another servicer during the period covered by the examination.
2. Determine whether the servicer provides borrowers with adequate and timely information when it transfers or sells servicing rights to a new servicer.

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[Click&type]

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

[Click&type]

4. If the servicer offers repurchase programs for repossessed vehicles, determine whether the servicer provides accurate information to the consumer about the total amount due, including principal, interest, fees, expenses, or other charges.

[Click&type]

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

[Click&type]

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

[Click&type]

7. Assess the servicer's process and controls to ensure transferred account information is accurate.

[Click&type]

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

[Click&type]

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

[Click&type]

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

[Click&type]

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

[Click&type]

Payoff Statements

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

[Click&type]

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

[Click&type]

Optional Products

Other Risks to Consumers

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

[Click&type]

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

[Click&type]

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

[Click&type]

4. Determine whether the servicer uses a service provider in connection with optional products and, if so, how the servicer monitors optional products offered and administrated by a service provider. This includes how the lender or servicer ensures that these items are appropriately presented as optional products to consumers.

[Click&type]

5. Review marketing materials, whether they are telemarketing scripts, direct mail, web-based, or other media, and determine whether each optional product's costs and terms are clearly

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and prominently disclosed. If consumer complaints or document review indicate potential violations in these areas and the servicer engages in telemarketing, then monitor call center activity and statements of representatives marketing the products. If the servicer engages in web-based marketing, monitor Internet communications related to the marketing.

[Click&type]

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

[Click&type]

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

[Click&type]

Leases

Other Risks to Consumers

1. Determine whether the servicer informs consumers in a timely manner about fees, penalties, or other charges that have been imposed after the lease has expired and the reasons for the imposition.
2. In assessing risks to consumers, examiners may find evidence of violations of—or an absence of compliance policies and procedures with respect to—other laws, in which case examiners should identify such matters for appropriate actions, such as, where authorized, possible referral to other regulators. For example, the Servicemembers Civil Relief Act has provisions that allow a servicemember to terminate certain lease agreements if:
 - a. the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service under a call or order specifying a period of not less than 180 days (or who enters military service under a call or order specifying a period of 180 days or less and who, without a break in service, receives orders extending the period of military service to a period of not less than 180 days); or
 - b. the servicemember, while in military service, executes the lease and thereafter receives military orders for a permanent change of station outside of the continental United States or orders to deploy with a military unit for a period of not less than 180 days.

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[Click&type]

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

[Click&type]

Module 6 – Collections, Debt Restructuring, Repossessions, and Accounts in Bankruptcy

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

Collections

Fair Debt Collection Practices Act (FDCPA)

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

The debt collector definition has an exception that frequently applies to servicing: an entity is not a debt collector under the FDCPA when it collects debts that were not in default when they were obtained by the servicer.⁵ Thus, a servicer that purchases the servicing rights for a portfolio of loans will be a debt collector only for loans that were in “default” at the time of the purchase.⁶

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

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

[Click&type]

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

[Click&type]

⁵ 15 U.S.C. 1692a(6)(F)(iii).

⁶ The FDCPA itself does not contain a definition of the term “default.” In determining whether a debt is in default, the following factors, among others, are generally considered: the creditor’s customary policies and practices; terms of the contract; determinations by the originator, and state law.

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

[Click&type]

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

[Click&type]

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

[Click&type]

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

[Click&type]

Refer to the FDCPA examination procedures for more detailed information.

Servicing Transfers

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

[Click&type]

Other Risks to Consumers

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

[Click&type]

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

[Click&type]

3. Determine whether the servicer contacts borrowers in an appropriate manner:
 - a. Employees and service providers clearly indicate to consumers that they are calling about the collection of a debt.

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- b. Employees and service providers do not disclose the existence of a consumer's debt to the public without the consent of the consumer, except as permitted by law.
- c. The entity avoids repeated telephone calls to consumers that annoy, abuse, or harass any person at the number called.

[Click&type]

- 4. Determine whether the servicer's representatives make misrepresentations or use other deceptive means to collect debts. Determine whether the servicer has appropriate controls to prevent such practices.

[Click&type]

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

[Click&type]

- 6. For regulated entities using service providers for collection activity, determine whether the servicer has policies and procedures in place to monitor the service provider for compliance with Federal consumer financial laws. Please refer to Module 2 for more information on service provider oversight.

[Click&type]

Collecting Delinquent Accounts through Legal Action

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

[Click&type]

Debt Restructuring/Workouts

Other Risks to Consumers

- 1. Determine whether the servicer offers formal or informal debt restructuring/workout options to borrowers in default or at risk of default. Such options may include forbearances, repayment plans, loan modifications, or other repayment options.
 - a. Assess the servicer's policies and procedures for workouts, including how the servicer discloses the requirements, terms, and any associated fees or other consequences (e.g., decreased credit score) when providing workout options to borrowers.

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- b. Determine how borrowers apply for any available workout options and what the eligibility requirements are for each option.
- c. Determine whether and how the servicer communicates with borrowers about possible workout options.
- d. Determine how the servicer determines what workout option(s) it will offer to the borrower, if any.
- e. Determine whether the servicer offers any available workout options consistently to all borrowers in similar situations.
- f. Determine whether the servicer has internal timelines for processing borrower requests for workout options and whether the servicer notifies the borrower of receipt of the application of documents.
- g. Determine how promptly workouts go into effect once agreed to by the servicer.
- h. Determine if the servicer includes any waiver of legal rights in its workout agreements.

[Click&type]

Repossessions

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

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

Other Risks to Consumers

1. Assess the servicer's policies and procedures for repossession, including how the servicer oversees and communicates with service providers performing repossession services. Please refer to Module 2 for more information on service provider oversight.

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- a. Assess how servicers assign vehicles to be repossessed to service providers and if the same vehicle may be assigned to more than one service provider.
- b. Assess if complaints (oral or written) from borrowers regarding service providers are addressed and resolved promptly.

[Click&type]

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

[Click&type]

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

[Click&type]

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

[Click&type]

- 5. Determine whether the servicer has repossessed a vehicle owned by a consumer who is current on the loan or lease.

[Click&type]

- 6. Determine whether the servicer has repossessed a vehicle owned by a consumer complying with the terms of a workout agreement.

[Click&type]

- 7. If the servicer offers repurchase programs for repossessed vehicles, determine whether the servicer provides accurate information to the consumer about the total amount due, including principal, interest, fees, expenses, or other charges.

[Click&type]

- 8. In assessing risks to consumers, examiners may find evidence of violations of—or an absence of compliance policies and procedures with respect to—other laws, in which case examiners should identify such matters for appropriate actions, such as, where authorized, possible referral to other regulators. For example, the Servicemembers Civil Relief Act prohibits servicers from repossessing the vehicle of any active duty military consumer, or any

consumer within one year of active duty service, with pre-service obligations, unless the servicer satisfies certain requirements. Examiners should determine whether compliance policies and procedures include checking the Department of Defense's Manpower Database prior to completing a repossession and documenting the results.

[Click&type]

Bankruptcy

Other Risks to Consumers

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

[Click&type]

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

[Click&type]

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

[Click&type]

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

[Click&type]

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

[Click&type]

Module 7 – Customer Complaints and Inquiries

Examiners should review consumer complaints. Examiners should determine whether complaints were resolved adequately and in a timely manner, and if the underlying facts may be a systemic issue affecting other consumers.

Other Risks to Consumers

1. Identify all channels and physical locations provided for receipt of customer complaints and inquiries.

[Click&type]

2. Evaluate the comprehensiveness of systems, procedures, and/or flowcharts for capturing, logging, tracking, handling, and reporting (including a trend analysis) complaints and their resolutions.

[Click&type]

3. Assess the effectiveness of any telephone line available for inquiries or complaints, including (a) whether it is toll-free, (b) the ease of accessing a live person, (c) the hold times, and (d) the call abandonment rates.

[Click&type]

4. Assess the effectiveness of other means available for inquiries or complaints, including written submissions and any online portal.

[Click&type]

5. Evaluate the processes and speed for responses to consumer complaints. Review reports to management and the board of directors (or principals). Review the consumer complaint log(s), performance metrics, and exception/trend reports to determine whether consumer complaints are captured, categorized correctly, and handled appropriately.

[Click&type]

6. Assess whether complaint data and root cause analysis of individual cases drive adjustments to business practices as appropriate.

[Click&type]

7. Determine if staffing levels are sufficient for volume. Then determine whether assumptions used for staffing determinations are validated or supported by analysis.

[Click&type]

8. Listen to live calls and taped calls to assess the quality and training of call center personnel.

[Click&type]

9. Assess whether the lender responds to borrower inquiries within a reasonable time period.

[Click&type]

Module 8 – Credit Reporting, Information Sharing, and Privacy

Credit Reporting

FCRA - Regulation V

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

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

[Click&type]

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

[Click&type]

Information Sharing

Gramm-Leach-Bliley Act (GLBA) and Implementing Regulation P – Privacy Notices

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

[Click&type]

FCRA and Regulation Implementing V – Information Sharing with Affiliates

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

[Click&type]

Module 9 – Examiner Conclusions and Wrap-Up

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

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

[Click&type]

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

[Click&type]

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

[Click&type]

4. Identify action needed to correct violations and weaknesses in the entity's compliance management system, as appropriate.

[Click&type]

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

[Click&type]

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

[Click&type]

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

[Click&type]

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

[Click&type]