

## Automobile Finance Examination Procedures

After completing the examination risk assessment and scoping, examiners should use these procedures to conduct an automobile finance examination. Because the Consumer Financial Protection Bureau (CFPB or Bureau) expects regulated entities under its supervision and enforcement authority to have an effective compliance management system adapted to its business strategy and operations, examiners should also use the Compliance Management Review (CMR) procedures to review and test components of the supervised entity's compliance management system.<sup>1</sup>

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

These procedures are organized into seven modules, which include guidance for examining all aspects of auto finance. As determined by the examination scope, and in conjunction with the CMR procedures, each examination will include parts of one or more of the following modules. Module 7 – Examiner Conclusions and Wrap-up is a required module and must be completed for all examinations.

Module 1 Company Business Model

Module 2 Advertising and Marketing

Module 3 Application and Origination

Module 4 Payment Processing and Account Maintenance

Module 5 Collections, Debt Restructuring, Repossession, and Accounts in Bankruptcy

Module 6 Credit Reporting, Information Sharing, and Privacy

Module 7 Examiner Conclusions and Wrap-up

<sup>1</sup> A supervised entity must develop and maintain an effective compliance management system that is integrated into the overall framework for product design, delivery, and administration of the entire product and service lifecycle. Ultimately, compliance should be part of the day-to-day responsibilities of management and the employees of a supervised entity; issues should be self-identified; and corrective actions should be initiated by the entity. Supervised entities are also expected to manage relationships with service providers to ensure that these providers effectively manage compliance with Federal consumer financial laws applicable to the product or service being provided. See CFPB *Supervision and Examination Manual*, <https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/>; see also CFPB *Compliance Bulletin and Policy Guidance*; 2016-02, Service Providers, <https://www.consumerfinance.gov/policy-compliance/guidance/supervisory-guidance/compliance-bulletin-and-policy-guidance-2016-02-service-providers/>.

## **Examination Objectives**

1. To assess the supervised entity’s compliance management system, including internal controls, policies, and procedures for preventing violations of Federal consumer financial law.
2. To identify acts or practices that materially increase the risk of violations of Federal consumer financial law.
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.
4. To determine, in consultation with headquarters, whether a violation of a Federal consumer financial law has occurred, and whether further supervisory or enforcement action is appropriate.

## **Background**

Section 1024 of the Dodd-Frank Act (12 U.S.C. 5514(a)(1)(B)) gave the CFPB supervisory authority over “larger participants” of certain markets for consumer financial products or services, as the CFPB defines by rule.<sup>2</sup> Under this authority, the Bureau issued its final rule defining larger participants of the automobile financing market, 12 CFR 1090.108, on June 30, 2015.<sup>3</sup> The rule became effective on August 31, 2015.<sup>4</sup>

Per the rule, a nonbank covered person that engages in automobile financing is generally a larger participant if such person has at least 10,000 aggregate annual originations,<sup>5</sup> which the Bureau defined to include the following transactions:

- Credit granted for the purpose of purchasing an automobile;
- Automobile leases;

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<sup>2</sup> Pub. L. No. 111-203 (2010).

<sup>3</sup> Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service, 80 Fed. Reg. 37495 (June 30, 2015).

<sup>4</sup> *Id.*

<sup>5</sup> 12 CFR 1090.108(b).

- Refinancings of credit granted for the purpose of purchasing an automobile (and any subsequent refinancings thereof) that are secured by an automobile; and
- Purchases or acquisitions of any of the foregoing obligations.<sup>6</sup>

The rule also clarified that auto dealers, including Buy-Here, Pay-Here (BHPH) dealers, are not larger participants under the rule.<sup>7</sup>

### **Sources of Auto Financing**

Consumers often purchase or obtain a vehicle by acquiring credit or entering into a lease arrangement. When acquiring credit, consumers can go through an indirect or a direct channel.

#### *Indirect Lending Channel*

With indirect lending, or dealer arranged financing, the dealer, rather than the consumer, typically selects the lender that will provide financing. Upon completion of the vehicle selection process, the dealer collects the consumer's credit application information and forwards that information to one or more lenders using a standardized platform, such as DealerTrack, RouteOne, or Credit Union Direct Lending (CUDL).

When selecting a lender to approve the loan, the dealer may have incentives to select a particular lender over another. For example, a franchised dealer, a dealer that sells vehicles for certain auto manufacturers, may have incentives, such as promotional discounts or limited-time financing offers, to use the manufacturer's subsidiary finance company – typically called a captive finance company – over another lender. Regardless of which lender the dealer selects, the underwriting and approval process is typically the same. That is, after evaluating the applicant, the lender will provide the dealer with its credit decision, including purchase eligibility criteria and other stipulations, such as a risk-based “buy rate.”<sup>8</sup>

After receiving a credit decision, the dealer will then finalize a retail installment sales contract with the consumer and subsequently sell that contract to the lender that provided the dealer with

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<sup>6</sup> 12 CFR § 1090.108(a)(i)(A).

<sup>7</sup> *Id.* § 1090.108(c); Section 1029 of the Dodd-Frank Act, 12 USC 5519, limits the Bureau's authority over auto dealers. The final larger participant rule references this exclusion. See 12 CFR 1090.108(c)(1). The larger participant rule also excludes motor vehicle dealers that are predominantly engaged in the sale (and/or leasing) and servicing of motor vehicles and operate a line of business that involves the extension of retail credit or retail leases directly to consumers without routinely assigning them to unaffiliated third party finance or leasing sources. See 12 CFR 1090.108(c)(2) (citing 12 USC 5519(b)(2) and (f)(2)); see also 80 Fed. Reg. at 37515-16 (explaining the exclusion for BHPH dealers in paragraph (c)(2)).

<sup>8</sup> The “buy rate” establishes the minimum interest rate at which the finance company is willing to purchase the retail installment sales contract executed between the consumer and the dealer for the purchase of the vehicle.

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an approved credit decision. The lender will then own and service the loan, or transfer those rights and responsibilities to another company.

*Direct Lending Channel*

In the direct lending context, consumers directly apply for financing with a finance company, bank, or credit union of their choosing. After receiving an approval, the consumer will use the loan proceeds to directly purchase a vehicle from a seller.

*Leasing*

A lease agreement, between a lessor and lessee, sets forth terms that allow the lessee to use the vehicle for a set number of months, typically 12 to 48 months, while making a payment to the lessor each month. Leasing a vehicle is similar to obtaining credit in that both require an application, decision, and ongoing contractual obligation. For example, like a consumer seeking credit to purchase a vehicle, a consumer seeking to lease a vehicle must provide basic financial information such as income and credit history. Moreover, by signing the lease agreement, the consumer undertakes a major financial obligation in the form of a commitment to make a stream of payments over a specified period. The consumer can typically purchase the vehicle at the end of the lease term for a pre-determined amount, which is generally based on the residual value of the vehicle.<sup>9</sup>

*Buy-Here, Pay-Here*

While most Buy-Here, Pay-Here (BHPH) dealers are independently owned entities that serve as the primary lender and servicer, some larger BHPH dealers sell or assign their contracts to an affiliated BHPH finance company once the contract has been consummated with the consumer.

**Ancillary Products and Services**

In addition to the actual vehicle, auto dealers and finance companies sometimes offer ancillary, or add-on, products and services at the time of vehicle purchase. For example:

- Guaranteed Auto Protection or Guaranteed Asset Protection (GAP) is a product designed to cover the difference, or “gap,” between the amount owed by the consumer on the auto loan and the amount received from the auto insurer in the event the vehicle is stolen, damaged, or totaled.

Generally, there are two types of GAP products in the market. A “GAP waiver” is a contractual agreement between the consumer and the finance company to cancel the debt in the event the vehicle is stolen, damaged, or totaled. The agreement typically appears in the

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<sup>9</sup> The residual value is the projected market value of the vehicle at the end of the lease, which is used in calculating the amount the consumer would have to pay to purchase the vehicle at the end of the lease term.

retail installment sales contract or as an addendum to the sales contract. Most lease contracts offered by a captive finance company will typically include a GAP waiver.

A “GAP waiver insurance” is an agreement between a consumer and an insurer. With this product, the consumer agrees to pay the insurer premiums for coverage and in return, the insurer agrees to pay the consumer the “gap” amount in the event of a total loss. Upon receiving this payout, the consumer will typically use it to pay off the remaining balance on the auto loan.

- An Extended Warranty is a product that covers the cost of some repairs either in addition to or after the manufacturer’s warranty ends. These products typically exclude routine maintenance, such as oil changes and tire replacements.
- Credit insurance is a product in which the provider agrees to make the consumer’s auto payments upon the occurrence of certain situations, such as death or disability. There are four main types of credit insurance:
  - Credit life insurance – pays off all or some of the outstanding balance on the loan in the event the consumer dies;
  - Credit disability insurance – makes payments on the loan if the consumer becomes ill or injured and, as a result, cannot work;
  - Involuntary unemployment insurance – makes payments on the loan if the consumer becomes unemployed; and
  - Credit property insurance – protects the car secured by the loan from events such as theft, accident, or natural disasters. This differs from property insurance.

### **Applicable Laws/Regulations**

Entities offering auto finance products or services must comply with Federal consumer financial laws to the extent that the law applies to the particular entity and its activities:

- The Truth in Lending Act (TILA) and its implementing regulation, Regulation Z, require creditors to disclose information relating to the cost of loans, comply with advertising requirements, and process credit balances.
- The Consumer Leasing Act (CLA) and its implementing regulation, Regulation M, require lessors to provide specific disclosures prior to consummation of a consumer lease and include certain disclosures in advertisements that contain specified triggering terms.
- 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 persons 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 data they place 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. Examiners should note that the FCRA's implementing regulations may differ for depository and non-depository institutions.
- 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 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
  - Because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.<sup>10</sup>

If examiners identify concerns related to ECOA or Regulation B, they should consult with the Fair Lending team in the Office of Supervision Policy, as those issues are beyond the scope of these procedures. An examination of whether an entity's auto finance activities involve discrimination or other practices in violation of the ECOA will rely on procedures outlined in the CFPB's ECOA Examination Procedures.

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<sup>10</sup> The Consumer Credit Protection Act, 15 USC 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.

To carry out the **Examination Objectives**, the examination process may also include assessing other risks to consumers. Collecting information about risks to consumers, whether or not there are specific legal guidelines addressing such risks, can help inform the CFPB’s policymaking. Moreover, these risks may include potentially unfair, deceptive, or abusive acts or practices (UDAAPs) with respect to the entity’s interactions with consumers.<sup>11</sup> The CFPB uses the following standards when assessing UDAAPs:

- 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:
  - 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.

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<sup>11</sup> Section 1036 of the Dodd-Frank Act, 12 USC 5536.

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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 and employee incentive structures and policies;
- Rate sheets;
- Fee sheets;
- Loan/lease applications;
- Loan/lease underwriting guidelines;
- Loan/lease account documentation, notes, disclosures, and all other contents of underwriting and closing files;
- 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;
- Servicing related policies and procedures, such as those related to payment posting and payment allocation, and repossession;
- Service provider due diligence and monitoring procedures, and service provider contracts;
- Compliance monitoring and/or audit reports;

- Management's responses to compliance monitoring and/or audit findings;
- Debt collection practices;
- Repossession reports;
- Training programs and materials;
- Advertisements; and
- Complaints.

Examiners should request that the entity provide a “walkthrough” of its origination and servicing processes using one or two specific consumer accounts as an example. Examiners should obtain access to, or a walkthrough of, the entity’s online services such as its origination interface and online applications, and servicing interface and online payments.

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 should also conduct interviews with management and staff to determine whether they understand and consistently follow the policies, procedures, and regulatory requirements applicable to automobile financing; manage change appropriately; and implement effective controls. Examiners should also consider observing live or recorded customer interactions if consumer complaints or transaction testing indicate potential concerns.

## **Module 1 – Company Business Model**

Examiners should review the entity’s portfolio and interview management to understand its business model.

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

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2. Determine the product volume, mix, trends, and concentrations.

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

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

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5. Assess the overall effectiveness of the entity’s compliance management system (CMS). An effective CMS commonly has two interdependent control components: board and management oversight and compliance program, which includes policies and procedures, training, monitoring and/or audit, and consumer complaint response. Additionally, an institution’s compliance expectations extend to service provider relationships into which the institution has entered. **Please refer to the Compliance Management Review (CMR) examination procedures for more information.**

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## **Module 2 – 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 laws.

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

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2. 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**

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

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2. Review a sample of the entity’s advertisements, including any electronic advertising, and verify that any specific credit terms advertised actually are or will be arranged or offered by the creditor. Also verify that required disclosures are made clearly and conspicuously. (12 CFR 1026.24(a) and (b))

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3. If the advertisement states a rate of finance charge:

- a. Determine whether the rate is stated as an “annual percentage rate,” using that term or the abbreviation “APR”;
- b. Determine whether the APR may increase after consummation. If so, verify that fact is stated;
- c. Determine whether the advertisement states any other rate; and

- d. If the advertisement discloses the simple annual rate or periodic rate that is applied to an unpaid balance, determine whether it is disclosed more conspicuously than the annual percentage rate. (12 CFR 1026.24(c))

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4. When triggering terms are used, determine whether the advertisements contain the additional required terms in a clear and conspicuous manner. (12 CFR 1026.24(b) and (d))

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5. If an advertisement appearing in a catalog, electronically, or other multiple-page advertisement uses a table or schedule to comply with the requirements in 12 CFR 1026.24(d)(2), determine whether the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered. (12 CFR 1026.24(e)(2))

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6. If television or radio advertisements use triggering terms, determine whether the advertisement provides the additional terms either by:

- a. Clearly and conspicuously stating each of the additional required terms; or
- b. Clearly and conspicuously stating the “annual percentage rate” and, if the rate may increase after consummation, that fact, and a toll-free number, or any telephone number that allows a consumer to reverse the phone charges when calling, along with a reference that such number may be used to obtain additional information. (12 CFR 1026.24(g))

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## **Consumer Leasing Act/Regulation M**

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

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2. Review a sample of the entity’s advertisements, including any electronic advertisements, and verify that the advertised terms are usually and customarily available, or that the lessor will lease the property at those terms. Also verify that required disclosures are made clearly and conspicuously. (12 CFR 1013.7(a) and (b))

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3. When triggering terms are used, determine whether the advertisements contain the additional required terms. (12 CFR 1013.7(d))

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4. If television or radio advertisements use triggering terms, determine whether the advertisement states the items listed in 12 CFR 1013.7(d)(2) or provides the alternative disclosures in 12 CFR 1013.7(f). (12 CFR 1013.7(d)(2) and (f))

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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)).
- 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.

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- 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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**Other Risks to Consumers**

- 1. Assess whether the entity clearly and prominently discloses the material terms and conditions of the auto loan, lease, or other products and services.

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2. Determine whether the entity engages in any deceptive acts or practices when marketing its products.

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3. 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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4. Determine whether the entity clearly and prominently discloses the optional nature of any optional products and whether the decision to purchase an optional product is considered in decisions to grant financing.

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

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## **Module 3 – Application and Origination**

When entities take applications, evaluate applicants, and originate auto loans or leases, they are subject to the legal requirements discussed below. Examiners should determine whether the entity's application and origination practices are consistent with these legal requirements.

### **Truth in Lending Act/Regulation Z**

#### **Disclosure Forms**

1. Determine if the entity has changed any TILA disclosure forms or if there are forms that have not previously been 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); and
  - b. Standard closed-end credit disclosures. (12 CFR 1026.17(a) and 1026.18)

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#### **Closed-End Credit Transactional Testing Procedures**

1. Determine that the disclosures are clear, conspicuous, grouped together or segregated as required, and provided in writing in a form the consumer may keep. For disclosures provided electronically (other than for advertising requirements), determine whether those disclosures were provided in compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). (12 CFR 1026.17(a)(1))

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2. Determine whether the terms “Finance Charge” and “Annual Percentage Rate” and corresponding rates or amounts are disclosed more conspicuously than other terms, except for the creditor’s identity. (12 CFR 1026.17(a)(2))

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3. Determine whether the required disclosures were given to the consumer in writing, in a form that the consumer may keep, before consummation of the transaction. (12 CFR 1026.17(a)(1) and (b))

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4. Determine whether the information required by 12 CFR 1026.18(a) through (p) and (r) is disclosed, as applicable. (12 CFR 1026.18)

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5. Determine whether the entity retained evidence of compliance with the requirements of 12 CFR Part 1026, other than the advertising requirements, for two years after the date the disclosures were required to be made or an action was required to be taken. (12 CFR 1026.25(a))

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## **Consumer Leasing Act/Regulation M**

### **Disclosure Forms**

1. Determine if the entity has changed any CLA 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); and
  - b. Standard leasing disclosures. (12 CFR 1013.3 and 4)

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### **Transactional Testing Procedures**

1. Determine that the disclosures are clear, conspicuous, and provided in writing in a form the consumer may keep. For disclosures provided electronically (other than disclosures in advertisements), determine whether those disclosures were provided in compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). (12 CFR 1013.3(a))

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2. Determine whether the disclosures are provided in a dated statement and in the prescribed format. (12 CFR 1013.3(a)(1))

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3. Determine whether the information required by 12 CFR 1013.4(b) through (f), (g)(2), (h)(3), (i)(1), (j), and (m)(1) is segregated and in a form substantially similar to the model in Appendix A. (12 CFR 1013.3(a)(2))

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4. Determine whether the required disclosures were made before consummation of the lease. (12 CFR 1013.3(a)(3))

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5. Determine whether the disclosures are accurate and include the information required by 12 CFR 1013.4(a) through (s), as applicable. (12 CFR 1013.4)

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6. Determine whether disclosures are given to lessees when they “renegotiate” or “extend” their leases, except as provided in 12 CFR 1013.5(d). (12 CFR 1013.5)

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7. Determine whether the entity retained evidence of compliance with the requirements of 12 CFR Part 1013, other than the advertising requirements, for a period of not less than two years after the date the disclosures were required to be made or an action was required to be taken. (12 CFR 1013.8)

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## **Electronic Fund Transfer Act/Regulation E**

1. If the entity initiates preauthorized electronic fund transfers (EFTs), assess the entity’s compliance with the applicable requirements relating to preauthorized EFTs.
  - a. Determine whether the entity obtains proper written authorization for preauthorized EFTs from a consumer’s account and provides a copy of the authorization to the consumer. (12 CFR 1005.10(b))
  - b. Determine whether the entity conditions an extension of credit to a consumer on the consumer’s repayment by preauthorized EFTs. (12 CFR 1005.10(e)(1))

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## **Fair Credit Reporting Act/Regulation V**

Entities that obtain information from a consumer reporting agency to determine a consumer’s creditworthiness must comply with the requirements of FCRA. When an entity denies applications for products like loans, or provides such products on materially less favorable terms to a consumer (e.g., charging a higher interest rate) because of the consumer report information it obtains, the entity must provide appropriate adverse action notice or risk-based pricing notices to the consumer. **Please refer to the FCRA examination procedures, Adverse Action Disclosures and Risk-Based Pricing Notice, for more information.**

### **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 entity or other person provides the appropriate disclosures, including the consumer’s credit score as appropriate, when it takes an 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.

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

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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.

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

1. Determine whether the entity uses consumer report information in consumer credit decisions. If yes, determine whether the entity 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 entity is subject to the risk-based pricing regulations.

[Click&type]

2. Determine the method the entity 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)).

[Click&type]

3. For entities that use the direct comparison method (12 CFR 1022.72(b)), determine whether the entity 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 entities that use the credit score proxy method (12 CFR 1022.72(b)(1)):
  - a. Determine whether the entity 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 entity 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 entity recalculates the cutoff scores within time periods specified in the regulation;
- d. For entities using more than one credit score to set material terms, determine whether the entity 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 entity provides the consumer a risk-based pricing notice.

[Click&type]

- 5. For entities that use the tiered pricing method (12 CFR 1022.72(b)(2)):
  - a. When four or fewer pricing tiers are used, determine if the entity 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 entity 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 entity provides a risk-based pricing notice to a consumer (12 CFR 1022.72(a)). For entities that provide the notice, proceed to #7, below. If the entity does not provide a risk-based pricing notice, proceed to #8, below, to determine whether an exception applies (12 CFR 1022.74).

[Click&type]

- 7. Determine whether the risk based pricing notice contains (12 CFR 1022.73(a)(1)):
  - 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 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 entity 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 entity using a consumer report after the consumer applied for the credit and after the entity obtained the consumer report;
  - b. An entity provides a notice of adverse action;
  - c. An entity 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. An entity 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. An entity 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 entities 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 entities 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;
  - 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 entities 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 an entity 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 an entity 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 entity 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 entity, the entity may provide a notice in the time periods described above. Alternatively, the entity 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 entity arranges to have the auto dealer provide a credit score disclosure for loans not secured by residential real property, the entity 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 entity.
- For all notices, determine whether the entity 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, an entity 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), an entity may satisfy the requirements by providing a single notice addressed to both consumers. However, if a notice includes a credit score(s), the entity 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 the consumers have the same address or not, the entity 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 entity 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.

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**Optional Products**

1. Determine whether the entity offers or finances optional products or services and, if so, which products or services the entity offers or finances.

[Click&type]

2. Determine how the entity tracks the sale or financing of optional products or services.

[Click&type]

3. Determine whether the entity uses a service provider in connection with the sale of any optional products or services. If so, how does the entity ensure that these providers effectively manage compliance with Federal consumer financial laws applicable to the product or service being provided?

[Click&type]

4. Determine whether the entity added optional products or services on the loan or lease without the consumer's explicit authorization.

[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 optional products or services, including any scripts.

[Click&type]

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

[Click&type]
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## **Module 4 – Payment Processing and Account Maintenance**

Servicers collect and process auto loan or lease payments from borrowers. Payment processing includes collecting payments such as regular payments or prepayments, posting a payment to a borrower’s account, assessing fees such as late fees or nonsufficient funds charges, or providing account statements to borrowers.

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, as 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**

#### **Overview of Servicer’s Activities**

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

[Click&type]

2. Determine whether the servicer timely posts payments and credits the borrower’s accounts.

[Click&type]

3. Determine how the 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]

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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]

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 an active duty servicemember must pay on a pre-service loan (entered into before the borrower entering military service) to no more than six percent upon receiving a written request and a copy of the servicemember's military orders.

[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 assessed and the reasons for the assessment.

[Click&type]

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

[Click&type]

3. Assess late fee pyramiding: Determine whether the servicer has assessed or collected any late or delinquency fee on a payment where such fee is only attributable to late or delinquency fees assessed on earlier installments (and the payment is otherwise the amount due for the applicable period and is paid on its due date or within an applicable grace period).

[Click&type]

### **Application of Payments**

1. Determine whether the servicer followed the order of payment application specified in the loan or lease agreements when crediting payments.

[Click&type]

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.

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### **Prepayments**

1. Determine whether the servicer restricts or refuses any prepayments including prepayments of future installments or principal payments.

[Click&type]

2. Determine whether the servicer assesses fees for any prepayments.

[Click&type]

3. Determine whether the servicer's process for prepayments creates any undue burden on borrowers' ability to make a prepayment.

[Click&type]

4. Determine whether information or instruction about how the servicer credits prepayments is clearly conveyed to the borrower.

[Click&type]

5. Assess whether the servicer credits prepayments to the borrower's principal balance or to a future installment of the borrower's account without reducing principal.

[Click&type]

6. Assess whether the servicer considers borrower instruction when applying the prepayment to the account and if the borrower may choose between having the additional payments applied to the borrower's principal balance or applied to a future installment without reducing principal. Does the servicer require specific instruction from the borrower, such as a written request to apply to the prepayment to a future installment or to principal?

[Click&type]

### **Periodic Statements**

Determine 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 statements provided to consumers.

1. Determine whether the statements clearly and conspicuously identify 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)).

[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, or give the consumer the option of receiving notice only when a transfer falls outside a specified range of amounts or differs from the most recent transfer by more than an agreed-upon amount (12 CFR 1005.10(d))?

[Click&type]

## **Account Maintenance**

### **Truth in Lending Act/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.

[Click&type]

2. Determine whether the servicer provides borrowers with adequate and timely information when it transfers or sells servicing rights to a new servicer.

[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. 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]

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

[Click&type]

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

[Click&type]

7. 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]

8. 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]

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

[Click&type]

10. 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**

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 or finances debt cancellation, debt suspension, or other similar optional 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 and providing refunds in a timely manner, where applicable.

[Click&type]

4. Determine how refunds of unused optional products or services are processed after the loan is prepaid or the loan is terminated (e.g., after repossession or total loss). Does the servicer's process consider state law requirements for refunds?

[Click&type]

5. Determine whether the servicer uses a service provider in connection with optional products and, if so, how the servicer ensures that these providers effectively manage compliance with Federal consumer financial laws applicable to the product or service being provided.

[Click&type]

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

7. Determine whether the servicer added 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]

8. For bi-weekly payment plan product 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**

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.

[Click&type]

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 either (1) for a permanent change of station from either a location inside the continental United States to one outside the continental United States, or from a location in a state outside the continental United States to any location outside that state, or (2) to deploy with a military unit for a period of not less than 180 days.

[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 5 – Collections, Debt Restructuring, Repossession, 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 vehicles 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 Federal consumer financial 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.<sup>12</sup> 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.<sup>13</sup>

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);

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<sup>12</sup> 15 U.S.C. 1692a(6)(F)(iii).

<sup>13</sup> 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.

[Click&type]

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. If the servicer contacts borrowers by telephone, consider the following:

- a. Employees and service providers clearly indicate to consumers that they are calling about the collection of a debt.

- 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.

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

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- 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 the CMR examination procedures 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**

- 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.
  - 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.

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## **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 vehicles 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.

- 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 the Bureau's CMR procedures for more information on service provider oversight.
  - a. Assess the servicer's policies and procedures for how a repossession order is cancelled after a borrower enters into a modified payment agreement, or makes a sufficient payment to the underlying loan agreement or modified payment agreement.
  - b. 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.

- c. Assess if complaints (oral or written) from borrowers regarding service providers are addressed and resolved promptly. **Please refer to the CMR examination procedures for more information on consumer complaint response.**
- d. Assess how servicers cancel repossession orders that previously were communicated to service providers and whether servicers ensure that the service provider acknowledged the cancellation communication.
- e. Assess the servicer's policies and procedures for selling repossessed vehicles at auction, including how it chooses facilities and how it applies proceeds to the balance of the loan.

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- 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.

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

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

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- 5. Determine whether the servicer has repossessed a vehicle owned by a consumer who made payments sufficient to prevent a repossession or is current on the loan or lease. Assess the root cause of any such repossession.

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- 6. Determine whether the servicer has repossessed a vehicle owned by a consumer complying with the terms of a workout agreement. Assess the root cause of any such repossession.

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- 7. Determine whether the servicer provides accurate information to the consumer after a repossession about the total amount due, including principal, interest, fees, expenses, or other charges. Include any communications about redemption programs in this review.

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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, without a court order, the vehicle of any active duty military consumer who paid a deposit or installment before entering military service. 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.

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9. Determine if the servicer or a service provider detains or refuses to return personal property found in repossessed vehicles until the consumer pays a fee, where the consumer requested return of the property.

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## **Bankruptcy**

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.

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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.

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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.

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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.

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

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## **Module 6 – Credit Reporting, Information Sharing, and Privacy**

### **Credit Reporting**

#### **Fair Credit Reporting Act/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.

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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.

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### **Information Sharing**

#### **Gramm-Leach-Bliley Act/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.

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#### **Fair Credit Reporting Act/Regulation 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.

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## **Module 7 – 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.

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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.

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

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4. Identify any action needed to correct violations and weaknesses in the entity's compliance management system, as appropriate. **Please refer to the CMR examination procedures for more information.**

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

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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.

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

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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.

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