

- (1) Upon request;
- (2) Before acting as a mortgage loan originator; and
- (3) Through the originator's initial written communication with a consumer, if any, whether on paper or electronically.

APPENDIX A TO SUBPART F OF PART 34—
EXAMPLES OF MORTGAGE LOAN
ORIGINATOR ACTIVITIES

This Appendix provides examples to aid in the understanding of activities that would cause an employee of a national bank to fall within or outside the definition of mortgage loan originator. The examples in this Appendix are not all inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under this subpart. For purposes of the examples below, the term “loan” refers to a residential mortgage loan.

(a) *Taking a loan application.* The following examples illustrate when an employee takes, or does not take, a loan application.

(1) Taking an application includes: receiving information provided in connection with a request for a loan to be used to determine whether the consumer qualifies for a loan, even if the employee:

(i) Has received the consumer's information indirectly in order to make an offer or negotiate a loan;

(ii) Is not responsible for verifying information;

(iii) Is inputting information into an online application or other automated system on behalf of the consumer; or

(iv) Is not engaged in approval of the loan, including determining whether the consumer qualifies for the loan.

(2) Taking an application does not include any of the following activities performed solely or in combination:

(i) Contacting a consumer to verify the information in the loan application by obtaining documentation, such as tax returns or payroll receipts;

(ii) Receiving a loan application through the mail and forwarding it, without review, to loan approval personnel;

(iii) Assisting a consumer who is filling out an application by clarifying what type of information is necessary for the application or otherwise explaining the qualifications or criteria necessary to obtain a loan product;

(iv) Describing the steps that a consumer would need to take to provide information to be used to determine whether the consumer qualifies for a loan or otherwise explaining the loan application process;

(v) In response to an inquiry regarding a prequalified offer that a consumer has received from a bank, collecting only basic identifying information about the consumer

and forwarding the consumer to a mortgage loan originator; or

(vi) Receiving information in connection with a modification to the terms of an existing loan to a borrower as part of the bank's loss mitigation efforts when the borrower is reasonably likely to default.

(b) *Offering or negotiating terms of a loan.* The following examples are designed to illustrate when an employee offers or negotiates terms of a loan, and conversely, what does not constitute offering or negotiating terms of a loan.

(1) Offering or negotiating the terms of a loan includes:

(i) Presenting a loan offer to a consumer for acceptance, either verbally or in writing, including, but not limited to, providing a disclosure of the loan terms after application under the Truth in Lending Act, even if:

(A) Further verification of information is necessary;

(B) The offer is conditional;

(C) Other individuals must complete the loan process; or

(D) Only the rate approved by the bank's loan approval mechanism function for a specific loan product is communicated without authority to negotiate the rate.

(ii) Responding to a consumer's request for a lower rate or lower points on a pending loan application by presenting to the consumer a revised loan offer, either verbally or in writing, that includes a lower interest rate or lower points than the original offer.

(2) Offering or negotiating terms of a loan does not include solely or in combination:

(i) Providing general explanations or descriptions in response to consumer queries regarding qualification for a specific loan product, such as explaining loan terminology (*i.e.*, debt-to-income ratio); lending policies (*i.e.*, the loan-to-value ratio policy of the national bank); or product-related services;

(ii) In response to a consumer's request, informing a consumer of the loan rates that are publicly available, such as on the national bank's Web site, for specific types of loan products without communicating to the consumer whether qualifications are met for that loan product;

(iii) Collecting information about a consumer in order to provide the consumer with information on loan products for which the consumer generally may qualify, without presenting a specific loan offer to the consumer for acceptance, either verbally or in writing;

(iv) Arranging the loan closing or other aspects of the loan process, including communicating with a consumer about those arrangements, provided that communication with the consumer only verifies loan terms already offered or negotiated;

(v) Providing a consumer with information unrelated to loan terms, such as the best

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days of the month for scheduling loan closings at the bank;

(vi) Making an underwriting decision about whether the consumer qualifies for a loan;

(vii) Explaining or describing the steps or process that a consumer would need to take in order to obtain a loan offer, including qualifications or criteria that would need to be met without providing guidance specific to that consumer's circumstances; or

(viii) Communicating on behalf of a mortgage loan originator that a written offer, including disclosures provided pursuant to the Truth in Lending Act, has been sent to a consumer without providing any details of that offer.

(c) *Offering or negotiating a loan for compensation or gain.* The following examples illustrate when an employee does or does not offer or negotiate terms of a loan "for compensation or gain."

(1) Offering or negotiating terms of a loan for compensation or gain includes engaging in any of the activities in paragraph (b)(1) of this Appendix in the course of carrying out employment duties, even if the employee does not receive a referral fee or commission or other special compensation for the loan.

(2) Offering or negotiating terms of a loan for compensation or gain does not include engaging in a seller-financed transaction for the employee's personal property that does not involve the national bank.

PART 35—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS

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§ 35.1 Purpose and scope of this part.

(a) *General.* This part implements section 711 of the Gramm-Leach-Bliley Act (12 U.S.C. 1831y). That section requires any nongovernmental entity or person, insured depository institution, or affiliate of an insured depository in-

stitution that enters into a covered agreement to—

(1) Make the covered agreement available to the public and the appropriate Federal banking agency; and

(2) File an annual report with the appropriate Federal banking agency concerning the covered agreement.

(b) *Scope of this part.* The provisions of this part apply to national banks, subsidiaries of national banks, and nongovernmental entities or persons that enter into covered agreements with a national bank or a subsidiary of a national bank.

(c) *Relation to Community Reinvestment Act.* This part does not affect in any way the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*), part 25 of this chapter (Community Reinvestment Act and Interstate Deposit Production Regulations) or the OCC's interpretations or administration of that Act or regulation.

(d) *Examples.* (1) The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

(2) Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issues that may arise in this part.

§ 35.2 Definition of covered agreement.

(a) *General definition of covered agreement.* A covered agreement is any contract, arrangement, or understanding that meets all of the following criteria—

(1) The agreement is in writing.

(2) The parties to the agreement include—

(i) One or more insured depository institutions or affiliates of an insured depository institution; and

(ii) One or more nongovernmental entities or persons (referred to hereafter as NGEPs).

(3) The agreement provides for the insured depository institution or any affiliate to—

(i) Provide to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other consideration (except loans) that have an aggregate value of more than \$10,000 in any calendar year; or