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As of January 1, 2014
Title 12, Part 900 to End
Revised as of January 1, 2013
Is Replaced by
Title 12, Parts 900 to 1025
and
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To cite the regulations in this volume use title, part and section number. Thus, 12 CFR 900.1 refers to title 12, part 900, section 1.
Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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

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

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, January 1, 2014), consult the “List of CFR Sections Affected (LSA),” which is issued monthly, and the “Cumulative List of Parts Affected,” which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cutoff date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request.
Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

PAST PROVISIONS OF THE CODE

Provisions of the Code that are no longer in force and effect as of the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on any given date in the past by using the appropriate List of CFR Sections Affected (LSA). For the convenience of the reader, a "List of CFR Sections Affected" is published at the end of each CFR volume. For changes to the Code prior to the LSA listings at the end of the volume, consult previous annual editions of the LSA. For changes to the Code prior to 2001, consult the List of CFR Sections Affected compilations, published for 1949-1963, 1964-1972, 1973-1985, and 1986-2000.

"[RESERVED]" TERMINOLOGY

The term "[Reserved]" is used as a place holder within the Code of Federal Regulations. An agency may add regulatory information at a "[Reserved]" location at any time. Occasionally "[Reserved]" is used editorially to indicate that a portion of the CFR was left vacant and not accidentally dropped due to a printing or computer error.

INCORPORATION BY REFERENCE

What is incorporation by reference? Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

What is a proper incorporation by reference? The Director of the Federal Register will approve an incorporation by reference only when the requirements of 1 CFR part 51 are met. Some of the elements on which approval is based are:

(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR part 51.

What if the material incorporated by reference cannot be found? If you have any problem locating or obtaining a copy of material listed as an approved incorporation by reference, please contact the agency that issued the regulation containing that incorporation. If, after contacting the agency, you find the material is not available, please notify the Director of the Federal Register, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001, or call 202-741-6010.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Authorities and Rules. A list of CFR titles, chapters, subchapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

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An index to the text of “Title 3—The President” is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the “Contents” entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

INQUIRIES

For a legal interpretation or explanation of any regulation in this volume, contact the issuing agency. The issuing agency’s name appears at the top of odd-numbered pages.

For inquiries concerning CFR reference assistance, call 202-741-6000 or write to the Director, Office of the Federal Register, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6901 or e-mail fedreg.info@nara.gov.

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CHARLES A. BARTH,
Director,
Office of the Federal Register.
January 1, 2014.
Title 12—BANKS AND BANKING is composed of ten volumes. The parts in these volumes are arranged in the following order: Parts 1–199, 200–219, 220–229, 230–299, 300–499, 500–599, 600–899, 900–1025, 1026–1099, and 1100–end. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 2014.

For this volume, Jonn V. Lilyea was Chief Editor. The Code of Federal Regulations publication program is under the direction of the Managing Editor, assisted by Ann Worley.
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(This book contains parts 900 to 1025)

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APPLYING TO ALL FINANCE BOARD REGULATIONS

Sec. 900.1 Basic terms relating to the Finance Board, the Bank System and related entities.

900.2 Terms relating to Bank operations, mission and supervision.

900.3 Terms relating to other entities and concepts used throughout 12 CFR chapter IX.


SOURCE: 67 FR 12842, Mar. 20, 2002, unless otherwise noted.

§ 900.1 Basic terms relating to the Finance Board, the Bank System and related entities.

As used throughout this chapter, the following basic terms relating to the Finance Board, the Bank System and related entities have the meanings set forth below, unless otherwise indicated in a particular subchapter, part, section, or paragraph:


Bank System means the Federal Home Loan Bank System, consisting of the 12 Banks and the Office of Finance.

Board of Directors, written in title case, means the Board of Directors of the Federal Housing Finance Board; the term board of directors, written in lower case, has the meaning indicated in context.

Chairperson means the Chairperson of the Board of Directors of the Finance Board.

Executive Secretary means an employee within the Office of Management of the Finance Board who is responsible for records management.


Financing Corporation or FICO means the Financing Corporation established and supervised by the Finance Board under section 21 of the Act (12 U.S.C. 1441) and part 995 of this chapter.

Housing associate means an entity that has been approved as a housing associate pursuant to part 926 of this chapter.

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§925.20 or 925.24(b) of this chapter.

Office of Finance or OF means the Office of Finance, a joint office of the Banks referred to in section 2B of the Act (12 U.S.C. 1422b) and established under part 985 of this chapter.

Resolution Funding Corporation or REFCORP means the Resolution Funding Corporation established by section 21B of the Act (12 U.S.C. 1441b) and addressed in parts 996 and 997 of this chapter.

Secretary to the Board means employees within the Office of General Counsel of the Finance Board who are responsible for issues concerning meetings of the Board of Directors.


§ 900.2 Terms relating to Bank operations, mission and supervision.

As used throughout this chapter, the following terms relating to Bank operations, mission and supervision have the meanings set forth below, unless otherwise indicated in a particular subchapter, part, section or paragraph:

Acquired member assets or AMA means those assets that may be acquired by a Bank under part 955 of this chapter.

Advance means a loan from a Bank that is:
(1) Provided pursuant to a written agreement;
(2) Supported by a note or other written evidence of the borrower's obligation; and
(3) Fully secured by collateral in accordance with the Act and part 950 of this chapter.

Affordable Housing Program or AHP means the Affordable Housing Program, the CICA program that each Bank is required to establish pursuant
§ 900.3 Terms relating to other entities and concepts used throughout 12 CFR chapter IX.

As used throughout this chapter, the following terms relating to other entities and concepts used throughout 12 CFR chapter IX have the meanings set forth below, unless otherwise indicated in a particular subchapter, part, section or paragraph:

- **Appropriate Federal banking agency** has the meaning set forth in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) and, for federally-insured credit unions, means the NCUA.

- **Appropriate state regulator** means any state officer, agency, supervisor or other entity that has regulatory authority over, or is empowered to institute enforcement action against, a particular institution.

- **Appropriate Federal banking agency** has the meaning set forth in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) and, for federally-insured credit unions, means the NCUA.

- **Community lending** means providing financing for economic development projects for targeted beneficiaries, and, for community financial institutions (as defined in §950.1 of this chapter), purchasing or funding small business loans, small farm loans or small agribusiness loans (as defined in §950.1 of this chapter).

- **Consolidated obligation** or **CO** means any bond, debenture, or note authorized under part 966 of this chapter to be issued jointly by the Banks pursuant to section 11(a) of the Act, as amended (12 U.S.C. 1431(a)), or any bond or note issued by the Finance Board on behalf of all Banks pursuant to section 11(c) of the Act (12 U.S.C. 1431(c)), on which the Banks are jointly and severally liable.

- **Data Reporting Manual** or **DRM** means a manual issued by the Finance Board and amended from time to time containing reporting requirements for the Banks.

- **Excess stock** means that amount of a Bank’s capital stock owned by a member or other institution in excess of that member’s or other institution’s minimum investment in capital stock required under the Bank’s capital plan, the Act, or the Finance Board’s regulations, as applicable.


- **FDIC** means the Federal Deposit Insurance Corporation.

- **FRB** means the Board of Governors of the Federal Reserve System.
Freddie Mac means the Federal Home Loan Mortgage Corporation established under authority of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451, et seq.).

Generally Accepted Accounting Principles or GAAP means accounting principles generally accepted in the United States.


GLB Act means the Gramm-Leach-Bliley Act (Pub. L. 106-102 (1999)).

HUD means the United States Department of Housing and Urban Development.

NCUA means the National Credit Union Administration.

NRSRO means a credit rating organization regarded as a Nationally Recognized Statistical Rating Organization by the Securities and Exchange Commission.

OCC means the Office of the Comptroller of the Currency.

OTS means the Office of Thrift Supervision.


SEC means the United States Securities and Exchange Commission.

State means a state of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, the District of Columbia, Guam, Puerto Rico, or the United States Virgin Islands.


§ 906.5 Monthly interest rate survey.

The Finance Board conducts its Monthly Survey of Rates and Terms on Conventional One-Family Non-farm Mortgage Loans in the following manner:

(a) Initial survey. Each month, the Finance Board samples savings institutions, commercial banks, and mortgage loan companies, and asks them to report the terms and conditions on all conventional mortgages (i.e., those not federally insured or guaranteed) used to purchase single-family homes that each such lender closes during the last five working days of the month. In most cases, the information is reported electronically in a format similar to Finance Board Form FHFB 10–91. The initial weights are based on lender type and lender size. The data also is weighted so that the pattern of weighted responses matches the actual pattern of mortgage originations by lender type and by region. The Finance Board tabulates the data and publishes standard data tables late in the following month.

(b) Adjustable-rate mortgage index. The weighted data, tabulated and published pursuant to paragraph (a) of this section, is used to compile the Finance Board’s adjustable-rate mortgage index, entitled the “National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders.” This index is the successor to the index maintained by the former Federal Home Loan Bank Board and is used for determining the movement of the interest rate on renegotiable-rate mortgages and on some other adjustable-rate mortgages.
Approval means a written statement issued to a Bank or the Office of Finance approving a transaction, activity, or item that requires Finance Board approval under the Act or a Finance Board rule, regulation, policy, or order.

Case-by-Case Determination means a Final Decision concerning any matter that requires a determination, finding, or approval by the Board of Directors under the Act or Finance Board regulations, for which no controlling statutory, regulatory, or other Finance Board standard previously has been established, and that, in the judgment of the Board of Directors, is best resolved on a case-by-case basis by a ruling applicable only to the Petitioner and any Intervenor, and not by adoption of a rule of general applicability.

Final Decision means a decision rendered by the Board of Directors on issues raised in a Petition or Request to Intervene that have been accepted for consideration.

Intervenor means a Bank, Member, or other entity that has been granted leave to intervene in the consideration of a Petition by the Board of Directors.

Managing Director means the Managing Director of the Finance Board.

No-Action Letter means a written statement issued to a Bank or the Office of Finance providing that Finance Board staff will not recommend supervisory or other action to the Board of Directors for failure to comply with a specific provision of the Act or a Finance Board rule, regulation, policy, or order, if such waiver is not inconsistent with the law and does not adversely affect any substantial existing rights, upon a determination that application of the provision would adversely affect achievement of the purposes of the Act, or upon a showing of good cause.

Party means a Petitioner, an Intervenor, or the Finance Board.

Petition means a Petition for Case-by-Case Determination or a Petition for Review of a Disputed Supervisory Determination.

Petitioner means the Office of Finance or a Bank that has filed a Petition.

Regulatory Interpretation means written guidance issued by Finance Board staff with respect to application of the Act or a Finance Board rule, regulation, policy, or order to a proposed transaction or activity.

Requester means an entity or person that has submitted an application for a Waiver or Approval or a request for a No-Action Letter or Regulatory Interpretation.

Supervisory determination means a Finance Board finding in a report of examination, order, or directive, or a Finance Board order or directive concerning safety and soundness or compliance matters that requires mandatory action by a Bank or the Office of Finance.

Waiver means a written statement issued to a Bank, a Member, or the Office of Finance that waives a provision, restriction, or requirement of a Finance Board rule, regulation, policy, or order, or a required submission of information, not otherwise required by law, in connection with a particular transaction or activity.


Subpart B—Waivers, Approvals, No-Action Letters, and Regulatory Interpretations

§ 907.2 Waivers.

(a) Authority. The Board of Directors reserves the right, in its discretion and in connection with a particular transaction or activity, to waive any provision, restriction, or requirement of this chapter, or any required submission of information, not otherwise required by law, if such waiver is not inconsistent with the law and does not adversely affect any substantial existing rights, upon a determination that application of the provision, restriction, or requirement would adversely affect achievement of the purposes of the Act, or upon a showing of good cause.

(b) Application. A Bank, a Member, or the Office of Finance may apply for a Waiver in accordance with §907.6.

[64 FR 30883, June 9, 1999, as amended at 65 FR 8257, Feb. 18, 2000]

§ 907.3 Approvals.

(a) Application. A Bank or the Office of Finance may apply for an Approval of any transaction, activity, or item that requires Finance Board approval under the Act or a Finance Board rule, regulation, policy, or order in accordance with §907.6, unless alternative application procedures are prescribed by
§ 907.4  No-Action Letters.

(a) Authority. Finance Board staff, in its discretion, may issue a No-Action Letter to a Bank or the Office of Finance stating that staff will not recommend supervisory or other action to the Board of Directors for failure to comply with a specific provision of the Act or a Finance Board rule, regulation, policy, or order, if a requester undertakes a proposed transaction or activity. The Board of Directors may modify or supersede a No-Action Letter.

(b) Requests. A Bank or the Office of Finance may request a No-Action Letter in accordance with § 907.6.

[64 FR 30883, June 9, 1999, as amended at 65 FR 8257, Feb. 18, 2000]

§ 907.5  Regulatory Interpretations.

(a) Authority. Finance Board staff, in its discretion, may issue a Regulatory Interpretation to a Bank, a Member, an official of a Bank or Member, the Office of Finance, or any other entity or person, providing guidance with respect to application of the Act or a Finance Board rule, regulation, policy, or order to a proposed transaction or activity. The Board of Directors may modify or supersede a Regulatory Interpretation.

(b) Requests. A Bank, a Member, an official of a Bank or Member, the Office of Finance, or any other entity or person may request a Regulatory Interpretation.

[64 FR 30883, June 9, 1999, as amended at 65 FR 8257, Feb. 18, 2000]

§ 907.6  Submission requirements.

Applications for a Waiver or Approval and requests for a No-Action Letter or Regulatory Interpretation shall comply with the following requirements:

(a) Filing. Each application or request shall be in writing. The original and three copies shall be filed with the Secretary to the Board, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

(b) Authorization—(1) Waivers and Approvals. Applications for Waivers and Approvals shall be signed by an official with authority to sign such applications on behalf of the requester. Applications for Waivers and Approvals from a Bank or the Office of Finance shall be accompanied by a resolution of the board of directors of the Bank or the Office of Finance concurring in the substance and authorizing the filing of the application.

(2) Requests for No-Action Letters. The president of the Bank making a Request for a No-Action Letter shall sign the Request. Requests for a No-Action Letter from the Office of Finance shall be signed by the chairperson of the board of directors of the Office of Finance.

(3) Requests for Regulatory Interpretations. The requester or an authorized representative of the requester shall sign a request for a Regulatory Interpretation.

(c) Information requirements. Each application or request shall contain:

(1) The name of the requester, and the name, title, address, telephone number, and electronic mail address, if any, of the officer filing the application or request on its behalf;

(2) The name, address, telephone number, and electronic mail address, if any, of a contact person from whom Finance Board staff may seek additional information if necessary;

(3) The section numbers of the particular provisions of the Act or Finance Board rules, regulations, policies, or orders to which the application or request relates;

(4) Identification of the determination or relief requested, including any alternative relief requested if the primary relief is denied, and a clear statement of why such relief is needed;

(5) A statement of the particular facts and circumstances giving rise to
the application or request and identifying all relevant legal and factual issues;

(6) References to all relevant authorities, including the Act, Finance Board rules, regulations, policies, and orders, judicial decisions, administrative decisions, relevant statutory interpretations, and policy statements;

(7) References to any Waivers, No-Action Letters, Approvals, or Regulatory Interpretations issued to the requester in the past in response to circumstances similar to those surrounding the request or application;

(8) For any application or request involving interpretation of the Act or Finance Board regulations, a reasoned opinion of counsel supporting the relief or interpretation sought and distinguishing any adverse authority;

(9) Any non-duplicative, relevant supporting documentation; and

(10) A certification by a person with knowledge of the facts that the representations made in the application or request are accurate and complete. The following form of certification is sufficient for this purpose: “I hereby certify that the statements contained in the submission are true and complete to the best of my knowledge. [Name and Title].”

(d) Waiver of requirements. The Managing Director may waive any requirement of this section for good cause. The Managing Director shall provide prompt notice of any such waiver to the Board of Directors. The Board of Directors may overrule any waiver granted by the Managing Director under this paragraph.

(e) Withdrawal. Once filed, an application or request may be withdrawn only upon written request. The Finance Board will not consider a request for withdrawal after transmission by the Secretary to the Board to the requester of a response in final form.

§ 907.7 Issuance of Waivers, Approvals, No-Action Letters, and Regulatory Interpretations.

(a) Board of Directors review. At least three business days prior to issuance to the requester, the Secretary to the Board shall transmit each Approval, No-Action Letter, or Regulatory Interpretation issued by the Chairperson or Finance Board staff to the Board of Directors for review.

(b) Issuance and effectiveness. A Waiver, Approval, No-Action Letter, or Regulatory Interpretation is not effective until the Secretary to the Board has transmitted it in final form to the requester.

(c) Abbreviated form. The Finance Board may respond to an application or request in an abbreviated form, consisting of a concise statement of the nature of the response, without restatement of the underlying facts.

Subpart C—Case-by-Case Determinations; Review of Disputed Supervisory Determinations

§ 907.8 Case-by-Case Determinations.

(a) Petition for Case-by-Case Determination. A Bank or the Office of Finance may seek a Case-by-Case Determination concerning any matter that may require a determination, finding or approval under the Act or Finance Board regulations by the Board of Directors, and for which no controlling statutory, regulatory or other Finance Board standard previously has been established. The Office of Finance or a Bank seeking a Case-by-Case Determination shall file a Petition for Case-by-Case Determination in accordance with §907.10.

(b) Intervention. A Member, a Bank, or the Office of Finance may file a Request to Intervene in the consideration of the Petition in accordance with §907.11 if it believes its rights may be affected.

§ 907.9 [Reserved]

§ 907.10 Petitions.

Each Petition brought pursuant to this subpart shall comply with the following requirements:

(a) Filing. The Petition shall be in writing. The original and three copies shall be filed with the Secretary to the Board, Federal Housing Finance Board,
§ 907.11

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1777 F Street NW., Washington, DC 20006.

(b) Information requirements. Each Petition shall contain:

(1) The name of the Petitioner, and the name, title, address, telephone number, and electronic mail address, if any, of the official filing the Petition on its behalf;

(2) The name, address, telephone number, and electronic mail address, if any, of a contact person from whom Finance Board staff may seek additional information if necessary;

(3) The section numbers of the particular provisions of the Act or Finance Board rules, regulations, policies, or orders to which the Petition relates, and, if the Petition is for Review of a Disputed Supervisory Determination, identification of the disputed Supervisory Determination;

(4) Identification of the determination or relief requested, including any alternative relief requested if the primary relief is denied, and a clear statement of why such relief is needed;

(5) A statement of the particular facts and circumstances giving rise to the Petition and identifying all relevant legal and factual issues;

(6) A summary of any steps taken to date by the Petitioner to address or resolve the dispute or issue; or, in cases involving safety and soundness or compliance issues, a summary of any actions taken by the Petitioner in the interim to implement corrective action;

(7) The Petitioner’s argument in support of its position, including citation to any supporting legal opinions, policy statements, or other relevant precedent and supporting documentation, if any;

(8) References to all relevant authorities, including the Act, Finance Board rules, regulations, policies, and orders, judicial decisions, administrative decisions, relevant statutory interpretations, and policy statements;

(9) A reasoned opinion of counsel supporting the relief or interpretation sought and distinguishing any adverse authority;

(10) Any non-duplicative, relevant supporting documentation; and

(11) A certification by a person with knowledge of the facts that the representations made in the Petition are accurate and complete. The following form of certification is sufficient for this purpose: “I hereby certify that the statements contained in the Petition are true and complete to the best of my knowledge. [Name and Title].”

(c) Authorization. Each Petition shall be accompanied by a resolution of the Petitioner’s board of directors concurring in the substance and authorizing the filing of the Petition.

(d) Request to Appear. The Petition may contain a request that staff or an agent of the Petitioner be permitted to make a personal appearance before the Board of Directors at any meeting convened to consider the Petition pursuant to these procedures. A statement of the reasons a written presentation would not suffice shall accompany a Request to Appear. The statement shall specifically:

(1) Identify any questions of fact that are in dispute;

(2) Summarize the evidence that would be presented at the meeting; and

(3) Identify any proposed witnesses, and state the substance of their anticipated testimony.

[64 FR 30883, June 9, 1999, as amended at 65 FR 8257, Feb. 18, 2000]

§ 907.11 Requests to Intervene.

(a) Filing—(1) Date. Any Request to Intervene in consideration of a Petition under this subpart shall be in writing and shall be filed with the Secretary to the Board within 45 days from the date the Petition is filed.

(2) Information requirements. A Request to Intervene shall include the information required by §907.10(b), where applicable, and a concise statement of the position and interest of the Intervenor and the grounds for the proposed intervention.

(3) Authorization. If the entity requesting intervention is a Bank or the Office of Finance, the Request to Intervene shall be accompanied by a resolution of the Petitioner’s board of directors concurring in the substance and authorizing the filing of the Request. If the entity requesting intervention is not a Bank or the Office of Finance, the Request to Intervene shall be signed by an official of the entity with authority to authorize the filing of the
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§ 907.12 Finance Board procedures.

(a) Notice of Receipt of Petition or Request to Intervene. No later than three business days following receipt of a Petition or Request to Intervene, the Secretary to the Board shall transmit a written Notice of Receipt to the Petitioner or Intervenor. In the case of a Petition for Case-by-Case Determination, the Finance Board shall promptly publish a notice of receipt of Petition, including a brief summary of the issue(s) involved, in the Federal Register.

(b) Transmittal of filings. The Secretary to the Board shall promptly transmit copies of any Petition, Request to Intervene, or other filing under this subpart to the Board of Directors and all other parties to the filing.

(c) Opportunity to cure defects. The Managing Director shall afford the Petitioner or Intervenor a reasonable opportunity to cure any failure to comply with the requirements of §907.10.

(d) Information request. The Managing Director may request additional information from the Petitioner or Intervenor. No later than 20 calendar days after the date of a request under this paragraph, the Petitioner shall provide to the Secretary to the Board all information requested.

(e) Supplemental information. Upon good cause shown, the Managing Director may grant permission to a Petitioner or Intervenor to submit supplemental written information pertaining to the Petition or Request to Intervene.

(f) Consolidation and severance—(1) Consolidation. The Managing Director may consolidate any or all matters at issue in two or more meetings on Petitions where:

(i) There exist common parties or common questions of fact or law;

(ii) Consolidation would expedite and simplify consideration of the issues; and

(iii) Consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings.

(2) Severance. The Managing Director may order any meetings and issues severed with respect to any or all parties or issues.

(g) Notice of Board Consideration. Within 30 calendar days of receipt of a Petition deemed by the Managing Director to be in compliance with the requirements of §907.10, or, if the Petition has been the subject of a request under paragraph (d) of this section, within 30 calendar days of receipt of a response from the Petitioner deemed by the Managing Director to complete the information necessary for the Board of Directors to consider the Petition, the Managing Director, after consultation with the Board of Directors, through the Secretary to the Board, shall provide all parties with a Notice...
§ 907.13  Consideration and Final Decisions.

(a) Consideration by Board of Directors. The Board of Directors may consider a Petition and render a decision:

(1) Solely on the basis of the written record; or

(2) At a regularly scheduled meeting or a meeting convened specifically for the purpose of considering the Petition. Consideration of a Petition at a meeting shall be governed by the procedures described in § 907.14.

(b) Final Decision. The Board of Directors shall render a Final Decision on the issue(s) presented in a Petition or Request to Intervene that has been accepted for consideration, based upon consideration of the entire record of the proceeding. The terms and conditions of the Final Decision shall bind the parties as to any issue(s) presented in the Petition or Request to Intervene and decided by the Board of Directors. The decision of the Board of Directors is a final decision for purposes of obtaining judicial review or as otherwise provided by law.

(c) Time periods. Subject to extension by such additional time as may reasonably be required, the Board of Directors shall render a Final Decision within 120 calendar days of the date the Petition is received in a form deemed by the Managing Director to be in compliance with the requirements of § 907.10 or, if the Petition has been the subject of a request under § 907.12(d), within 120 calendar days of receipt of a response from the Petitioner deemed by the Managing Director to complete the information necessary for the Board of Directors to consider the Petition.

(d) Transmittal of Final Decision. The Secretary to the Board shall transmit the Final Decision of the Board of Directors to all parties to the submission.

[64 FR 30883, June 9, 1999, as amended at 65 FR 8257, Feb. 18, 2000]

§ 907.14  Meetings of the Board of Directors to consider Petitions.

(a) Full and fair opportunity to be heard. Any meeting of the Board of Directors to consider a Petition shall be conducted in a manner that provides the parties a full and fair opportunity to be heard on the issues accepted for consideration. Any such meeting shall be conducted so as to permit an expeditious presentation of such issues.

(b) Participation in meeting. (1) The presence of a quorum of the Board if Directors is required to conduct a meeting under this section. Members of the Board of Directors are deemed present if they appear in person or by telephone.

(2) An act of the Board of Directors requires the vote of a majority of the members of the Board of Directors voting at a meeting at which a quorum of the Board of Directors is present.

(3) A Final Decision may be reached by a vote of the majority of the members of the Board of Directors eligible to vote and voting shall be an act of the Board of Directors.

(c) Chairperson—(1) Presiding officer. The Chairperson, or a member of the Board of Directors designated by the Chairperson, shall preside over a meeting of the Board of Directors convened under this section.

(2) Authority of the Chairperson. The Chairperson shall have all powers and discretion necessary to conduct the
meeting in a fair and impartial manner, to avoid unnecessary delay, to regulate the course of the meeting and the conduct of the parties and their counsel, and to discharge the duties of a presiding officer.

(3) Board of Directors may overrule the Chairperson. Any member of the Board of Directors may, by motion, challenge any action, finding, or determination made by the Chairperson in the course of the meeting, and the Board of Directors, by majority vote, may overrule any action, finding or determination of the Chairperson.

(d) Meeting may be closed. A party may request that the meeting, or portion thereof, be closed to public observation. A request to close a meeting shall be processed in accordance with the requirements of the Government in the Sunshine Act (5 U.S.C. 552b) and the Finance Board's implementing regulation (12 CFR part 912).

(e) Location of meeting. Unless otherwise specified, all meetings of the Board of Directors will be held in the Board Room of the Finance Board at 1777 F Street, NW., Washington, DC, at the time specified in the notice of meeting issued pursuant to 12 CFR 912.6.

(f) Presentation of issues—(1) Stipulations. Subject to the Chairperson's discretion, the parties may agree to stipulations of law or fact, including stipulations as to the admissibility of exhibits, and present such stipulations at the meeting. Stipulations shall be made a part of the record of the proceeding.

(2) Order of presentation. The Chairperson shall determine the order of presentation of the issues, testimony of any witnesses, presentation of any other information or document, and all other procedural matters at the meeting.

(g) Record. The meeting shall be recorded and transcribed. Transcripts of the proceeding shall be governed by 12 CFR 912.5(c). The Petition and all supporting documentation shall be made a part of the record, unless otherwise determined by the Chairperson. The Chairperson may order the record corrected, upon motion to correct, upon stipulation of the parties, or at the Chairperson's discretion.

(h) Admissibility of documents and testimony. (1) The Chairperson has discretion to admit and make a part of the record documents and testimony that are relevant, material, and reliable, and may elect not to admit documents and testimony that are privileged, unduly repetitious, or of little probative value.

(2) The Board of Directors shall give such weight to documents and testimony admitted and made part of the record as it may deem reasonable and appropriate.

(3) The Chairperson may admit and make a part of the record, in lieu of oral testimony, statements of fact or opinion prepared by a witness. The admissibility of the information contained in the statement shall be subject to the same rules as if the testimony were provided orally.

(i) Official notice. All matters officially noticed by the Chairperson shall appear on the record.

(j) Exhibits and documents—(1) Copies. A legible duplicate copy of a document shall be admissible to the same extent as the original.

(2) Exhibits. Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines, or other graphic materials to summarize, illustrate, or simplify the presentation of testimony. Subject to the Chairperson’s discretion, such materials may be used with or without being admitted into the record.

(3) Identification. All exhibits offered into the record shall be numbered sequentially and marked with a designation identifying the sponsor. The original of each exhibit offered into the record or marked for identification shall be retained in the record of the meeting, unless the Chairperson permits substitution of a copy for the original.

(4) Exchange of Exhibits. One copy of each exhibit offered into the record shall be furnished to each of the parties and to each member of the Board of Directors. If the Chairperson does not fix a time for the exchange of exhibits, the parties shall exchange copies of proposed exhibits at the earliest practicable time before the commencement of the hearing.
of the meeting to consider the Petition. Parties are not required to exchange exhibits submitted as rebuttal information before the meeting commences if submission of the exhibits is not reasonably certain at that time.

(5) **Authenticity.** The authenticity of all documents submitted or exchanged as proposed exhibits prior to the meeting shall be admitted unless written objection is filed before the commencement of the meeting, or unless good cause is shown for failing to file such a written objection.

(k) **Sanction for obstruction of the proceedings.** The Board of Directors may impose sanctions it deems appropriate for violation of any applicable provision of this subpart or any applicable law, rule, regulation, or order, or any dilatory, frivolous, or obstructionist conduct by any witness or counsel during the course of a meeting.

[64 FR 30883, June 9, 1999, as amended at 65 FR 8257, Feb. 18, 2000]

§ 907.15 General provisions.

(a) **Waiver of requirements.** The Managing Director may waive any filing requirement or deadline in this subpart for good cause shown. The Managing Director shall provide prompt notice of any such waiver to the Board of Directors.

(b) **Actions of the Managing Director subject to the authority of the Board of Directors.** The Board of Directors may overrule any action by the Managing Director under this subpart.

(c) **Withdrawal.** At any time prior to the issuance by the Managing Director of a Notice of Board Consideration pursuant to §907.12(g), an authorized representative of a Petitioner may withdraw the Petition, or an authorized representative of an Intervenor may withdraw the Request to Intervene, by filing a written request to withdraw with the Secretary to the Board. Only the Board of Directors may grant a request to withdraw after issuance by the Managing Director of a Notice of Board Consideration pursuant to §907.12(g). Unless otherwise agreed, withdrawal of a Petition or Request to Intervene shall not foreclose a Petitioner from resubmitting a Petition, or an Intervenor from submitting a Request to Intervene, on the same or similar issues.

(d) **Settlement agreement.** (1) At any time during the course of the proceedings pursuant to this subpart, the Finance Board shall give Petitioners and Intervenors the opportunity to submit offers of settlement when the nature of the proceedings and the public interest permit. With the approval of the Managing Director, an authorized representative of a Petitioner or Intervenor may enter into a proposed settlement agreement with the Finance Board disposing of some or all of the issues presented in a Petition or Request to Intervene.

(2) No proposed settlement agreement shall be final until approved by the Board of Directors. The Board of Directors shall consider any proposed settlement agreement within 30 calendar days of receiving a notice of the proposed settlement agreement. If the Board of Directors disapproves or fails to approve a proposed settlement agreement within 30 days, the proposed settlement agreement shall be null and void and the previously filed Petition or Request to Intervene shall be considered in accordance with this subpart.

(3) A settlement agreement approved by the Board of Directors shall be deemed final and binding on all parties to the agreement. At the time a proposed settlement agreement becomes final, a Petition or Request to Intervene previously filed by a party to the agreement shall be deemed withdrawn as to all issues resolved in the agreement, and the parties to the agreement shall be estopped from raising objection to those issues or to the terms of the settlement agreement.

(e) **No rights created; Finance Board not prohibited.** Nothing in this subpart shall be deemed to create any substantive or discovery right in any party. Nothing in this subpart shall limit in any manner the right of the Finance Board to conduct any examination or inspection of any Bank or the Office of Finance, or to take any action with respect to a Bank or the Office of Finance, or its directors, officers, employees or agents, otherwise authorized by law.

(f) **Exhaustion requirement.** When seeking a Case-by-Case Determination of any matter or review by the Board of
Directors of any Supervisory Determination, a Bank or the Office of Finance shall follow the procedures in this subpart as a prerequisite to seeking judicial review. Failure to do so shall be deemed to be a failure to exhaust all available administrative remedies.

(g) Improper conduct prohibited. No party shall, by act or omission, unduly burden or frustrate the efforts of the Board of Directors to carry out its duties under the laws and regulations of the Finance Board. A Petitioner or Intervenor shall confine its communications with the Board of Directors, or any individual member thereof, concerning issues raised in a pending Petition, to written communications for inclusion in the record of the proceeding, filed with the Secretary to the Board.

(h) Costs. Petitioners are encouraged to contain costs associated with the preparation and filing of Petitions and related personal appearances, if any, at any meeting held by the Board of Directors under this subpart. The Petitioner shall be solely responsible for all costs associated with any such Petitions and appearances.

(i) Procedures are exclusive. All Case-by-Case Determinations by the Board of Directors and all Reviews of Disputed Supervisory Determinations shall be considered exclusively pursuant to the procedures described in this subpart.

§ 907.16 Rules of practice.
In connection with any matter initiated or pending pursuant to this part, petitioners, requestors or intervenors, or their representatives, shall be subject to the provisions of subpart F of 12 CFR part 908. No other provision of part 908 shall apply under this part.
SUBCHAPTER C—GOVERNANCE AND MANAGEMENT OF THE FEDERAL HOME LOAN BANKS

PART 914—DATA AVAILABILITY AND REPORTING

§ 914.1 Regulatory Report defined.
(a) Definition. Regulatory Report means any report of raw or summary data needed to evaluate the safe and sound condition and operations of a Bank or to determine compliance with any:
   (1) Provision in the Act or other law, order, rule, or regulation;
   (2) Condition imposed in writing by the Finance Board in connection with the granting of any application or other request by a Bank; or
   (3) Written agreement entered into between the Finance Board and a Bank.

(b) Examples. Regulatory Report includes:
   (1) Call reports and reports of instrument-level risk modeling data;
   (2) Reports related to a Bank’s housing mission achievement, such as reports related to AMA, AHP, CIP, and other CICA programs; and
   (3) Reports submitted in response to requests to one or more Banks for information on a nonrecurring basis.

§ 914.2 Filing Regulatory Reports.
Each Bank shall file Regulatory Reports with the Finance Board in accordance with the forms, instructions, and schedules issued by the Finance Board from time to time. If no regularly scheduled reporting dates are established, Regulatory Reports shall be filed as requested by the Finance Board.

§ 914.3 [Reserved]

PART 917—POWERS AND RESPONSIBILITIES OF BANK BOARDS OF DIRECTORS AND SENIOR MANAGEMENT

§ 917.1 Definitions.
As used in this part:
Business risk means the risk of an adverse impact on a Bank’s profitability resulting from external factors as may occur in both the short and long run.
Community financial institution has the meaning set forth in § 925.1 of this chapter.
Contingency liquidity means the sources of cash a Bank may use to meet its operational requirements when its access to the capital markets is impeded, and includes:
   (1) Marketable assets with a maturity of one year or less;
   (2) Self-liquidating assets with a maturity of seven days or less;
   (3) Assets that are generally accepted as collateral in the repurchase agreement market; and
   (4) Irrevocable lines of credit from financial institutions rated not lower than the second highest credit rating category by an NRSRO.
Credit risk means the risk that the market value, or estimated fair value if market value is not available, of an obligation will decline as a result of deterioration in creditworthiness.
Immediate family member means a parent, sibling, spouse, child, dependent, or any relative sharing the same residence.

Internal auditor means the individual responsible for the internal audit function at the Bank.

Liquidity risk means the risk that a Bank will be unable to meet its obligations as they come due or meet the credit needs of its members and associates in a timely and cost-efficient manner.

Market risk means the risk that the market value, or estimated fair value if market value is not available, of a Bank’s portfolio will decline as a result of changes in interest rates, foreign exchange rates, equity and commodity prices.

Operational liquidity means sources of cash from both a Bank’s ongoing access to the capital markets and its holding of liquid assets to meet operational requirements in a Bank’s normal course of business.

Operations risk means the risk of an unexpected loss to a Bank resulting from human error, fraud, unenforceability of legal contracts, or deficiencies in internal controls or information systems.

Reportable conditions means matters that represent significant deficiencies in the design or operation of the internal control system that could adversely affect a Bank’s ability to record, process, summarize and report financial data consistent with the assertions of management.

§ 917.3 Risk management.

(a) Risk management policy—(1) Adoption. Beginning August 29, 2000, each Bank’s board of directors shall have in effect at all times a risk management policy that addresses the Bank’s exposure to credit risk, market risk, liquidity risk, business risk and operations risk and that conforms to the requirements of paragraph (b) of this section and to all applicable Finance Board regulations and policies.

(2) Review and compliance. Each Bank’s board of directors shall:

(i) Review the Bank’s risk management policy at least annually;

(ii) Amend the risk management policy as appropriate;

(iii) Re-adopt the Bank’s risk management policy, including interim
amendments, not less often than every three years; and

(iv) Ensure that policies and procedures are in place that are reasonably designed to achieve continuing Bank compliance with the risk management policy.

(b) Risk management policy requirements. In addition to meeting any other requirements set forth in this chapter, each Bank’s risk management policy shall:

(1) After the Finance Board has approved a Bank’s capital plan, but before the plan takes effect, the Bank shall amend its risk management policy to describe the specific steps the Bank will take to comply with its capital plan and to include specific target ratios of total capital and permanent capital to total assets at which the Bank intends to operate. The target operating capital-to-assets ratios to be specified in the risk management policy shall be in excess of the minimum leverage and risk-based capital ratios and may be expressed as a range of ratios or as a single ratio;

(2) Set forth the Bank’s tolerance levels for the market and credit risk components; and

(3) Set forth standards for the Bank’s management of each risk component, including but not limited to:

(i) Regarding credit risk arising from all secured and unsecured transactions, standards and criteria for, and timing of, periodic assessment of the creditworthiness of issuers, obligors, or other counterparties including identifying the criteria for selecting dealers, brokers and other securities firms with which the Bank may execute transactions;

(ii) Regarding market risk, standards for the methods and models used to measure and monitor such risk;

(iii) Regarding day-to-day operational liquidity needs and contingency liquidity needs:

(A) An enumeration of specific types of investments to be held for such liquidity purposes; and

(B) The methodology to be used for determining the Bank’s operational and contingency liquidity needs;

(iv) Regarding operations risk, standards for an effective internal control system, including periodic testing and reporting; and

(v) Regarding business risk, strategies for mitigating such risk, including contingency plans where appropriate.

(c) Risk assessment. The senior management of each Bank shall perform, at least annually, a risk assessment that is reasonably designed to identify and evaluate all material risks, including both quantitative and qualitative aspects, that could adversely affect the achievement of the Bank’s performance objectives and compliance requirements. The risk assessment shall be in written form and shall be reviewed by the Bank’s board of directors promptly upon its completion.

§ 917.4 Bank Member Products Policy.

(a) Adoption and review of member products policy—(1) Adoption. Beginning November 15, 2000, each Bank’s board of directors shall have in effect at all times a policy that addresses the Bank’s management of products offered by the Bank to members and housing associates, including but not limited to advances, standby letters of credit and acquired member assets, consistent with the requirements of the Act, paragraph (b) of this section, and all applicable Finance Board regulations and policies.

(2) Review and compliance. Each Bank’s board of directors shall:

(i) Review the Bank’s member products policy annually;

(ii) Amend the member products policy as appropriate; and

(iii) Re-adopt the member products policy, including interim amendments, not less often than every three years.

(b) Member products policy requirements. In addition to meeting any other requirements set forth in this chapter, each Bank’s member products policy shall:

(1) Address credit underwriting criteria to be applied in evaluating applications for advances, standby letters of credit, and renewals;

(2) Address appropriate levels of collateralization, valuation of collateral and discounts applied to collateral
§ 917.5 Strategic business plan.

(a) Adoption of strategic business plan. Beginning on July 30, 2000, each Bank’s board of directors shall have in effect at all times a strategic business plan that describes how the business activities of the Bank will achieve the mission of the Bank consistent with part 940 of this chapter. Specifically, each Bank’s strategic business plan shall:

(1) Enumerate operating goals and objectives for each major business activity and for all new business activities, which must include plans for maximizing activities that enhance the carrying out of the mission of the Bank, consistent with part 940 of this chapter;

(2) Discuss how the Bank will:

(i) Address credit needs and market opportunities identified through ongoing market research and consultations with members, associates and public and private organizations; and

(ii) Notify members and associates of relevant programs and initiatives;

(3) Establish quantitative performance goals for Bank products related to multi-family housing, small business, small farm and small agri-business lending;

(4) Describe any proposed new business activities or enhancements of existing activities; and

(5) Be supported by appropriate and timely research and analysis of relevant market developments and member and associate demand for Bank products and services.

(b) Review and monitoring. Each Bank’s board of directors shall:

(1) Review the Bank’s strategic business plan at least annually;

(2) Amend the strategic business plan as appropriate;

(3) Re-adopt the Bank’s strategic business plan, including interim amendments, not less often than every three years; and

(4) Establish management reporting requirements and monitor implementation of the strategic business plan and the operating goals and objectives contained therein.

(c) Report to Finance Board. Each Bank shall submit to the Finance Board annually a report analyzing and describing the Bank’s performance in achieving the goals described in paragraph (a)(3) of this section.

§ 917.6 Internal control system.

(a) Establishment and maintenance. (1) Each Bank shall establish and maintain an effective internal control system that addresses:

(i) The efficiency and effectiveness of Bank activities;

(ii) The safeguarding of Bank assets;

(iii) The reliability, completeness and timely reporting of financial and management information and transparency of such information to the Bank’s board of directors and to the Finance Board; and

(iv) Compliance with applicable laws, regulations, policies, supervisory determinations and directives of the Bank’s board of directors and senior management.

(2) Ongoing internal control activities necessary to maintain the internal
control system required under paragraph (a)(1) of this section shall include, but are not limited to:
(i) Top level reviews by the Bank’s board of directors and senior management, including review of financial presentations and performance reports;
(ii) Activity controls, including review of standard performance and exception reports by department-level management on an appropriate periodic basis;
(iii) Physical and procedural controls to safeguard, and prevent the unauthorized use of, assets;
(iv) Monitoring for compliance with the risk tolerance limits set forth in the Bank’s risk management policy;
(v) Any required approvals and authorizations for specific activities; and
(vi) Any required verifications and reconciliations for specific activities.

(b) Internal control responsibilities of Banks’ boards of directors. Each Bank’s board of directors shall ensure that the internal control system required under paragraph (a)(1) of this section is established and maintained, and shall oversee senior management’s implementation of such a system on an ongoing basis, by:
(1) Conducting periodic discussions with senior management regarding the effectiveness of the internal control system;
(2) Ensuring that an internal audit of the internal control system is performed annually and that such annual audit is reasonably designed to be effective and comprehensive;
(3) Requiring that internal control deficiencies be reported to the Bank’s board of directors in a timely manner and that such deficiencies are addressed promptly;
(4) Conducting a timely review of evaluations of the effectiveness of the internal control system made by internal auditors, external auditors and Finance Board examiners;
(5) Directing senior management to address promptly and effectively recommendations and concerns expressed by internal auditors, external auditors and Finance Board examiners regarding weaknesses in the internal control system;
(6) Reporting any internal control deficiencies found, and the corrective action taken, to the Finance Board in a timely manner;
(7) Establishing, documenting and communicating an organizational structure that clearly shows lines of authority within the Bank, provides for effective communication throughout the Bank, and ensures that there are no gaps in the lines of authority;
(8) Reviewing all delegations of authority to specific personnel or committees and requiring that such delegations state the extent of the authority and responsibilities delegated; and
(9) Establishing reporting requirements, including specifying the nature and frequency of reports it receives.

(c) Internal control responsibilities of Banks’ senior management. Each Bank’s senior management shall be responsible for carrying out the directives of the Bank’s board of directors, including the establishment, implementation and maintenance of the internal control system required under paragraph (a)(1) of this section, by:
(1) Establishing, implementing and effectively communicating to Bank personnel policies and procedures that are adequate to ensure that internal control activities necessary to maintain an effective internal control system, including the activities enumerated in paragraph (a)(2) of this section, are an integral part of the daily functions of all Bank personnel;
(2) Ensuring that all Bank personnel fully understand and comply with all policies, procedures and legal requirements applicable to their positions and responsibilities;
(3) Ensuring that there is appropriate segregation of duties among Bank personnel and that personnel are not assigned conflicting responsibilities;
(4) Establishing effective paths of communication upward, downward and across the organization in order to ensure that Bank personnel receive necessary and appropriate information, including:
(i) Information relating to the operational policies and procedures of the Bank;
(ii) Information relating to the actual operational performance of the Bank;
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§ 917.7 Audit committees.

(a) Establishment. The board of directors of each Bank shall establish an audit committee, consistent with the requirements set forth in this section. (b) Composition. (1) The audit committee shall comprise five or more persons drawn from the Bank’s board of directors, each of whom shall meet the criteria of independence set forth in paragraph (c) of this section. (2) The audit committee shall include a balance of representatives of: (i) Community financial institutions and other members; and (ii) Appointive and elective directors of the Bank. (3) The terms of audit committee members shall be appropriately staggered so as to provide for continuity of service. (4) At least one member of the audit committee shall have extensive accounting or related financial management experience. (c) Independence. Any member of the Bank’s board of directors shall be considered to be sufficiently independent to serve as a member of the audit committee if that director does not have a disqualifying relationship with the Bank or its management that would interfere with the exercise of that director’s independent judgment. Such disqualifying relationships include, but are not limited to: (1) Being employed by the Bank in the current year or any of the past five years; (2) Accepting any compensation from the Bank other than compensation for service as a board director; (3) Serving or having served in any of the past five years as a consultant, advisor, promoter, underwriter, or legal counsel of or to the Bank; or (4) Being an immediate family member of an individual who is, or has been in any of the past five years, employed by the Bank as an executive officer.

(d) Charter. (1) The audit committee of each Bank shall adopt, and the Bank’s board of directors shall approve, a formal written charter that specifies the scope of the audit committee’s powers and responsibilities, as well as the audit committee’s structure, processes and membership requirements. (2) The audit committee and the board of directors of each Bank shall: (i) Review, assess the adequacy of and, where appropriate, amend the Bank’s audit committee charter on an annual basis; (ii) Amend the audit committee charter as appropriate; and (iii) Re-adopt and re-approve, respectively, the Bank’s audit committee charter not less often than every three years. (3) Each Bank’s audit committee charter shall: (i) Provide that the audit committee has the responsibility to select, evaluate and, where appropriate, replace the internal auditor and that the internal auditor may be removed only with the approval of the audit committee; (ii) Provide that the internal auditor shall report directly to the audit committee on substantive matters and that the internal auditor is ultimately accountable to the audit committee and board of directors; and (iii) Provide that both the internal auditor and the external auditor shall have unrestricted access to the audit committee without the need for any
(e) **Duties.** Each Bank's audit committee shall have the duty to:

1. Direct senior management to maintain the reliability and integrity of the accounting policies and financial reporting and disclosure practices of the Bank;
2. Review the basis for the Bank's financial statements and the external auditor's opinion rendered with respect to such financial statements (including the nature and extent of any significant changes in accounting principles or the application therein) and ensure that policies are in place that are reasonably designed to achieve disclosure and transparency regarding the Bank's true financial performance and governance practices;
3. Oversee the internal audit function by:
   i. Reviewing the scope of audit services required, significant accounting policies, significant risks and exposures, audit activities and audit findings;
   ii. Assessing the performance and determining the compensation of the internal auditor; and
   iii. Reviewing and approving the internal auditor's work plan;
4. Oversee the external audit function by:
   i. Approving the external auditor's annual engagement letter;
   ii. Reviewing the performance of the external auditor; and
   iii. Making recommendations to the Bank's board of directors regarding the appointment, renewal, or termination of the external auditor;
5. Provide an independent, direct channel of communication between the Bank's board of directors and the internal and external auditors;
6. Conduct or authorize investigations into any matters within the audit committee's scope of responsibilities;
7. Ensure that senior management has established and is maintaining an adequate internal control system within the Bank by:
   i. Reviewing the Bank's internal control system and the resolution of identified material weaknesses and reportable conditions in the internal control system, including the prevention or detection of management override or compromise of the internal control system; and
   ii. Reviewing the programs and policies of the Bank designed to ensure compliance with applicable laws, regulations and policies and monitoring the results of these compliance efforts;
8. Review the policies and procedures established by senior management to assess and monitor implementation of the Bank's strategic business plan and the operating goals and objectives contained therein; and
9. Report periodically its findings to the Bank's board of directors.

(f) **Meetings.** The audit committee shall prepare written minutes of each audit committee meeting.

[65 FR 25274, May 1, 2000, as amended at 67 FR 12846, Mar. 20, 2002]

§ 917.8 **Budget preparation.**

(a) **Adoption of budgets.** Each Bank's board of directors shall be responsible for the adoption of an annual operating expense budget and a capital expenditures budget for the Bank, and any subsequent amendments thereto, consistent with the requirements of the Act, this section, other regulations and policies of the Finance Board, and with the Bank's responsibility to protect both its members and the public interest by keeping its costs to an efficient and effective minimum.

(b) **No delegation of budget authority.** A Bank's board of directors may not delegate the authority to approve the Bank's annual budgets, or any subsequent amendments thereto, to Bank officers or other Bank employees.

(c) **Interest rate scenario.** A Bank's annual budgets shall be prepared based upon an interest rate scenario as determined by the Bank.

(d) **Board approval for deviations.** A Bank may not exceed its total annual operating expense budget or its total annual capital expenditures budget without prior approval by the Bank's board of directors of an amendment to such budget.

§ 917.9 **Dividends.**

(a) A Bank's board of directors may declare and pay a dividend only from previously retained earnings or current net earnings and only in accordance...
with any other applicable limitations on dividends set forth in the Act or this chapter. Dividends on such capital stock shall be computed without preference.

(b) A Bank’s board of directors may not declare or pay a dividend based on projected or anticipated earnings and may not declare or pay a dividend if the par value of the Bank’s stock is impaired or is projected to become impaired after paying such dividend.

(c) The requirement in paragraph (a) of this section that dividends be computed without preference shall cease to apply to any Bank that has established any dividend preferences for 1 or more classes or subclasses of its capital stock as part of its approved capital plan, as of the date on which the capital plan takes effect.

[71 FR 78051, Dec. 28, 2006]

§ 917.10 Bank bylaws.

A Bank’s board of directors shall have in effect at all times bylaws governing the manner in which the Bank administers its affairs and such bylaws shall be consistent with applicable laws and regulations as administered by the Finance Board.
§ 930.1 Definitions.
As used in this subchapter:

Affiliated counterparty means a counterparty of a Bank that controls, is controlled by or is under common control with another counterparty of the Bank. For the purposes of this definition only, direct or indirect ownership (including beneficial ownership) of more than 50 percent of the voting securities or voting interests of an entity constitutes control.

Certain drawdown means a legally binding agreement that commits the Bank to make an advance or acquire a loan, at or by a specified future date.

Charges against the capital of the Bank means an other than temporary decline in the Bank’s total equity that causes the value of total equity to fall below the Bank’s aggregate capital stock amount.

Class A stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified by §931.1(a) of this subchapter.

Class B stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified by §931.1(b) of this subchapter.

Contingency liquidity means the sources of cash a Bank may use to meet its operational requirements when its access to the capital markets is impeded, and includes:

(1) Marketable assets with a maturity of one year or less;
(2) Self-liquigating assets with a maturity of seven days or less;
(3) Assets that are generally accepted as collateral in the repurchase agreement market; and
(4) Irrevocable lines of credit from financial institutions rated not lower than the second highest credit rating category by an NRSRO.

Credit derivative contract means a derivative contract that transfers credit risk.

Credit risk means the risk that the market value, or estimated fair value if market value is not available, of an obligation will decline as a result of deterioration in creditworthiness.

Derivative contract means generally a financial contract the value of which is derived from the values of one or more underlying assets, reference rates, or indices of asset values, or credit-related events. Derivative contracts include interest rate, foreign exchange rate, equity, precious metals, commodity, and credit contracts, and any other instruments that pose similar risks.

Exchange rate contracts include cross-currency interest-rate swaps, forward foreign exchange rate contracts, currency options purchased, and any similar instruments that give rise to similar risks.

General allowance for losses means an allowance established by a Bank in accordance with GAAP for losses, but which does not include any amounts held against specific assets of the Bank.

Government Sponsored Enterprise, or GSE, means a United States Government-sponsored agency or instrumentality originally established or chartered to serve public purposes specified by the United States Congress, but whose obligations are not obligations of the United States and are not guaranteed by the United States.

Interest rate contracts include, single currency interest-rate swaps, basis swaps, forward rate agreements, interest-rate options, and any similar instrument that gives rise to similar risks, including when-issued securities.

Investment grade means:

(1) A credit quality rating in one of the four highest credit rating categories by an NRSRO and not below the fourth highest rating category by any NRSRO; or
(2) If there is no credit quality rating by an NRSRO, a determination by a
Bank that the issuer, asset or instrument is the credit equivalent of investment grade using credit rating standards available from an NRSRO or other similar standards.

Market risk means the risk that the market value, or estimated fair value if market value is not available, of a Bank’s portfolio will decline as a result of changes in interest rates, foreign exchange rates, equity and commodity prices.

Marketable means, with respect to an asset, that the asset can be sold with reasonable promptness at a price that corresponds reasonably to its fair value.

Market value at risk is the loss in the market value of a Bank’s portfolio measured from a base line case, where the loss is estimated in accordance with §932.5 of this chapter.

Minimum investment means the minimum amount of Class A and/or Class B stock that a member is required to own in order to be a member of a Bank and in order to obtain advances and to engage in other business activities with the Bank in accordance with §931.3 of this chapter.

Operations risk means the risk of an unexpected loss to a Bank resulting from human error, fraud, unenforceability of legal contracts, or deficiencies in internal controls or information systems.

Permanent capital means the retained earnings of a Bank, determined in accordance with GAAP, plus the amount paid-in for the Bank’s Class B stock.

Redeem or Redemption means the acquisition by a Bank of its outstanding Class A or Class B stock at par value following the expiration of the six-month or five-year statutory redemption period, respectively, for the stock.

Regulatory risk-based capital requirement means the amount of permanent capital that a Bank is required to maintain in accordance with §932.3 of this chapter.

Regulatory total capital requirement means the amount of total capital that a Bank is required to maintain in accordance with §932.2 of this chapter.

Repurchase means the acquisition by a Bank of excess stock prior to the expiration of the six-month or five-year statutory redemption period for the stock.

Repurchase agreement means an agreement between a seller and a buyer whereby the seller agrees to repurchase a security or similar securities at an agreed upon price, with or without a stated time for repurchase.

Sales of federal funds subject to a continuing contract means an overnight federal funds loan that is automatically renewed each day unless terminated by either the lender or the borrower.

Total assets means the total assets of a Bank, as determined in accordance with GAAP.

Total capital of a Bank means the sum of permanent capital, the amounts paid-in for Class A stock, the amount of any general allowance for losses, and the amount of other instruments identified in a Bank’s capital plan that the Finance Board has determined to be available to absorb losses incurred by such Bank.

Walkaway clause means a provision in a bilateral netting contract that permits a nondefaulting counterparty to make a lower payment than it would make otherwise under the bilateral netting contract, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the bilateral netting contract.


PART 931—FEDERAL HOME LOAN BANK CAPITAL STOCK

Sec.
931.1 Classes of capital stock.
931.2 Issuance of capital stock.
931.3 Minimum investment in capital stock.
931.4 Dividends.
931.5 Liquidation, merger, or consolidation.
931.6 Transfer of capital stock.
931.7 Redemption and repurchase of capital stock.
931.8 Other restrictions on the repurchase or redemption of Bank stock.
931.9 Transition provision.


SOURCE: 66 FR 8310, Jan. 30, 2001, unless otherwise noted.
§ 931.1 Classes of capital stock.

The authorized capital stock of a Bank shall consist of the following instruments:

(a) Class A stock, which shall:

(1) Have a par value as determined by the board of directors of the Bank and stated in the Bank’s capital plan;

(2) Be issued, redeemed, and repurchased only at its stated par value; and

(3) Be redeemable in cash only on six-months written notice to the Bank.

(b) Class B stock, which shall:

(1) Have a par value as determined by the board of directors of the Bank and stated in the Bank’s capital plan;

(2) Be issued, redeemed, and repurchased only at its stated par value;

(3) Be redeemable in cash only on five-years written notice to the Bank; and

(4) Confer an ownership interest in the retained earnings, surplus, undivided profits, and equity reserves of the Bank; and

(c) Any one or more subclasses of Class A or Class B stock, each of which may have different rights, terms, conditions, or preferences as may be authorized in the Bank’s capital plan, provided, however, that each subclass of stock shall have all of the characteristics of its respective class, as specified in paragraph (a) or (b) of this section.

§ 931.2 Issuance of capital stock.

(a) In general. A Bank may issue either one or both classes of its capital stock (including subclasses), as authorized by §931.1, and shall not issue any other class of capital stock. A Bank shall issue its stock only to its members and only in book-entry form, and the Bank shall act as its own transfer agent. All capital stock shall be issued in accordance with the Bank’s capital plan.

(b) Initial issuance. In connection with the initial issuance of its Class A and/or Class B stock (or any subclass of either), a Bank may issue such stock in exchange for its existing stock, through a conversion of its existing stock, or through any other fair and equitable transaction or method of distribution. As part of its initial stock issuance transaction, a Bank may distribute any portion of its then-existing unrestricted retained earnings as shares of Class B stock.

§ 931.3 Minimum investment in capital stock.

(a) A Bank shall require each member to maintain a minimum investment in the capital stock of the Bank, both as a condition to becoming and remaining a member of the Bank and as a condition to transacting business with the Bank or obtaining advances and other services from the Bank. The amount of the required minimum investment shall be determined in accordance with the Bank’s capital plan and shall be sufficient to ensure that the Bank remains in compliance with its minimum capital requirements. A Bank shall require each member to maintain its minimum investment for as long as the institution remains a member of the Bank and for as long as the member engages in any activity with the Bank against which the Bank is required to maintain capital.

(b) A Bank may establish the minimum investment required of each member as a percentage of the total assets of the member, as a percentage of the advances outstanding to the member, as a percentage of any other business activity conducted with the member, on any other basis that is approved by the Finance Board, or any combination thereof.

(c) A Bank may require each member to satisfy the minimum investment requirement through the purchase of either Class A or Class B stock, or through the purchase of one or more combinations of Class A and Class B stock that have been authorized by the board of directors of the Bank in its capital plan. A Bank, in its discretion, may establish a lower minimum investment for members that invest in Class B stock than is required for members that invest in Class A stock, provided that such reduced investment provides sufficient capital for the Bank to remain in compliance with its minimum capital requirements.

(d) Each member of a Bank shall at all times maintain an investment in the capital stock of the Bank in an amount that is sufficient to satisfy the minimum investment required for that
§ 931.4 Dividends.
(a) In general. A Bank may pay dividends on Class A or Class B stock, including any subclasses of such stock, only out of previously retained earnings or current net earnings, and shall declare and pay dividends only as provided by its capital plan. The capital plan may establish different dividend rates or preferences for each class or subclass of stock, which may include a dividend that tracks the economic performance of certain Bank assets, such as Acquired Member Assets. A member, including a member that has provided the Bank with a notice of intent to withdraw from membership or one whose membership is otherwise terminated, shall be entitled to receive any dividends that a Bank declares on its capital stock while the member owns the stock.

(b) Limitation on payment of dividends. In no event shall a Bank declare or pay any dividend on its capital stock if after doing so the Bank would fail to meet any of its minimum capital requirements, nor shall a Bank that is not in compliance with any of its minimum capital requirements declare or pay any dividend on its capital stock.

§ 931.5 Liquidation, merger, or consolidation.

The respective rights of the Class A and Class B stockholders, in the event that the Bank is liquidated, or is merged or otherwise consolidated with another Bank, shall be determined in accordance with the capital plan of the Bank.

§ 931.6 Transfer of capital stock.

A Bank in its capital plan may allow a member to transfer any excess capital stock of the Bank to another member of that Bank or to an institution that has been approved for membership in that Bank and that has satisfied all conditions for becoming a member, other than the purchase of the minimum amount of Bank stock that it is required to hold as a condition of membership. Any such stock transfers shall be at par value and shall be effective upon being recorded on the appropriate books and records of the Bank. The Bank may, in its capital plan, require a member to receive the approval of the Bank before a transfer of the Bank’s stock, as allowed under this section, is completed.

§ 931.7 Redemption and repurchase of capital stock.

(a) Redemption. A member may have its capital stock in a Bank redeemed by providing written notice to the Bank in accordance with this section. For Class A stock, a member shall provide six-months written notice, and for Class B stock a member shall provide five-years written notice. The notice shall indicate the number of shares of Bank stock that are to be redeemed, and a member shall not have more than one notice of redemption outstanding at one time for the same shares of Bank stock. A member may cancel a notice of redemption by so informing the Bank in writing, and the Bank may impose a fee (to be specified in its capital plan) on any member that cancels a pending notice of redemption. At the expiration of the applicable notice period, the Bank shall pay the stated par value of that stock to the member in cash. A request by a member (whose membership has not been terminated) to redeem specific shares of stock shall automatically be cancelled if the Bank is prevented from redeeming the member’s stock by paragraph (c) of this section within five business days from the end of the expiration of the applicable redemption notice period because the member would fail to maintain its minimum investment in the stock of the Bank after such redemption. The automatic cancellation of a member’s redemption request shall have the same effect as if the member had cancelled its notice to redeem stock prior to the end of the redemption notice period, and a Bank may impose a fee (to be specified in its capital plan) for automatic cancellation of a redemption request. A Bank
§ 931.8 Other restrictions on the repurchase or redemption of Bank stock.

(a) Capital impairment. A Bank may not redeem or repurchase any capital stock without the prior written approval of the Finance Board if the Finance Board or the board of directors of the Bank has determined that the Bank has incurred or is likely to incur losses that result in or are likely to result in charges against the capital of the Bank. This prohibition shall apply even if a Bank is in compliance with its minimum capital requirements, and shall remain in effect for however long the Bank continues to incur such charges or until the Finance Board determines that such charges are not expected to continue.

(b) Bank discretion to suspend redemption. A Bank, upon the approval of its board of directors, or of a subcommittee thereof, may suspend redemption of stock if the Bank reasonably believes that continued redemption of stock would cause the Bank to fail to meet its minimum capital requirements as set forth in §§932.2 or 932.3 of this chapter, would prevent the Bank from maintaining adequate capital against a potential risk that may not be adequately reflected in its minimum capital requirements, or would otherwise prevent the Bank from operating in a safe and sound manner. A Bank shall notify the Finance Board in writing within two business days of the date of the decision to suspend the redemption of stock, informing the Finance Board of the reasons for the suspension and of the Bank’s strategies and time frames for addressing the conditions that led to the suspension. The Finance Board may require the Bank to re-institute the redemption of member stock. A Bank shall not repurchase any stock without the written permission of the Finance Board during any period in which the Bank has suspended redemption of stock under this paragraph.


§ 931.9 Transition provision.

(a) In general. Each Bank shall comply with the minimum leverage and risk-based capital requirements specified in §932.2 and §932.3 of this chapter, respectively, and each member shall comply with the minimum investment established in the capital plan, as of the effective date of that Bank’s capital plan. The effective date of a Bank’s capital plan shall be the date on which the Bank first issues any Class A or Class B stock. Prior to the effective date, the issuance and retention of Bank stock shall be as provided in §925.20 and §925.22 of this chapter.
§ 932.2 Transition period—(1) Bank transition. A Bank that will not be in compliance with the minimum leverage and risk-based capital requirements specified in §932.2 and §932.3 of this chapter as of the effective date of its capital plan shall maintain compliance with the leverage limit requirements in §966.3(a) of this chapter and shall include in its capital plan a description of the steps that the Bank will take to achieve compliance with the minimum capital requirements specified in §932.2 and §932.3 of this chapter. The period of time for compliance with the minimum capital requirements shall be stated in the plan and shall not exceed three years from the effective date of the capital plan. When the Bank has achieved compliance with the leverage requirement of §932.2 of this chapter, the leverage limit requirements of §966.3(a) of this chapter shall cease to apply to that Bank.

(2) Member transition. (i) Existing members. A Bank’s capital plan shall require any institution that was a member on November 12, 1999, and whose investment in Bank stock as of the effective date of the capital plan will be less than the minimum investment required by the plan, to comply with the minimum investment by a date specified in the Bank’s capital plan. The length of the transition period shall be specified in the capital plan and shall not exceed three years. The capital plan shall describe the actions that the existing members are required to take to achieve compliance with the minimum investment, and may require such members to purchase additional Bank stock periodically over the course of the transition period.

(ii) New members. A Bank’s capital plan shall require any institution that became a member after November 12, 1999, but prior to the effective date of the capital plan, to comply with the minimum investment specified in the Bank’s capital plan as of the effective date of the plan. A Bank’s capital plan shall require any institution that becomes a member after the effective date of the capital plan, to comply with the minimum investment upon becoming a member.

(3) New business. A Bank’s capital plan shall require any member that obtains an advance or other services from the Bank, or that initiates any other business activity with the Bank against which the Bank is required to hold capital, after the effective date of the capital plan to comply with the minimum investment specified in the Bank’s capital plan for such advance, services, or activity at the time the transaction occurs.

PART 932—FEDERAL HOME LOAN BANK CAPITAL REQUIREMENTS

Sec. 932.1 Risk management.
932.2 Total capital requirement.
932.3 Risk-based capital requirement.
932.4 Credit risk capital requirement.
932.5 Market risk capital requirement.
932.6 Operations risk capital requirement.
932.7 Reporting requirements.
932.8 Minimum liquidity requirements.
932.9 Limits on unsecured extensions of credit to one counterparty or affiliated counterparties; reporting requirements for total extensions of credit to one counterparty or affiliated counterparties.

SOURCE: 66 FR 8310, Jan. 30, 2001, unless otherwise noted.

§ 932.1 Risk management.

Before its new capital plan may take effect, each Bank shall obtain the approval of the Finance Board for the internal market risk model or the internal cash flow model used to calculate the market risk component of its risk-based capital requirement, and for the risk assessment procedures and controls (whether established as part of its risk management policy or otherwise) to be used to manage its credit, market, and operations risks.

§ 932.2 Total capital requirement.

Each Bank shall maintain at all times:

(a) Total capital in an amount at least equal to 4.0 percent of the Bank’s total assets; and

(b) A leverage ratio of total capital to total assets of at least 5.0 percent of the Bank’s total assets. For purposes of determining the leverage ratio, total capital shall be computed by multiplying the Bank’s permanent capital...
§ 932.3 Risk-based capital requirement.

Each Bank shall maintain at all times permanent capital in an amount at least equal to the sum of its credit risk capital requirement, its market risk capital requirement, and its operations risk capital requirement, calculated in accordance with §§ 932.4, 932.5 and 932.6, respectively.

[76 FR 11674, Mar. 3, 2011]

§ 932.4 Credit risk capital requirement.

(a) General requirement. Each Bank’s credit risk capital requirement shall be equal to the sum of the Bank’s credit risk capital charges for all assets, off-balance sheet items and derivative contracts.

(b) Credit risk capital charge for assets. Except as provided in paragraph (i) of this section, each Bank’s credit risk capital charge for an asset shall be equal to the book value of the asset multiplied by the credit risk percentage requirement assigned to that asset pursuant to paragraph (e)(2) of this section.

(c) Credit risk capital charge for off-balance sheet items. Each Bank’s credit risk capital charge for an off-balance sheet item shall be equal to the credit equivalent amount of such item, as determined pursuant to paragraph (f) of this section multiplied by the credit risk percentage requirement assigned to that item pursuant to paragraph (e)(2) of this section, except that the credit risk percentage requirement applied to the credit equivalent amount for a stand-by letter of credit shall be that for an advance with the same remaining maturity as that stand-by letter of credit.

(d) Credit risk capital charge for derivative contracts—(1) Derivative contracts with non-member counterparties. Except as provided in paragraph (j) of this section, each Bank’s credit risk capital charge for a specific derivative contract entered into between a Bank and a non-member institution shall equal the sum of:

(i) The current credit exposure for the derivative contract, calculated in accordance with paragraph (g) or (h) of this section, as applicable, multiplied by the credit risk percentage requirement assigned to that derivative contract pursuant to paragraph (e)(2) of this section, provided that:

(A) The remaining maturity of the derivative contract shall be deemed to be less than one year for the purpose of applying Table 1.1 or 1.3 of this part; and

(B) Any collateral held against an exposure from the derivative contract shall be applied to reduce the portion of the credit risk capital charge corresponding to the current credit exposure in accordance with the requirements of paragraph (e)(2)(ii)(B) of this section; plus

(ii) The potential future credit exposure for the derivative contract calculated in accordance with paragraph (g) or (h) of this section, as applicable, multiplied by the credit risk percentage requirement assigned to that derivative contract pursuant to paragraph (e)(2) of this section, where the actual remaining maturity of the derivative contract is used to apply Table 1.1 or Table 1.3 of this part.

(2) Derivative contracts with a member. Except as provided in paragraph (j) of this section, the credit risk capital charge for any derivative contract entered into between a Bank and one of its member institutions shall be calculated in accordance with paragraph (d)(1) of this section. However, the credit risk percentage requirements used in the calculations shall be found in Table 1.1 of this part, which sets forth the credit risk percentage requirements for advances.

(e) Determination of credit risk percentage requirements—(1) Finance Board determination of credit risk percentage requirements. The Finance Board shall determine, and update periodically, the credit risk percentage requirements set forth in Tables 1.1 through 1.4 of this part applicable to a Bank’s assets, off-balance sheet items, and derivative contracts.

(2) Bank determination of credit risk percentage requirements. (i) Each Bank shall determine the credit risk percentage requirement applicable to each
Federal Housing Finance Board

§ 932.4

asset, each off-balance sheet item and each derivative contract by identifying the category set forth in Table 1.1, Table 1.2, Table 1.3 or Table 1.4 of this part to which the asset, item or derivative belongs, given, if applicable, its demonstrated credit rating and remaining maturity (as determined in accordance with paragraphs (e)(2)(ii) and (e)(2)(iii) of this section). The applicable credit risk percentage requirement for an asset, off-balance sheet item or derivative contract shall be used to calculate the credit risk capital charge for such asset, item, or derivative contract in accordance with paragraphs (b), (c) or (d) of this section respectively. The relevant categories and credit risk percentage requirements are provided in the following Tables 1.1 through 1.4 of this part:

TABLE 1.1—REQUIREMENT FOR ADVANCES—Continued

<table>
<thead>
<tr>
<th>Type of advances</th>
<th>Percentage applicable to advances</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remaining maturity &gt;10 years</td>
<td>0.35</td>
</tr>
</tbody>
</table>

TABLE 1.2—REQUIREMENT FOR RATED RESIDENTIAL MORTGAGE ASSETS

<table>
<thead>
<tr>
<th>Type of residential mortgage asset</th>
<th>Percentage applicable to residential mortgage assets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest Investment Grade</td>
<td>0.37</td>
</tr>
<tr>
<td>Second Highest Investment Grade</td>
<td>0.60</td>
</tr>
<tr>
<td>Third Highest Investment Grade</td>
<td>0.86</td>
</tr>
<tr>
<td>Fourth Highest Investment Grade</td>
<td>1.20</td>
</tr>
</tbody>
</table>

If Downgraded to Below Investment Grade After Acquisition By Bank:

<table>
<thead>
<tr>
<th>Type of mortgage asset</th>
<th>Percentage applicable to below investment grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest Below Investment Grade</td>
<td>2.40</td>
</tr>
<tr>
<td>Second Highest Below Investment Grade</td>
<td>4.80</td>
</tr>
<tr>
<td>All Other Below Investment Grade</td>
<td>34.00</td>
</tr>
</tbody>
</table>

TABLE 1.3—REQUIREMENT FOR RATED ASSETS OR RATED ITEMS OTHER THAN ADVANCES OR RESIDENTIAL MORTGAGE ASSETS

[Based on remaining maturity]

<table>
<thead>
<tr>
<th>Applicable percentage</th>
<th>≤1 year</th>
<th>&gt;1 yr to 3 yrs</th>
<th>&gt;3 yrs to 7 yrs</th>
<th>&gt;7 yrs to 10 yrs</th>
<th>&gt;10 yrs</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. Government Securities</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Highest Investment Grade</td>
<td>0.15</td>
<td>0.40</td>
<td>0.90</td>
<td>1.40</td>
<td>2.20</td>
</tr>
<tr>
<td>Second Highest Investment Grade</td>
<td>0.20</td>
<td>0.45</td>
<td>1.00</td>
<td>1.45</td>
<td>2.30</td>
</tr>
<tr>
<td>Third Highest Investment Grade</td>
<td>0.70</td>
<td>1.10</td>
<td>1.60</td>
<td>2.05</td>
<td>2.95</td>
</tr>
<tr>
<td>Fourth Highest Investment Grade</td>
<td>2.50</td>
<td>3.70</td>
<td>4.45</td>
<td>5.50</td>
<td>7.05</td>
</tr>
</tbody>
</table>

If Downgraded Below Investment Grade After Acquisition by Bank:

<table>
<thead>
<tr>
<th>Type of mortgage asset</th>
<th>Percentage applicable to below investment grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest Below Investment Grade</td>
<td>10.00</td>
</tr>
<tr>
<td>Second Highest Below Investment Grade</td>
<td>26.00</td>
</tr>
<tr>
<td>All Other</td>
<td>100.00</td>
</tr>
</tbody>
</table>

TABLE 1.4—REQUIREMENT FOR UNRATED ASSETS

<table>
<thead>
<tr>
<th>Type of unrated asset</th>
<th>Applicable percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>0.00</td>
</tr>
<tr>
<td>Premises, Plant, and Equipment</td>
<td>8.00</td>
</tr>
<tr>
<td>Investments Under §940.3(e) &amp; (f)</td>
<td>8.00</td>
</tr>
</tbody>
</table>

(A) For assets or items that are rated directly by an NRSRO, the credit rating shall be the NRSRO’s credit rating for the asset or item as determined in accordance with paragraph (e)(2)(iii) of this section.

(B) When using Table 1.3 of this part, for an asset, off-balance sheet item, or derivative contract that is not rated directly by an NRSRO, but for which an NRSRO rating has been assigned to any corresponding obligor

(ii) When determining the applicable credit risk percentage requirement from Tables 1.2 or 1.3 of this part, each Bank shall apply the following criteria:
counterparty, third party guarantor, or collateral backing the asset, item, or derivative, the credit rating that shall apply to the asset, item, or derivative, or portion of the asset, item, or derivative so guaranteed or collateralized, shall be the credit rating corresponding to such obligor counterparty, third party guarantor, or underlying collateral, as determined in accordance with paragraph (e)(2)(iii) of this section. If there are multiple obligor counterparties, third party guarantors, or collateral instruments backing an asset, item, or derivative not rated directly by an NRSRO, or any specific portion thereof, then the credit rating that shall apply to that asset, item, or derivative or specific portion thereof, shall be the highest credit rating among such obligor counterparties, third party guarantors, or collateral instruments, as determined in accordance with paragraph (e)(2)(iii) of this section. Assets, items or derivatives shall be deemed to be backed by collateral for purposes of this paragraph if the collateral is:

1. Actually held by the Bank or an independent, third-party custodian, or, if permitted under the Bank’s collateral agreement with such party, by the Bank’s member or an affiliate of that member where the term “affiliate” has the same meaning as in § 950.1 of this chapter;
2. Legally available to absorb losses;
3. Of a readily determinable value at which it can be liquidated by the Bank;
4. Held in accordance with the provisions of the Bank’s member products policy established pursuant to § 917.4 of this chapter; and
5. Subject to an appropriate discount to protect against price decline during the holding period, as well as the costs likely to be incurred in the liquidation of the collateral.

(C) When using Table 1.3 of this part, for an asset with a short-term credit rating from a given NRSRO, the credit risk percentage requirement shall be based on the remaining maturity of the asset and the long-term credit rating provided for the issuer of the asset by the same NRSRO. Should the issuer of the short-term asset not have a long-term credit rating, the long-term equivalent rating shall be determined as follows:

1. The highest short-term credit rating shall be equivalent to the third highest long-term rating;
2. The second highest short-term rating shall be equivalent to the fourth highest long-term rating;
3. The third highest short-term rating shall be equivalent to the fourth highest long-term rating; and
4. If the short-term rating is downgraded to below investment grade after acquisition by the Bank, the short-term rating shall be equivalent to the second highest below investment grade long-term rating.

D) For residential mortgage assets and other assets or items, or relevant portion of an asset or item, that do not meet the requirements of paragraphs (e)(2)(ii)(A), (e)(2)(ii)(B) or (e)(2)(ii)(C) of this section, and are not identified in Tables 1.1 or Table 1.4 of this part, each Bank shall determine its own credit rating for such assets or items, or relevant portion thereof, using credit rating standards available from an NRSRO or other similar standards. This credit rating, as determined by the Bank, shall be used to identify the applicable credit risk percentage requirement under Table 1.2 of this part for residential mortgage assets, or under Table 1.3 of this part for all other assets or items.

(E) The credit risk percentage requirement for mortgage assets that are acquired member assets described in § 955.2 of this chapter shall be assigned from Table 1.2 of this part based on the rating of those assets after taking into account any credit enhancement required by § 955.3 of this chapter. Should a Bank further enhance a pool of loans through the purchase of insurance or by some other means, the credit risk percentage requirement shall be based on the rating of such pool after the supplemental credit enhancement, except that the Finance Board retains the right to adjust the credit capital charge to account for any deficiencies with the supplemental enhancement on a case-by-case basis.

(iii) In determining the credit ratings under paragraph (e)(2)(ii)(A),
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(e)(2)(ii)(B) and (e)(2)(ii)(C) of this section, each Bank shall apply the following criteria:

(A) The most recent credit rating from a given NRSRO shall be considered. If only one NRSRO has rated an asset or item, that NRSRO’s rating shall be used. If an asset or item has received credit ratings from more than one NRSRO, the lowest credit rating from among those NRSROs shall be used.

(B) Where a credit rating has a modifier (e.g., A–1+ for short-term ratings and A+ or A– for long-term ratings) the credit rating is deemed to be the credit rating without the modifier (e.g., A–1+ = A–1 and A+ or A– = A).

(f) Calculation of credit equivalent amount for off-balance sheet items—(1) General requirement. The credit equivalent amount for an off-balance sheet item shall be determined by a Finance Board approved model or shall be equal to the face amount of the instrument multiplied by the credit conversion factor assigned to such risk category of instruments, subject to the exceptions in paragraph (f)(2) of this section, provided in the following Table 2 of this part:

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Credit conversion factor (in percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asset sales with recourse where the credit risk remains with the Bank</td>
<td>100</td>
</tr>
<tr>
<td>Commitments to make advances subject to certain drawdown.</td>
<td>50</td>
</tr>
<tr>
<td>Commitments to acquire loans subject to certain drawdown.</td>
<td></td>
</tr>
<tr>
<td>Standby letters of credit</td>
<td></td>
</tr>
<tr>
<td>Other commitments with original maturity of over one year.</td>
<td></td>
</tr>
<tr>
<td>Other commitments with original maturity of one year or less.</td>
<td>20</td>
</tr>
</tbody>
</table>

(2) Exceptions. The credit conversion factor shall be zero for Other Commitments With Original Maturity of Over One Year and Other Commitments With Original Maturity of One Year or Less, for which credit conversion factors of 50 percent or 20 percent would otherwise apply, that are unconditionally cancelable, or that effectively provide for automatic cancellation, due to the deterioration in a borrower’s creditworthiness, at any time by the Bank without prior notice.

(g) Calculation of current and potential future credit exposures for single derivative contracts—(1) Current credit exposure. The current credit exposure for a derivative contract that is not subject to a qualifying bilateral netting contract described in paragraph (h)(3) of this section shall be:

(i) If the mark-to-market value of the contract is positive, the mark-to-market value of the contract; or

(ii) If the mark-to-market value of the contract is zero or negative, zero.

(2) Potential future credit exposure. (i) The potential future credit exposure for a single derivative contract, including a derivative contract with a negative mark-to-market value, shall be calculated using an internal model approved by the Finance Board or, in the alternative, by multiplying the effective notional amount of the derivative contract by the assigned credit conversion factors, modified as may be required by paragraph (g)(2)(ii) of this section, for the appropriate category as provided in the following Table 3 of this part:

<table>
<thead>
<tr>
<th>Residual maturity</th>
<th>Interest rate</th>
<th>Foreign exchange and gold</th>
<th>Equity</th>
<th>Precious metals except gold</th>
<th>Other commodities</th>
</tr>
</thead>
<tbody>
<tr>
<td>One year or less</td>
<td>0</td>
<td>1</td>
<td>6</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>Over 1 year to five years</td>
<td>5</td>
<td>5</td>
<td>8</td>
<td>7</td>
<td>12</td>
</tr>
<tr>
<td>Over five years</td>
<td>1.5</td>
<td>7.5</td>
<td>10</td>
<td>8</td>
<td>15</td>
</tr>
</tbody>
</table>
(i) In applying the credit conversion factors in Table 3 of this part the following modifications shall be made:

(A) For derivative contracts with multiple exchanges of principal, the conversion factors are multiplied by the number of remaining payments in the derivative contract; and

(B) For derivative contracts that automatically reset to zero value following a payment, the residual maturity equals the time until the next payment; however, interest rate contracts with remaining maturities of greater than one year shall be subject to a minimum conversion factor of 0.5 percent.

(iii) If a Bank uses an internal model to determine the potential future credit exposure for a particular type of derivative contract, the Bank shall use the same model for all other similar types of contracts. However, the Bank may use an internal model for one type of derivative contract and Table 3 of this part for another type of derivative contract.

(iv) Forwards, swaps, purchased options and similar derivative contracts not included in the Interest Rate, Foreign Exchange and Gold, Equity, or Precious Metals Except Gold categories shall be treated as other commodities contracts when determining potential future credit exposures using Table 3 of this part.

(v) If a Bank uses Table 3 of this part to determine the potential future credit exposure for multiple derivative contracts subject to a qualifying bilateral netting contract, the credit conversion factors provided in Table 3 for equity contracts shall also apply to the credit derivative contracts entered into with investment grade counterparties. If the counterparty is downgraded to below investment grade, the credit conversion factor provided in Table 3 of this part for other commodity contracts shall apply.

(h) Calculation of current and potential future credit exposure for multiple derivative contracts subject to a qualifying bilateral netting contract—(1) Current credit exposure. The current credit exposure for multiple derivative contracts executed with a single counterparty and subject to a qualifying bilateral netting contract described in paragraph (h)(3) of this section, shall be calculated on a net basis and shall equal:

(i) The net sum of all positive and negative mark-to-market values of the individual derivative contracts subject to a qualifying bilateral netting contract, if the net sum of the mark-to-market values is positive; or

(ii) Zero, if the net sum of the mark-to-market values is zero or negative.

(2) Potential future credit exposure. The potential future credit exposure for each individual derivative contract from among a group of derivative contracts that are executed with a single counterparty and subject to a qualifying bilateral netting contract described in paragraph (h)(3) of this section shall be calculated as follows:

\[ A_{net} = 0.4 \times A_{gross} + (0.6 \times NGR \times A_{gross}) \]

where:

(i) \( A_{net} \) is the potential future credit exposure for an individual derivative contract subject to the qualifying bilateral netting contract;

(ii) \( A_{gross} \) is the gross potential future credit exposure, i.e., the potential future credit exposure for the individual derivative contract, calculated in accordance with paragraph (g)(2) of this section but without regard to the fact that the contract is subject to the qualifying bilateral netting contract;

(iii) NGR is the net to gross ratio, i.e., the ratio of the net current credit exposure of all the derivative contracts subject to the qualifying bilateral netting contract, calculated in accordance with paragraph (h)(1) of this section, to the gross current credit exposure; and

(iv) The gross current credit exposure is the sum of the positive current credit exposures of all the derivative contracts subject to the qualifying bilateral netting contract, calculated in accordance with paragraph (g)(1) of this section but without regard to the fact that the contract is subject to the qualifying bilateral netting contract.

(3) Qualifying bilateral netting contract. A bilateral netting contract shall be considered a qualifying bilateral netting contract if the following conditions are met:

(i) The netting contract is in writing;

(ii) The netting contract is not subject to a walkaway clause;
(iii) The netting contract provides that the Bank would have a single legal claim or obligation either to receive or to pay only the net amount of the sum of the positive and negative mark-to-market values on the individual derivative contracts covered by the netting contract in the event that a counterparty, or a counterparty to whom the netting contract has been assigned, fails to perform due to default, insolvency, bankruptcy, or other similar circumstance;

(iv) The Bank obtains a written and reasoned legal opinion that represents, with a high degree of certainty, that in the event of a legal challenge, including one resulting from default, insolvency, bankruptcy, or similar circumstances, the relevant court and administrative authorities would find the Bank's exposure to be the net amount under:

(A) The law of the jurisdiction by which the counterparty is chartered or the equivalent location in the case of non-corporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

(B) The law of the jurisdiction that governs the individual derivative contracts covered by the netting contract; and

(C) The law of the jurisdiction that governs the netting contract;

(v) The Bank establishes and maintains procedures to monitor possible changes in relevant law and to ensure that the netting contract continues to satisfy the requirements of this section; and

(vi) The Bank maintains in its files documentation adequate to support the netting of a derivative contract.

(1) Credit risk capital charge for assets hedged with credit derivatives—(1) Credit derivatives with a remaining maturity of one year or more. The credit risk capital charge for an asset that is hedged with a credit derivative that has a remaining maturity of one year or more may be reduced only in accordance with paragraph (i)(3) of this section and only if the remaining maturity on the credit derivative is identical to or exceeds the remaining maturity of the hedged asset and the credit derivative provides substantial protection against credit losses.

(2) Credit derivatives with a remaining maturity of less than one year. The credit risk capital charge for an asset that is hedged with a credit derivative that has a remaining maturity of less than one year may be reduced only in accordance with paragraph (i)(3) of this section and only if the remaining maturity of the credit derivative is identical to or exceeds the remaining maturity for the hedged asset, and either:

(A) The asset referenced in the credit derivative is identical to the hedged asset; or

(B) The asset referenced in the credit derivative is different from the hedged asset, but only if the asset referenced in the credit derivative and the hedged asset have been issued by the same obligor, the asset referenced in the credit derivative ranks pari passu to or more junior than the hedged asset and has the same maturity as the hedged asset, and cross-default clauses apply; and

(ii) The credit risk capital charge for the credit derivative contract calculated pursuant to paragraph (d) of this section is still applied.

(4) Capital charge reduction in certain other cases. The credit risk capital charge for an asset hedged with a credit derivative in accordance with paragraph (i)(1) of this section shall equal the sum of the credit risk capital charges for the hedged and unhedged portion of the asset provided that:

(i) The remaining maturity for the credit derivative used for the hedge is identical to or exceeds the remaining maturity for the hedged asset, and either:

(A) The asset referenced in the credit derivative is identical to the hedged asset; or

(B) The asset referenced in the credit derivative is different from the hedged asset, but only if the asset referenced in the credit derivative and the hedged asset have been issued by the same obligor, the asset referenced in the credit derivative ranks pari passu to or more junior than the hedged asset and has the same maturity as the hedged asset, and cross-default clauses apply; and

(ii) The credit risk capital charge for the credit derivative contract calculated pursuant to paragraph (d) of this section is still applied.

(A) The asset referenced in the credit derivative is identical to the hedged asset; or

(B) The asset referenced in the credit derivative is different from the hedged asset, but only if the asset referenced in the credit derivative and the hedged...
§ 932.5 Market risk capital requirement.

(a) General requirement. (1) Each Bank’s market risk capital requirement shall equal the sum of:

(i) The market value of the Bank’s portfolio at risk from movements in interest rates, foreign exchange rates, commodity prices, and equity prices that could occur during periods of market stress, where the market value of the Bank’s portfolio at risk is determined using an internal market risk model that fulfills the requirements of paragraph (b) of this section and that has been approved by the Finance Board; and

(ii) The amount, if any, by which the Bank’s current market value of total capital is less than 85 percent of the Bank’s book value of total capital, where:

(A) The current market value of the total capital is calculated by the Bank using the internal market risk model approved by the Finance Board under paragraph (d) of this section; and

(B) The book value of total capital is the same as the amount of total capital reported by the Bank to the Finance Board under §932.7 of this part.

(2) A Bank may substitute an internal cash flow model to derive a market risk capital requirement in place of that calculated using an internal market risk model under paragraph (a)(1) of this section, provided that:

(i) The Bank obtains Finance Board approval of the internal cash flow model and of the assumptions to be applied to the model; and

(ii) The Bank demonstrates to the Finance Board that the internal cash flow model subjects the Bank’s assets and liabilities, off-balance sheet items and derivative contracts, including related options, to a comparable degree of stress for such factors as will be required for an internal market risk model.

(b) Measurement of market value at risk under a Bank’s internal market risk model. (1) Except as provided under paragraph (a)(2) of this section, each
Bank shall use an internal market risk model that estimates the market value of the Bank’s assets and liabilities, off-balance sheet items, and derivative contracts, including any related options, and measures the market value of the Bank’s portfolio at risk of its assets and liabilities, off-balance sheet items, and derivative contracts, including related options, from all sources of the Bank’s market risks, except that the Bank’s model need only incorporate those risks that are material.

(2) The Bank’s internal market risk model may use any generally accepted measurement technique, such as variance-covariance models, historical simulations, or Monte Carlo simulations, for estimating the market value of the Bank’s portfolio at risk, provided that any measurement technique used must cover the Bank’s material risks.

(3) The measures of the market value of the Bank’s portfolio at risk shall include the risks arising from the nonlinear price characteristics of options and the sensitivity of the market value of options to changes in the volatility of the options’ underlying rates or prices.

(4) The Bank’s internal market risk model shall use interest rate and market price scenarios for estimating the market value of the Bank’s portfolio at risk, but at a minimum:

(i) The Bank’s internal market risk model shall provide an estimate of the market value of the Bank’s portfolio at risk such that the probability of a loss greater than that estimated shall be no more than one percent;

(ii) The scenarios reflect changes in interest rates, interest rate volatility, and shape of the yield curve, and changes in market prices, equivalent to those that have been observed over 120-business day periods of market stress, as determined using historical data that is from an appropriate period; and

(iii) The total number of, and specific historical observations identified by the Bank as, stress scenarios shall be:

(A) Satisfactory to the Finance Board;

(B) Representative of the periods of greatest potential market stress given the Bank’s portfolio, and

(C) Comprehensive given the modeling capabilities available to the Bank; and

(iv) The measure of the market value of the Bank’s portfolio at risk may incorporate empirical correlations among interest rates.

(5) For any consolidated obligations denominated in a currency other than U.S. Dollars or linked to equity or commodity prices, each Bank shall, in addition to fulfilling the criteria of paragraph (b)(4) of this section, calculate an estimate of the market value of its portfolio at risk due to the material foreign exchange, equity price or commodity price risk, such that, at a minimum:

(i) The probability of a loss greater than that estimated shall not exceed one percent;

(ii) The scenarios reflect changes in foreign exchange, equity, or commodity market prices that have been observed over 120-business day periods of market stress, as determined using historical data that is from an appropriate period; and

(iii) The total number of, and specific historical observations identified by the Bank as, stress scenarios shall be:

(A) Satisfactory to the Finance Board;

(B) Representative of the periods of greatest potential stress given the Bank’s portfolio; and

(C) Comprehensive given the modeling capabilities available to the Bank; and

(iv) The measure of the market value of the Bank’s portfolio at risk may incorporate empirical correlations within or among foreign exchange rates, equity prices, or commodity prices.

(c) Independent validation of Bank internal market risk model or internal cash flow model. (1) Each Bank shall conduct an independent validation of its internal market risk model or internal cash flow model within the Bank that is carried out by personnel not reporting to the business line responsible for conducting business transactions for the
§ 932.6 Operations risk capital requirement.

(a) General requirement. Except as authorized under paragraph (b) of this section, each Bank’s operations risk capital requirement shall at all times equal 30 percent of the sum of the Bank’s credit risk capital requirement and market risk capital requirement.

(b) Alternative requirements. With the approval of the Finance Board, each Bank may have an operations risk capital requirement equal to less than 30 percent but no less than 10 percent of the sum of the Bank’s credit risk capital requirement and market risk capital requirement if:

(1) The Bank provides an alternative methodology for assessing and quantifying an operations risk capital requirement; or

(2) The Bank obtains insurance to cover operations risk from an insurer rated at least the second highest investment grade credit rating by an NRSRO.

§ 932.7 Reporting requirements.

Each Bank shall report to the Finance Board by the 15th business day of each month its risk-based capital requirement by component amounts, and its actual total capital amount and permanent capital amount, calculated as of the close of business of the last business day of the preceding month, or more frequently, as may be required by the Finance Board.

§ 932.8 Minimum liquidity requirements.

In addition to meeting the deposit liquidity requirements contained in §965.3 of this chapter, each Bank shall hold contingency liquidity in an amount sufficient to enable the Bank to meet its liquidity needs, which shall, at a minimum, cover five business days of inability to access the consolidated obligation debt markets. An asset that has been pledged under a repurchase agreement cannot be used to satisfy minimum liquidity requirements.

§ 932.9 Limits on unsecured extensions of credit to one counterparty or affiliated counterparties; reporting requirements for total extensions of credit to one counterparty or affiliated counterparties.

(a) Unsecured extensions of credit to a single counterparty. A Bank shall not extend unsecured credit to any single counterparty (other than a GSE) in an amount that would exceed the limits of this paragraph. A Bank shall not extend unsecured credit to a GSE in an amount that would exceed the limits set forth in paragraph (c) of this section. If a third-party provides an irrevocable, unconditional guarantee of repayment of a credit (or any part thereof), the third-party guarantor shall be considered the counterparty for purposes of calculating and applying the unsecured credit limits of this section with respect to the guaranteed portion of the transaction.

(1) Term limits. All unsecured extensions of credit by a Bank to a single counterparty that arise from the Bank’s on- and off-balance sheet and derivative transactions (but excluding
the amount of sales of federal funds with a maturity of one day or less and sales of federal funds subject to a continuing contract) shall not exceed the product of the maximum capital exposure limit applicable to such counterparty, as determined in accordance with paragraph (a)(4) of this section and Table 4 of this part, multiplied by the lesser of:

(i) The Bank’s total capital; or

(ii) The counterparty’s Tier 1 capital, or if Tier 1 capital is not available, total capital (as defined by the counterparty’s principal regulator) or some similar comparable measure identified by the Bank.

(2) Overall limits including sales of overnight federal funds. All unsecured extensions of credit by a Bank to a single counterparty that arise from the Bank’s on- and off-balance sheet and derivative transactions, including the amounts of sales of federal funds with a maturity of one day or less and sales of federal funds subject to a continuing contract, shall not exceed twice the limit calculated pursuant to paragraph (a)(1) of this section.

(3) Limits for certain obligations issued by state, local or tribal governmental agencies. The term limit set forth in paragraph (a)(1) of this section when applied to the marketable direct obligations of state, local or tribal government unit or agencies that are acquired member assets identified in §955.2(a)(3) of this chapter or are otherwise excluded from the prohibition against investments in whole mortgages or whole loan or interests in such mortgages or loans by §956.3(a)(4)(iii) of this chapter or are otherwise excluded from the prohibition against investments in whole mortgages or whole loan or interests in such mortgages or loans by §956.3(a)(4)(iii) of this chapter or are otherwise excluded from the prohibition against investments in whole mortgages or whole loan or interests in such mortgages or loans shall be calculated based on the Bank’s total capital and the credit rating assigned to the particular obligation as determined in accordance with paragraph (a)(5) of this section. If a Bank owns series or classes of obligations issued by a particular state, local or tribal government unit or agency or has extended other forms of unsecured credit to such entity falling into different rating categories, the total amount of unsecured credit extended by the Bank to that government unit or agency shall not exceed the term limit associated with the highest-rated obligation issued by the entity and actually purchased by the Bank.

(4) Bank determination of applicable maximum capital exposure limits. (i) Except as set forth in paragraph (a)(4)(ii) or (a)(4)(iii) of this section, the applicable maximum capital exposure limits are assigned to each counterparty based upon the long-term credit rating of the counterparty, as determined in accordance with paragraph (a)(5) of this section, and are provided in the following Table 4 of this part:

<table>
<thead>
<tr>
<th>Long-term credit rating of counterparty category</th>
<th>Maximum capital exposure limit (in percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest Investment Grade</td>
<td>15</td>
</tr>
<tr>
<td>Second Highest Investment Grade</td>
<td>14</td>
</tr>
<tr>
<td>Third Highest Investment Grade</td>
<td>9</td>
</tr>
<tr>
<td>Fourth Highest Investment Grade</td>
<td>3</td>
</tr>
<tr>
<td>Below Investment Grade or Other</td>
<td>1</td>
</tr>
</tbody>
</table>

(ii) If a counterparty does not have a long-term credit rating but has received a short-term credit rating from an NRSRO, the maximum capital exposure limit applicable to that counterparty shall be based upon the short-term credit rating, as determined in accordance with paragraph (a)(5) of this section, as follows:

(A) The highest short-term investment grade credit rating shall correspond to the maximum capital exposure limit provided in Table 4 of this part for the third highest long-term investment grade rating.

(B) The second highest short-term investment grade rating shall correspond to the maximum capital exposure limit provided in Table 4 of this part for the fourth highest long-term investment grade rating.

(C) The third highest short-term investment grade rating shall correspond to the maximum capital exposure limit provided in Table 4 of this part for the fourth highest long-term investment grade rating.

(iii) If a specific debt obligation issued by a counterparty receives a credit rating from an NRSRO that is lower than the counterparty’s long-term credit rating, the total amount of
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the lower-rated obligation held by the Bank may not exceed a sub-limit calculated in accordance with paragraph (a)(1) of this section, except that the Bank shall use the credit rating associated with the specific obligation to determine the applicable maximum capital exposure limit. For purposes of this paragraph, the credit rating of the debt obligation shall be determined in accordance with paragraph (a)(5) of this section.

(5) Bank determination of applicable credit ratings. The following criteria shall be applied to determine a counterparty’s credit rating:

(i) The counterparty’s most recent credit rating from a given NRSRO shall be considered;

(ii) If only one NRSRO has rated the counterparty, that NRSRO’s rating shall be used. If a counterparty has received credit ratings from more than one NRSRO, the lowest credit rating from among those NRSROs shall be used;

(iii) Where a credit rating has a modifier, the credit rating is deemed to be the credit rating without the modifier;

(iv) If a counterparty is placed on a credit watch for a potential downgrade by an NRSRO, the credit rating from that NRSRO at the next lower grade shall be used; and

(v) If a counterparty is not rated by an NRSRO, the Bank shall determine the applicable credit rating by using credit rating standards available from an NRSRO or other similar standards.

(b) Unsecured extensions of credit to affiliated counterparties—(1) In general. The total amount of unsecured extensions of credit by a Bank to a group of affiliated counterparties that arise from the Bank’s on- and off-balance sheet and derivative transactions, including sales of federal funds subject to a continuing contract, shall not exceed thirty percent of the Bank’s total capital.

(2) Relation to individual limits. The aggregate limits calculated under this paragraph shall apply in addition to the limits on extensions of unsecured credit to a single counterparty imposed by paragraph (a) of this section.

(c) Special limits for GSEs—(1) In general. Unsecured extensions of credit by a Bank to a GSE that arise from the Bank’s on- and off-balance sheet and derivative transactions, including from the purchase of any subordinated debt subject to the sub-limit set forth in paragraph (c)(2) of this section, from any sales of federal funds with a maturity of one day or less and from sales of federal funds subject to a continuing contract, shall not exceed the lesser of:

(i) The Bank’s total capital; or

(ii) The GSE’s total capital (as defined by the GSE’s principal regulator) or some similar comparable measure identified by the Bank.

(2) Sub-limit for subordinated debt. The maximum amount of subordinated debt issued by a GSE and held by a Bank shall not exceed the term limit calculated under paragraph (a)(1) of this section, except that a Bank shall use the credit rating of the GSE’s subordinated debt to determine the applicable maximum capital exposure limit. The credit rating of the subordinated debt shall be determined in accordance with paragraph (a)(5) of this section.

(3) Limits applying to a GSE after a downgrade. If any NRSRO assigns a credit rating to any senior debt obligation issued (or to be issued) by a GSE that is below the highest investment grade or downgrades, or places on a credit watch for a potential downgrade of the credit rating on any senior unsecured obligation issued by a GSE to below the highest investment grade, the special limits on unsecured extensions of credit under paragraph (c)(1) of this section shall cease to apply, and instead, the Bank shall calculate the maximum amount of its unsecured extensions of credit to that GSE in accordance with paragraphs (a)(1) and (a)(2) of this section.

(4) Extensions of unsecured credit to other Banks. The limits of this section do not apply to unsecured credit extended by one Bank to another Bank.

(d) Extensions of unsecured credit after downgrade or placement on credit watch. If an NRSRO downgrades the credit rating applicable to any counterparty or places any counterparty on a credit watch for a potential downgrade, a Bank need not unwind or liquidate any existing transaction or position with
that counterparty that complied with the limits of this section at the time it was entered. In such a case, however, a Bank may extend any additional unsecured credit to such a counterparty only in compliance with the limitations that are calculated using the lower maximum exposure limits. For the purposes of this section, the renewal of an existing unsecured extension of credit, including any decision not to terminate any sales of federal funds subject to a continuing contract, shall be considered an additional extension of unsecured credit that can be undertaken only in accordance with the lower limit.

(e) Reporting requirements—(1) Total unsecured extensions of credit. Each Bank shall report monthly to the Finance Board the amount of the Bank’s total unsecured extensions of credit arising from on- and off-balance sheet and derivative transactions to any single counterparty or group of affiliated counterparties that exceeds 5 percent of:

(i) The Bank’s total capital; or
(ii) The counterparty’s, or affiliated counterparties’ combined, Tier 1 capital, or if Tier 1 capital is not available, total capital (as defined by each counterparty’s principal regulator) or some similar comparable measure identified by the Bank.

(2) Total secured and unsecured extensions of credit. Each Bank shall report monthly to the Finance Board the amount of the Bank’s total secured and unsecured extensions of credit arising from on- and off-balance sheet and derivative transactions to any single counterparty or group of affiliated counterparties that exceeds 5 percent of the Bank’s total assets.

(3) Extensions of credit in excess of limits. A Bank shall report promptly to the Finance Board any extensions of unsecured credit that exceeds any limit set forth in paragraphs (a), (b) or (e) of this section. In making this report, a Bank shall provide the name of the counterparty or group of affiliated counterparties to which the excess unsecured credit has been extended, the dollar amount of the applicable limit which has been exceeded, the dollar amount by which the Bank’s extension of unsecured credit exceeds such limit, the dates for which the Bank was not in compliance with the limit, and, if applicable, a brief explanation of any extenuating circumstances which caused the limit to be exceeded.

(f) Measurement of unsecured extensions of credit—(1) In general. For purposes of this section, unsecured extensions of credit will be measured as follows:

(i) For on-balance sheet transactions, an amount equal to the sum of the book value of the item plus net payments due the Bank;
(ii) For off-balance sheet transactions, an amount equal to the credit equivalent amount of such item, calculated in accordance with §932.4(f) of this part; and
(iii) For derivative transactions, an amount equal to the sum of the current and potential future credit exposures for the derivative contract, where those values are calculated in accordance with §§932.4(g) or 932.4(h) of this part, as applicable, less the amount of any collateral that is held in accordance with the requirements of §932.4(e)(2)(ii)(B) of this part against the credit exposure from the derivative contract.

(2) Status of debt obligations purchased by the Bank. Any debt obligation or debt security (other than mortgage-backed securities or acquired member assets that are identified in §§955.2(a)(1) and (2) of this chapter) purchased by a Bank shall be considered an unsecured extension of credit for the purposes of this section, except:

(i) Any amount owed the Bank against which the Bank holds collateral in accordance with §932.4(e)(2)(ii)(B) of this part; or
(ii) Any amount which the Finance Board has determined on a case-by-case basis shall not be considered an unsecured extension of credit.

(g) Obligations of the United States. Obligations of, or guaranteed by, the United States are not subject to the requirements of this section.

[66728, Dec. 27, 2002]

PART 933—BANK CAPITAL STRUCTURE PLANS

Sec.
933.1 Submission of plan.
§ 933.1 Submission of plan.

(a) In general. By no later than October 29, 2001, the board of directors of each Bank shall submit to the Finance Board a plan to establish and implement a new capital structure for that Bank, which plan shall comply with part 931 of this chapter and under which, when implemented, the Bank shall have sufficient total and permanent capital to comply with the regulatory capital requirements established by part 932 of this chapter. The Finance Board, upon a demonstration of good cause submitted by the board of directors of a Bank, may approve a reasonable extension of the 270-day period for submission of the capital plan. A Bank shall not implement its capital plan, or any amendment to the plan, without Finance Board approval.

(b) Failure to submit a capital plan. If a Bank fails to submit a capital plan to the Finance Board by October 29, 2001, including any approved extension, the Finance Board may establish a capital plan for that Bank, take any enforcement action against the Bank, its directors, or its executive officers authorized by section 2B(a) of the Act (12 U.S.C. 1422b(a)), or merge the Bank pursuant to section 26 of the Act (12 U.S.C. 1446) into any other Bank that has submitted a capital plan.

(c) Consideration of the plan. After receipt of a Bank’s capital plan, the Finance Board may return the plan to the Bank if it does not comply with section 6 of the Act (12 U.S.C. 1426) or any regulatory requirement or is otherwise incomplete or materially deficient. If the Finance Board accepts a capital plan for review, it may require the Bank to submit additional information regarding its plan or to amend the plan, prior to determining whether to approve the plan. The Finance Board may approve a capital plan as submitted or as amended, or may condition its approval on the Bank’s compliance with certain stated conditions, and may require that the capital plans of all Banks take effect on the same date.

§ 933.2 Contents of plan.

The capital plan for each Bank shall include, at a minimum, provisions addressing the following matters:

(a) Minimum investment. (1) The capital plan shall require each member to purchase and maintain a minimum investment in the capital stock of the Bank, in accordance with §931.3, of this chapter and shall prescribe the manner in which the minimum investment is to be calculated. The plan shall require each member to maintain its minimum investment in the Bank’s stock for as long as it remains a member and, with regard to Bank stock purchased to support an advance or other business activity, for as long as the advance or business activity remains outstanding.

(2) The capital plan shall specify the amount and class (or classes) of Bank stock that an institution is required to own in order to become and remain a member of the Bank, and shall specify the amount and class (or classes) of Bank stock that a member is required to own in order to obtain advances from, or to engage in other business transactions with, the Bank. If a Bank requires its members to satisfy its minimum investment through the purchase of one or more combinations of Class A and Class B stock, the authorized combinations of stock shall be specified in the capital plan, which shall afford the members the option of satisfying the minimum investment through the purchase of any such combination of stock.

(3) The capital plan shall establish a minimum investment that is calculated as a percentage of the total assets of the member, as a percentage of the advances outstanding to the member, as a percentage of the other business activities conducted with the member, on any other basis approved by the Finance Board, or on any combination of the above.

(4) The minimum investment established by the capital plan shall be set at a level that, when applied to all
members, provides sufficient capital for the Bank to comply with its minimum capital requirements, as specified in part 932 of this chapter. The capital plan shall require the board of directors of the Bank to monitor and, as necessary, to adjust, the minimum investment to ensure that the stock required to be purchased and maintained by the members is sufficient to allow the Bank to comply with its minimum capital requirements. The plan shall require each member to comply promptly with any adjusted minimum investment established by the board of directors of the Bank, but may allow a member a reasonable time to do so and may allow a member to reduce its outstanding business with the Bank as an alternative to purchasing additional stock.

(b) Classes of capital stock. The capital plan shall specify the class or classes of stock (including subclasses, if any) that the Bank will issue, and shall establish the par value, rights, terms, and preferences associated with each class (or subclass) of stock. A Bank may establish preferences relating to, but not limited to, the dividend, voting, or liquidation rights for each class or subclass of Bank stock. Any voting preferences established by the Bank pursuant to §915.5 of this chapter shall expressly state the voting rights of each class of stock with regard to the election of Bank directors. The capital plan shall provide that the owners of the Class B stock own the retained earnings, surplus, undivided profits, and equity reserves of the Bank, but shall have no right to receive any portion of those items, except through declaration of a dividend or capital distribution approved by the board of directors or through the liquidation of the Bank.

(c) Dividends. The capital plan shall establish the manner in which the Bank will pay dividends, if any, on each class or subclass of stock, and shall provide that the Bank may not declare or pay any dividends if it is not in compliance with any capital requirement or if after paying the dividend it would not be in compliance with any capital requirement.

(d) Initial issuance. The capital plan shall specify the date on which the Bank will implement the new capital structure, and shall establish the manner in which the Bank will issue Class A and/or Class B stock to its existing members, as well as to eligible institutions that subsequently become members. The capital plan shall address how the Bank will retire the stock that is outstanding as of the effective date, including stock held by a member that does not affirmatively elect to convert or exchange its existing stock to either Class A or Class B stock, or some combination thereof.

(e) Members wishing not to convert existing stock. The capital plan shall establish an opt-out date on or before which a member that does not wish to convert its existing stock into Class A and/or Class B stock must file a written notice to withdraw from membership with the Finance Board. This opt-out date shall not be more than six months before the effective date of the capital plan. (For purposes of applying this provision, the membership of an institution that files its notice to withdraw with the Finance Board on or before the opt-out date established in a capital plan shall terminate six months from the date that the notice of withdrawal was filed with the Finance Board or on the effective date of the Bank’s capital plan, whichever date is earlier.) The capital plan shall further provide that any member that is in the process of withdrawing on the effective date of the capital plan but did not file its written notice to withdraw from membership with the Finance Board on or before this opt-out date, shall have its existing stock converted into Class A and/or Class B stock as required by the capital plan, and that the effective date of withdrawal for such member shall be established in accordance with §§925.26(b) and (c) of this chapter, provided, however, that the applicable stock redemption periods calculated under §925.26(c) of this chapter shall commence on date the member first submitted its written notice to withdraw to the Finance Board.

(f) Stock transactions. The capital plan shall establish the criteria for the issuance, redemption, repurchase, transfer, and retirement of stock issued by the Bank. The capital plan also:
(1) Shall provide that the Bank may not issue stock other than in accordance with § 931.2 of this chapter;

(2) Shall provide that the stock of the Bank may be issued only to and held only by the members of that Bank;

(3) Shall specify whether the stock of the Bank may be transferred among members, and, if such transfer is allowed, shall specify the procedures that a member should follow to effect such transfer, and that the transfer shall be undertaken only in accordance with § 931.6 of this chapter;

(4) Shall specify that the stock of the Bank may be traded only between the Bank and its members;

(5) May provide for a minimum investment for members that purchase Class B stock that is lower than the minimum investment for members that purchase Class A stock, provided that the level of investment is sufficient for the Bank to comply with its regulatory capital requirements;

(6) Shall specify the fee, if any, to be imposed on a member that cancels a request to redeem Bank stock; and

(7) Shall specify the period of notice that the Bank will provide to a member before the Bank, on its own initiative, determines to repurchase any excess Bank stock from a member.

(g) Termination of membership. The capital plan shall address the manner in which the Bank will provide for the disposition of its capital stock that is held by institutions that terminate their membership, and the manner in which the Bank will liquidate claims against its members, including claims resulting from prepayment of advances prior to their stated maturity.

(h) Implementation. The capital plan shall demonstrate that the Bank has made a good faith determination that the Bank will be able to implement the plan as submitted and that the Bank will be in compliance with its regulatory total capital requirement and its regulatory risk-based capital requirement after the plan is implemented.

§ 933.3 Independent review of capital plan.

Prior to submitting its capital plan, each Bank shall conduct a review of the plan by an independent certified public accountant to ensure, to the extent possible, that the implementation of the plan would not result in any write-down of the redeemable stock owned by its members, and shall conduct a separate review by at least one NRSRO to determine, to the extent possible, whether the implementation of the plan would have a material effect on the credit rating of the Bank. The Bank shall submit a copy of each report to the Finance Board as part of its proposed capital plan.

§ 933.4 Transition provisions.

(a) The capital plan of a Bank may include a transition provision that would allow a period of time, not to exceed three years, during which the Bank shall increase its total and permanent capital to levels that are sufficient to comply with its minimum leverage capital requirement and its minimum risk-based capital requirement. The capital plan of a Bank may also include a transition provision that would allow a period of time, not to exceed three years, during which institutions that were members of the Bank on November 12, 1999, shall increase the amount of Bank stock to a level that is sufficient to comply with the minimum investment established by the capital plan. The length of the transition periods need not be identical.

(b) Any transition provision shall comply with the requirements of § 931.9.

§ 933.5 Disclosure to members concerning capital plan and capital stock conversion.

(a) No capital plan shall become effective until disclosure required by paragraphs (b) and (c) of this section has been provided to members. All disclosure required under this section shall be transmitted, sent or given to members not less than 45 days and not more than 60 days prior to the opt-out date established in the Bank's capital plan in accordance with § 932.2(e).

(b) The following information shall be provided to members about the Class A and/or Class B stock that a
Bank intends to issue on the effective date of its capital plan:

1. With regard to each class or subclass of authorized stock, a description of:
   
   i. Dividend rights;
   
   ii. The terms of conversion;
   
   iii. Redemption and repurchase rights;
   
   iv. Voting rights and preferences;
   
   v. Liquidation rights; and
   
   vi. Any liability to further calls or to assessments by the Banks;

2. A description of any material differences between the securities to be converted into Class A and/or Class B stock and the Class A and/or Class B stock with regard to the rights addressed in paragraph (b)(1) of this section.

3. A statement of the reasons for the conversion to Class A and/or Class B stock and of the general effect thereof upon the rights of existing members; and

4. A description of any other material features concerning the Bank’s initial issuance of Class A and/or Class B stock.

(c) In addition to the disclosure about Class A and/or Class B stock, the following information shall be provided to members:

1. The Bank shall disclose financial information as follows:
   
   i. Audited balance sheets as of the end of the two most recent fiscal years, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent audited balance sheet being presented, and unaudited interim balance sheets and statements of income and cash flows as of and for appropriate interim dates that in form and content meet the requirements of §989.4 of this chapter;
   
   ii. A pro forma capitalization table that reflects the Bank’s projected new capital structure relative to its actual capitalization as of the date of the latest balance sheet required to be provided to members by paragraph (c)(1)(i) of this section. The Bank shall also provide a description of any material assumptions underlying the pro forma capitalization table and the basis for these assumptions, and shall provide estimates of its risk-based capital requirement, calculated in accordance with §932.3 of this chapter, and of its total capital-to-asset ratio (both of which shall be based on the same financial data used for the capitalization table), along with a discussion of material assumptions underlying these estimates and the basis for these assumptions; and
   
   iii. Any of the financial information required to be disclosed by paragraph (c)(1) of this section may be incorporated by reference, provided the information being incorporated is contained in an annual or quarterly Bank report prepared in accordance with §989.4 of this chapter or an annual or quarterly Bank System report, and the disclosure identifies the information being incorporated by reference;

2. A narrative discussion of anticipated developments that could materially affect the liquidity, capital, earnings or continuing operations of the Bank, including those affecting dividends, product volumes, investment volumes, new business lines and risk profile.

3. A description of any amendments anticipated to be made to the Bank’s by-laws, policies or other governance documents as a result of the implementation of the capital plan;

4. To the extent that such information has not been provided under paragraph (b) of this section, the Bank shall disclose information related to the capital plan as follows:
   
   i. A description of the minimum stock investment requirements set forth in the capital plan;
   
   ii. A statement outlining the requirements for amending the capital plan;
   
   iii. A description of any restrictions or limitations under a Bank’s capital plan on a member’s rights to buy, or redeem its class A or class B stock, to have such stock repurchased, or otherwise to make use of such stock to fulfill the member’s minimum stock investment requirement;
   
   iv. A statement setting forth the opt-out date, on or before which a member’s written notice to withdraw must be filed with the Finance Board (as established in accordance with §933.2(e) of this part) for the member not to have its existing Bank stock
converted to Class A or Class B stock on the effective date of the Bank’s capital plan and describing the effect on a member’s effective date of withdrawal of failing to file its notice to withdraw on or before the opt-out date; and

(v) A description of a member’s rights under the capital plan to have its stock redeemed or repurchased upon voluntary or involuntary termination of its membership;

(5) The Bank should state the name, address and telephone number where members may direct written or oral requests for a copy of the capital plan and any other instrument or document that defines the rights of the member/stockholders. This information shall be provided to the members without charge; and

(6) The Bank shall provide a statement as to the anticipated accounting treatment for the transaction and the federal income tax implications of the transaction that members should consider in consultation with their own accounting and tax advisors.

(d) Nothing in this section shall create or be deemed to create any rights in any third party.

[66 FR 54109, Oct. 26, 2001]

SUBCHAPTER F [RESERVED]
PART 955—ACQUIRED MEMBER ASSETS

Sec. 955.1 Definitions.
955.2 Authorization to hold acquired member assets.
955.3 Required credit-risk sharing structure.
955.4 Reporting requirements for acquired member assets.
955.5 Administrative and investment transactions between Banks.
955.6 Risk-based capital requirement for acquired member assets.

SOURCE: 65 FR 43981, July 17, 2000, unless otherwise noted.

§ 955.1 Definitions.
As used in this part:
Affiliate means any business entity that controls, is controlled by, or is under common control with, a member.
Expected losses means the base loss scenario in the methodology of an NRSRO applicable to that type of AMA asset.
Residential real property has the meaning set forth in §950.1 of this chapter.

[67 FR 12852, Mar. 20, 2002]

§ 955.2 Authorization to hold acquired member assets.
Subject to the requirements of part 980 of this chapter, each Bank may hold assets acquired from or through Bank System members or housing associates by means of either a purchase or a funding transaction (AMA), subject to each of the following requirements:
(a) Loan type requirement. The assets are either:
(1) Whole loans that are eligible to secure advances under §§950.7(a)(1)(i), (a)(2)(i), (a)(4), or (b)(1) of this chapter, excluding:
(i) Loans made to an entity, or secured by property, not located in a state;
(2) Whole loans secured by manufactured housing, regardless of whether such housing qualifies as residential real property; or
(3) State and local housing finance agency bonds;
(b) Member or housing associate nexus requirement. The assets are:
(1) Either:
(i) Originated or issued by, through, or on behalf of a Bank System member or housing associate, or an affiliate thereof; or
(ii) Held for a valid business purpose by a Bank System member or housing associate, or an affiliate thereof, prior to acquisition by a Bank; and
(2) Acquired either:
(i) From a member or housing associate of the acquiring Bank;
(ii) From a member or housing associate of another Bank, pursuant to an arrangement with that Bank, which, in the case of state and local finance agency bonds only, may be reached in accordance with the following process:
(A) The housing finance agency shall first offer the Bank in whose district the agency is located (local Bank) a right of first refusal to purchase, or negotiate the terms of, its proposed bond offering;
(B) If the local Bank indicates, within a three day period, that it will negotiate in good faith to purchase the bonds, the agency may not offer to sell or negotiate the terms of a purchase with another Bank; and
(C) If the local Bank declines the offer, or has failed to respond within the three day period, the acquiring Bank will be considered to have an arrangement with the local Bank for purposes of this section and may offer to buy or negotiate the terms of a bond sale with the agency;
(iii) From another Bank; and
(c) Credit risk-sharing requirement. The transactions through which the Bank acquires the assets either:
(1) Meet the credit risk-sharing requirements of §955.3 of this part; or
§ 955.3 Required credit risk-sharing structure.

(a) Determination of necessary credit enhancement. At the earlier of 270 days from the date of the Bank’s acquisition of the first loan in a pool, or the date at which the amount of a pool’s assets reaches $100 million, a Bank shall determine the total credit enhancement necessary to enhance the asset or pool of assets to a credit quality that is equivalent to that of an instrument having at least the fourth highest credit rating from an NRSRO, or such higher credit rating as the Bank may require. The Bank shall make this determination for each AMA product using a methodology that is confirmed in writing by an NRSRO to be comparable to a methodology that the NRSRO would use in determining credit enhancement levels when conducting a rating review of the asset or pool of assets in a securitization transaction.

(b) Credit risk-sharing structure. A Bank acquiring AMA shall implement, and have in place at all times, a credit risk-sharing structure for each AMA product under which a member or housing associate of the Bank or, with the approval of both Banks, a member or housing associate of another Bank, provides a sufficient credit enhancement from the first dollar of credit loss for each asset or pool of assets such that the acquiring Bank’s exposure to credit risk for the life of the asset or pool of assets is no greater than that of an asset rated in the fourth highest credit rating category, as determined pursuant to paragraph (a) of this section, or such higher rating as the acquiring Bank may require. This credit enhancement structure shall meet the following requirements:

1. A portion of the credit enhancement may be provided by:
   (i) Contracting with an insurance affiliate of that member or housing associate to provide an enhancement or undertaking against losses to the Bank, but only where such insurance is positioned in the credit enhancement structure so as to cover only losses remaining after the member or housing associate has borne losses as required under paragraph (b)(2) of this section;
   (ii) Purchasing loan-level insurance, which may include United States government insurance or guarantee, but only where:
      (A) The member or housing associate is legally obligated at all times to maintain such insurance with an insurer rated not lower than the second highest credit rating category; and
      (B) Such insurance is positioned in the credit enhancement structure so as to cover only losses remaining after the member or housing associate has borne losses as required under paragraph (b)(2) of this section;
   (iii) Purchasing pool-level insurance, but only where such insurance:
      (A) Insures that portion of the required credit enhancement attributable to the geographic concentration and size of the pool; and
      (B) Is positioned last in the credit enhancement structure so as to cover only losses remaining after all other elements of the credit enhancement structure have been exhausted; or
   (iv) Contracting with another member or housing associate in the Bank’s district or in another Bank’s district, pursuant to an arrangement with that Bank, to provide an enhancement or undertaking against losses to the Bank in return for some compensation;

2. The member or housing associate that is providing the credit enhancement required under paragraph (b)(1) of this section shall in all cases bear the direct economic consequences of actual credit losses on the asset or pool of assets:
   (i) From the first dollar of loss up to the amount of expected losses; or
   (ii) Immediately following expected losses, but in an amount equal to or exceeding the amount of expected losses;

3. The portion of the credit enhancement that is an obligation of a Bank System member or housing associate shall be fully secured; and

4. The Bank shall obtain written verification from an NRSRO that concludes to the satisfaction of the Finance Board, based on the underlying economic terms of the credit enhancement structure as represented by the
§ 955.6 Risk-based capital requirement for acquired member assets.

(a) General. Each Bank shall hold retained earnings plus general allowance for losses as support for the credit risk of all AMA estimated by the Bank to represent a credit risk that is greater than that of comparable instruments that have received the second highest credit rating from an NRSRO in an amount equal to or greater than the outstanding balance of the assets or pools of assets times a factor associated with the putative credit rating of the assets or pools of assets as determined by the Finance Board on a case-by-case basis. For single-family mortgage assets, the factors are as set forth in Table 1 of this part.

(b) Recalculation of credit enhancement. For risk-based capital purposes, each Bank shall recalculate the estimated credit rating of a pool of AMA if

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<th>Percentage applicable to on-balance sheet equivalent value of AMA</th>
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<td>Third Highest Investment Grade</td>
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<td>Fourth Highest Investment Grade</td>
<td>1.50</td>
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<td>If Downgraded to Below Investment Grade After Acquisition By Bank:</td>
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<tr>
<td>Highest Below Investment Grade</td>
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<td>Second Highest Below Investment Grade</td>
<td>2.60</td>
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<tr>
<td>All Other Below Investment Grade</td>
<td>100.00</td>
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there is evidence that a decline in the credit quality of that pool may have occurred.

SUBCHAPTERS H–M [RESERVED]
## CHAPTER X—BUREAU OF CONSUMER FINANCIAL PROTECTION

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PART 1002—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

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

§ 1002.1 Authority, scope and purpose.

(a) Authority and scope. This part, known as Regulation B, is issued by the Bureau of Consumer Financial Protection (Bureau) pursuant to title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.). Except as otherwise provided herein, this part applies to all persons who are creditors, as defined in §1002.2(1), other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376. Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 et seq. and have been assigned OMB No. 3170–0013.

(b) Purpose. The purpose of this part is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to the fact that all or part of the applicant’s income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The regulation prohibits creditor practices that discriminate on the basis of any of these factors. The regulation also requires creditors to notify applicants of action taken on their applications; to report credit history in the names of both spouses on an account; to retain records of credit applications; to collect information about the applicant’s race and other personal characteristics in applications for certain dwelling-related loans; and to provide applicants with copies of appraisal reports used in connection with credit transactions.

§ 1002.2 Definitions.

For the purposes of this part, unless the context indicates otherwise, the following definitions apply.

(a) Account means an extension of credit. When employed in relation to an account, the word use refers only to open-end credit.

(b) Act means the Equal Credit Opportunity Act (Title VII of the Consumer Credit Protection Act).

(c) Adverse action. (1) The term means:

(i) A refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered;

(ii) A termination of an account or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor’s accounts; or

(iii) A refusal to increase the amount of credit available to an applicant who
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has made an application for an increase.

(2) The term does not include:
(i) A change in the terms of an account expressly agreed to by an applicant;
(ii) Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account;
(iii) A refusal or failure to authorize an account transaction at point of sale or loan, except when the refusal is a denial of an application for an increase in the amount of credit available under the account;
(iv) A refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or
(v) A refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(3) An action that falls within the definition of both paragraphs (c)(1) and (c)(2) of this section is governed by paragraph (c)(2) of this section.

(d) Age refers only to the age of natural persons and means the number of fully elapsed years from the date of an applicant’s birth.

(e) Applicant means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may become contractually liable regarding an extension of credit. For purposes of §1002.7(d), the term includes guarantors, sureties, endorsers, and similar parties.

(f) Application means an oral or written request for an extension of credit that is made in accordance with procedures used by a creditor for the type of credit requested. The term application does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit. A completed application means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral). The creditor shall exercise reasonable diligence in obtaining such information.

(g) Business credit refers to extensions of credit primarily for business or commercial (including agricultural) purposes, but excluding extensions of credit of the types described in §§1002.3(a)–(d).

(h) Consumer credit means credit extended to a natural person primarily for personal, family, or household purposes.

(i) Contractually liable means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(j) Credit means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(k) Credit card means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain money, property, or services on credit.

(l) Creditor means a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit. For purposes of §§1002.4(a) and (b), the term creditor also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made. A person is not a creditor regarding any violation of the Act or this part committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before becoming involved in the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.
(m) Credit transaction means every aspect of an applicant’s dealings with a creditor regarding an application for credit or an existing extension of credit (including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures).

(n) Discriminate against an applicant means to treat an applicant less favorably than other applicants.

(o) Elderly means age 62 or older.

(p) Empirically derived and other credit scoring systems—(1) A credit scoring system is a system that evaluates an applicant’s creditworthiness mechanically, based on key attributes of the applicant and aspects of the transaction, and that determines, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy. To qualify as an empirically derived, demonstrably and statistically sound, credit scoring system, the system must be:

(i) Based on data that are derived from an empirical comparison of sample groups or the population of creditworthy and non-creditworthy applicants who applied for credit within a reasonable preceding period of time;

(ii) Developed for the purpose of evaluating the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system (including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor’s business judgment);

(iii) Developed and validated using accepted statistical principles and methodology; and

(iv) Periodically revalidated by the use of appropriate statistical principles and methodology and adjusted as necessary to maintain predictive ability.

(2) A creditor may use an empirically derived, demonstrably and statistically sound, credit scoring system obtained from another person or may obtain credit experience from which to develop such a system. Any such system must satisfy the criteria set forth in paragraph (p)(1) through (iv) of this section; if the creditor is unable during the development process to validate the system based on its own credit experience in accordance with paragraph (p)(1) of this section, the system must be validated when sufficient credit experience becomes available. A system that fails this validity test is no longer an empirically derived, demonstrably and statistically sound, credit scoring system for that creditor.

(q) Extend credit and extension of credit mean the granting of credit in any form (including, but not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open-end credit plan; the refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity).

(r) Good faith means honesty in fact in the conduct or transaction.

(s) Inadvertent error means a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid such errors.

(t) Judgmental system of evaluating applicants means any system for evaluating the creditworthiness of an applicant other than an empirically derived, demonstrably and statistically sound, credit scoring system.

(u) Marital status means the state of being unmarried, married, or separated, as defined by applicable state law. The term “unmarried” includes persons who are single, divorced, or widowed.

(v) Negative factor or value, in relation to the age of elderly applicants, means utilizing a factor, value, or weight assigned to the class of applicants that are not classified as elderly and are most favored by a creditor on the basis of age.

(w) Open-end credit means credit extended under a plan in which a creditor may permit an applicant to make purchases or obtain loans from time to
§ 1002.3 Limited exceptions for certain classes of transactions.

(a) Public utilities credit—(1) Definition. Public utilities credit refers to extensions of credit that involve public utility services provided through pipe, wire, or other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, and any discount for prompt payment are filed with or regulated by a government unit.

(2) Exceptions. The following provisions of this part do not apply to public utilities credit:

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

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

(b) Securities credit—(1) Definition. Securities credit refers to extensions of credit subject to regulation under section 7 of the Securities Exchange Act of 1934, or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934.

(2) Exceptions. The following provisions of this part do not apply to securities credit:

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

(ii) Section 1002.5(c) concerning information about a spouse or former spouse;

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

(iv) Section 1002.7(b) relating to designation of name to the extent necessary to comply with rules regarding an account in which a broker or dealer has an interest, or rules regarding the aggregation of accounts of spouses to determine controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

(v) Section 1002.7(c) relating to action concerning open-end accounts, to the extent the action taken is on the basis of a change of name or marital status;

(vi) Section 1002.7(d) relating to the signature of a spouse or other person;

(vii) Section 1002.10 relating to furnishing of credit information; and

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

(c) Incidental credit—(1) Definition. Incidental credit refers to extensions of consumer credit other than the types described in paragraphs (a) and (b) of this section:

(i) That are not made pursuant to the terms of a credit card account;

(ii) That are not subject to a finance charge (as defined in Regulation Z, 12 CFR 1026.4); and

(iii) That are not payable by agreement in more than four installments.

(2) Exceptions. The following provisions of this part do not apply to incidental credit:

(i) Section 1002.5(b) concerning information about the sex of an applicant, but only to the extent necessary for medical records or similar purposes;

(ii) Section 1002.5(c) concerning information about a spouse or former spouse;

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

(iv) Section 1002.5(d)(2) concerning information about income derived from
alimony, child support, or separate maintenance payments;

(v) Section 1002.7(d) relating to the signature of a spouse or other person;

(vi) Section 1002.9 relating to notifications;

(vii) Section 1002.10 relating to furnishing of credit information; and

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

(d) Government credit—(1) Definition. Government credit refers to extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(2) Applicability of regulation. Except for §1002.4(a), the general rule against discrimination on a prohibited basis, the requirements of this part do not apply to government credit.

§ 1002.5 Rules concerning requests for information.

(a) General rules—(1) Requests for information. Except as provided in paragraphs (b) through (d) of this section, a creditor may request any information in connection with a credit transaction. This paragraph does not limit or abrogate any Federal or state law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information.

(2) Required collection of information. Notwithstanding paragraphs (b) through (d) of this section, a creditor shall request information for monitoring purposes as required by §1002.13 for credit secured by the applicant’s dwelling. In addition, a creditor may...
obtain information required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency (including the Attorney General of the United States or a similar state official) to monitor or enforce compliance with the Act, this part, or other Federal or state statutes or regulations.

(3) Special-purpose credit. A creditor may obtain information that is otherwise restricted to determine eligibility for a special purpose credit program, as provided in §§1002.8(b), (c), and (d).

(b) Limitation on information about race, color, religion, national origin, or sex. A creditor shall not inquire about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction, except as provided in paragraphs (b)(1) and (b)(2) of this section.

(1) Self-test. A creditor may inquire about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction for the purpose of conducting a self-test that meets the requirements of §1002.15. A creditor that makes such an inquiry shall disclose orally or in writing, at the time the information is requested, that:
   (i) The applicant will not be required to provide the information;
   (ii) The creditor is requesting the information to monitor its compliance with the Federal Equal Credit Opportunity Act;
   (iii) Federal law prohibits the creditor from discriminating on the basis of this information, or on the basis of an applicant’s decision not to furnish the information; and
   (iv) If applicable, certain information will be collected based on visual observation or surname if not provided by the applicant or other person.

(2) Sex. An applicant may be requested to designate a title on an application form (such as Ms., Miss, Mr., or Mrs.) if the form discloses that the designation of a title is optional. An application form shall otherwise use only terms that are neutral as to sex.

(c) Information about a spouse or former spouse—(1) General rule. Except as permitted in this paragraph, a creditor may not request any information concerning the spouse or former spouse of an applicant.

(2) Permissible inquiries. A creditor may request any information concerning an applicant’s spouse (or former spouse under paragraph (c)(2)(v) of this section) that may be requested about the applicant if:
   (i) The spouse will be permitted to use the account;
   (ii) The spouse will be contractually liable on the account;
   (iii) The applicant is relying on the spouse’s income as a basis for repayment of the credit requested;
   (iv) The applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested; or
   (v) The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

(3) Other accounts of the applicant. A creditor may request that an applicant list any account on which the applicant is contractually liable and to provide the name and address of the person in whose name the account is held. A creditor may also ask an applicant to list the names in which the applicant has previously received credit.

(d) Other limitations on information requests—(1) Marital status. If an applicant applies for individual unsecured credit, a creditor shall not inquire about the applicant’s marital status unless the applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested. If an application is for other than individual unsecured credit, a creditor may inquire about the applicant’s marital status, but shall use only the terms married, unmarried, and separated. A creditor may explain that the category unmarried includes single, divorced, and widowed persons.

(2) Disclosure about income from alimony, child support, or separate maintenance. A creditor shall not inquire whether income stated in an application is derived from alimony, child support, or separate maintenance payments unless the creditor discloses to the applicant that such income need
§ 1002.6 Rules concerning evaluation of applications.

(a) General rule concerning use of information. Except as otherwise provided in the Act and this part, a creditor may consider any information obtained, so long as the information is not used to discriminate against an applicant on a prohibited basis. The legislative history of the Act indicates that the Congress intended an “effects test” concept, as outlined in the employment field by the Supreme Court in the cases of Griggs v. Duke Power Co., 401 U.S. 424 (1971), and Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975), to be applicable to a creditor’s determination of creditworthiness.

(b) Specific rules concerning use of information. (1) Except as provided in the Act and this part, a creditor shall not take into account any prohibited basis in evaluating the creditworthiness of applicants.

(2) Age, receipt of public assistance. (i) Except as permitted in this paragraph, a creditor shall not take into account the age of an applicant or whether an applicant is a student or not. (ii) In an empirically derived, demonstrably and statistically sound, credit scoring system, a creditor may use an applicant’s age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

(iii) In a judgmental system of evaluating creditworthiness, a creditor may consider the age of a student applicant when such age is used to favor the student applicant in extending credit.

(3) Childbearing, childrearing. A creditor shall not make assumptions or use aggregate statistics relating to the likelihood that any category of persons will bear or rear children or will, for that reason, receive diminished or interrupted income in the future.

(4) Telephone listing. A creditor shall not take into account whether there is a telephone listing in the name of an applicant for consumer credit but may take into account whether there is a telephone in the applicant’s residence.

(5) Income. A creditor shall not count or exclude from consideration the income of an applicant or the spouse of an applicant because of a prohibited basis or because the income is derived from part-time employment or is an annuity, pension, or other retirement benefit; a creditor may consider the amount and probable continuance of any income in evaluating an applicant’s creditworthiness. When an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, the creditor shall consider such payments as income to the extent that they are likely to be consistently made.

(6) Credit history. To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant’s creditworthiness a creditor shall consider:

(i) The credit history, when available, of accounts designated as accounts that the applicant and the applicant’s spouse are permitted to use or for which both are contractually liable;
§ 1002.7 Rules concerning extensions of credit.

(a) Individual accounts. A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

(b) Designation of name. A creditor shall not refuse to allow an applicant to open or maintain an account in a birth-given first name and a surname that is the applicant’s birth-given surname, the spouse’s surname, or a combined surname.

(c) Immigration status. A creditor may consider the applicant’s immigration status or status as a permanent resident of the United States, and any additional information that may be necessary to ascertain the creditor’s rights and remedies regarding repayment.

(7) Marital status. Except as otherwise permitted or required by law, a creditor shall evaluate married and unmarried applicants by the same standards; and in evaluating joint applicants, a creditor shall not treat applicants differently based on the existence, absence, or likelihood of a marital relationship between the parties.

(9) Race, color, religion, national origin, sex. Except as otherwise permitted or required by law, a creditor shall not consider race, color, religion, national origin, or sex (or an applicant’s or other person’s decision not to provide the information) in any aspect of a credit transaction.

(c) State property laws. A creditor’s consideration or application of state property laws directly or indirectly affecting creditworthiness does not constitute unlawful discrimination for the purposes of the Act or this part.

§ 1002.7 Rules concerning extensions of credit.

(a) Individual accounts. A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

(b) Designation of name. A creditor shall not refuse to allow an applicant to open or maintain an account in a birth-given first name and a surname that is the applicant’s birth-given surname, the spouse’s surname, or a combined surname.

(c) Action concerning existing open-end accounts—(1) Limitations. In the absence of evidence of the applicant’s inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open-end account on the basis of the applicant’s reaching a certain age or retiring or on the basis of a change in the applicant’s name or marital status:

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

(ii) Change the terms of the account; or

(iii) Terminate the account.

(2) Requiring reapplication. A creditor may require a reapplication for an open-end account on the basis of a change in the marital status of an applicant who is contractually liable if the credit granted was based in whole or in part on income of the applicant’s spouse and if information available to the creditor indicates that the applicant’s income may not support the amount of credit currently available.

(d) Signature of spouse or other person—(1) Rule for qualified applicant. Except as provided in this paragraph, a creditor shall not require the signature of an applicant’s spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor’s standards of creditworthiness for the amount and terms of the credit requested. A creditor shall not deem the submission of a joint financial statement or other evidence of jointly held assets as an application for joint credit.

(2) Unsecured credit. If an applicant requests unsecured credit and relies in part upon property that the applicant owns jointly with another person to satisfy the creditor’s standards of creditworthiness, the creditor may require the signature of the other person only on the instrument(s) necessary, or reasonably believed by the creditor to be necessary, under the law of the state in which the property is located, to enable the creditor to reach the property being relied upon in the event of the death or default of the applicant.

(3) Unsecured credit—community property states. If a married applicant requests unsecured credit and resides in a
§ 1002.8 Special purpose credit programs.

(a) Standards for programs. Subject to the provisions of paragraph (b) of this section, the Act and this part permit a creditor to extend special purpose credit to applicants who meet eligibility requirements under the following types of credit programs:

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

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

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

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

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

(b) Rules in other sections—(1) General applicability. All the provisions of this part apply to each of the special purpose credit programs described in paragraph (a) of this section except as modified by this section.

(2) Common characteristics. A program described in paragraph (a)(2) or (a)(3) of this section qualifies as a special purpose credit program only if it was established and is administered so as not to discriminate against an applicant on any prohibited basis; however, all program participants may be required to share one or more common characteristics (for example, race, national origin, or sex) so long as the program was not

Community property state, or if the applicant is relying on property located in such a state, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the community property available to satisfy the debt in the event of default if:

1. Applicable state law denies the applicant power to manage or control sufficient community property to qualify for the credit requested under the creditor’s standards of creditworthiness; and

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

(4) Secured credit. If an applicant requests secured credit, a creditor may require the signature of the applicant’s spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the property being offered as security available to satisfy the debt in the event of default, for example, an instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

(5) Additional parties. If, under a creditor’s standards of creditworthiness, the personal liability of an additional party is necessary to support the credit requested, a creditor may request a cosigner, guarantor, endorser, or similar party. The applicant’s spouse may serve as an additional party, but the creditor shall not require that the spouse be the additional party.

(6) Rights of additional parties. A creditor shall not impose requirements upon an additional party that the creditor is prohibited from imposing upon an applicant under this section.

(e) Insurance. A creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, disability, or other credit-related insurance is not available on the basis of the applicant’s age.
established and is not administered with the purpose of evading the requirements of the Act or this part.

(c) Special rule concerning requests and use of information. If participants in a special purpose credit program described in paragraph (a) of this section are required to possess one or more common characteristics (for example, race, national origin, or sex) and if the program otherwise satisfies the requirements of paragraph (a) of this section, a creditor may request and consider information regarding the common characteristic(s) in determining the applicant’s eligibility for the program.

(d) Special rule in the case of financial need. If financial need is one of the criteria under a special purpose credit program described in paragraph (a) of this section, the creditor may request and consider information regarding the applicant’s marital status; alimony, child support, and separate maintenance income; and the spouse’s financial resources. In addition, a creditor may obtain the signature of an applicant’s spouse or other person on an application or credit instrument relating to a special purpose credit program if the signature is required by Federal or state law.

§ 1002.9 Notifications.

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

(1) When notification is required. A creditor shall notify an applicant of action taken within:

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

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

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

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

(2) Content of notification when adverse action is taken. A notification given to an applicant when adverse action is taken shall be in writing and shall contain a statement of the action taken; the name and address of the creditor; a statement of the provisions of section 701(a) of the Act; the name and address of the Federal agency that administers compliance with respect to the creditor; and either:

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

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

(3) Notification to business credit applicants. For business credit, a creditor shall comply with the notification requirements of this section in the following manner:

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

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

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

(C) For an application made entirely by telephone, a creditor satisfies the requirements of paragraph (a)(2)(i) of this section by an oral statement of the action taken and of the applicant’s right to a statement of reasons for adverse action.

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

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

(B) Provide a written statement of the reasons for adverse action and the ECOA notice specified in paragraph (b)(1) of this section if the applicant makes a written request for the reasons within 60 days of the creditor’s notification.

(b) Form of ECOA notice and statement of specific reasons—(1) ECOA notice. To satisfy the disclosure requirements of paragraph (a)(2) of this section regarding section 701(a) of the Act, the creditor shall provide a notice that is substantially similar to the following: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant’s income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency or agencies listed in appendix A of this part]. Until January 1, 2013, a creditor may comply with this paragraph (b)(1) and paragraph (a)(2) of this section by including in the notice the name and address as specified by the appropriate agency in appendix A to 12 CFR part 202, as in effect on October 1, 2011.

(2) Statement of specific reasons. The statement of reasons for adverse action required by paragraph (a)(2) of this section must be specific and indicate the principal reason(s) for the adverse action. Statements that the adverse action was based on the creditor’s internal standards or policies or that the applicant, joint applicant, or similar party failed to achieve a qualifying score on the creditor’s credit scoring system are insufficient.

(c) Incomplete applications—(1) Notice alternatives. Within 30 days after receiving an application that is incomplete regarding matters that an applicant can complete, the creditor shall notify the applicant either:

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

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

(2) Notice of incompleteness. If additional information is needed from an applicant, the creditor shall send a written notice to the applicant specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration being given to the application. The creditor shall have no further obligation under this section if the applicant fails to respond within the designated time period. If the applicant supplies the requested information within the designated time period, the creditor shall take action on the application and notify the applicant in accordance with paragraph (a) of this section.

(d) Oral request for information. At its option, a creditor may inform the applicant orally of the need for additional information. If the application remains incomplete the creditor shall send a notice in accordance with paragraph (c)(1) of this section.

(e) Oral notifications by small-volume creditors. In the case of a creditor that did not receive more than 150 applications during the preceding calendar year, the requirements of this section (including statements of specific reasons) are satisfied by oral notifications.

(f) Withdrawal of approved application. When an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, the creditor may treat the application as withdrawn and need not comply with paragraph (a)(1) of this section.

(g) Multiple applicants. When an application involves more than one applicant, notification need only be given to one of them but must be given to the
§ 1002.10 Furnishing of credit information.

(a) Designation of accounts. A creditor that furnishes credit information shall designate:

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

(2) Any existing account to reflect such participation, within 90 days after receiving a written request to do so from one of the spouses.

(b) Routine reports to consumer reporting agency. If a creditor furnishes credit information to a consumer reporting agency concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

(c) Reporting in response to inquiry. If a creditor furnishes credit information in response to an inquiry, concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in the name of the spouse about whom the information is requested.

§ 1002.11 Relation to state law.

(a) Inconsistent state laws. Except as otherwise provided in this section, this part alters, affects, or preempts only those state laws that are inconsistent with the Act and this part and then only to the extent of the inconsistency. A state law is not inconsistent if it is more protective of an applicant.

(b) Preempted provisions of state law.

(1) A state law is deemed to be inconsistent with the requirements of the Act and this part and less protective of an applicant within the meaning of section 705(f) of the Act to the extent that the law:

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

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

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

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

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

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

(c) Laws on finance charges, loan ceilings. If married applicants voluntarily apply for and obtain individual accounts with the same creditor, the accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or loan ceilings under any Federal or state law. Permissible loan ceiling laws shall be construed to permit each spouse to become individually liable up to the amount of the loan ceilings, less the amount for which the applicant is jointly liable.

(d) State and Federal laws not affected. This section does not alter or annul any provision of state property laws, laws relating to the disposition of decedents’ estates, or Federal or state banking regulations directed only toward insuring the solvency of financial institutions.

(e) Exemption for state-regulated transactions—(1) Applications. A state may
§ 1002.12 Record retention.

(a) Retention of prohibited information. A creditor may retain in its files information that is prohibited by the Act or this part for use in evaluating applications, without violating the Act or this part, if the information was obtained:

(1) From any source prior to March 23, 1977;

(2) From consumer reporting agencies, an applicant, or others without the specific request of the creditor; or

(3) As required to monitor compliance with the Act and this part or other Federal or state statutes or regulations.

(b) Preservation of records—(1) Applications. For 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section) after the date that a creditor notifies an applicant of action taken on an application or of incompleteness, the creditor shall retain in original form or a copy thereof:

(i) Any application that it receives, any information required to be obtained concerning characteristics of the applicant to monitor compliance with the Act and this part or other similar law, and any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant’s request;

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

(A) The notification of action taken; and

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

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

(2) Existing accounts. For 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section) after the date that a creditor notifies an applicant of adverse action regarding an existing account, the creditor shall retain as to that account, in original form or a copy thereof:

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

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

(3) Other applications. For 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section) after the date that a creditor receives an application for which the creditor is not required to comply with the notification requirements of §1002.9, the creditor shall retain all written or recorded information in its possession concerning the applicant, including any notation of action taken.

(4) Enforcement proceedings and investigations. A creditor shall retain the information beyond 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section) if the creditor has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the Act or this part, by the Attorney General of the United States or by an enforcement agency charged with monitoring that creditor’s compliance with the Act and this part, or if it has been served with notice of an action filed pursuant to section 706 of the Act and §1002.16 of this part. The creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.
§ 1002.13 Information for monitoring purposes.

(a) Information to be requested. (1) A creditor that receives an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, shall request as part of the application the following information regarding the applicant(s):

(i) Ethnicity, using the categories Hispanic or Latino, and not Hispanic or Latino; and race, using the categories American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White;

(ii) Sex;

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

(iv) Age.

(2) Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit and a mobile or other manufactured home.

(b) Obtaining information. Questions regarding ethnicity, race, sex, marital status, and age may be listed, at the creditor’s option, on the application form or on a separate form that refers to the application. The applicant(s) shall be asked but not required to supply the information. If the applicant(s) chooses not to provide the information or any part of it, that fact shall be noted on the form. The creditor shall then also note on the form, to the extent possible, the ethnicity, race, and sex of the applicant(s) on the basis of visual observation or surname.

(c) Disclosure to applicant(s). The creditor shall inform the applicant(s) that the information regarding ethnicity, race, sex, marital status, and age is being requested by the Federal Government for the purpose of monitoring compliance with Federal statutes that prohibit creditors from discriminating against applicants on those bases. The creditor shall also inform the applicant(s) that if the applicant(s) chooses not to provide the information, the creditor is required to note the ethnicity, race and sex on the basis of visual observation or surname.

(d) Substitute monitoring program. A monitoring program required by an agency charged with administrative enforcement under section 704 of the Act may be substituted for the requirements contained in paragraphs (a), (b), and (c) of this section.
§ 1002.14 Rules on providing appraisal reports.

(a) Providing appraisals. A creditor shall provide a copy of an appraisal report used in connection with an application for credit that is to be secured by a lien on a dwelling. A creditor shall comply with either paragraph (a)(1) or (a)(2) of this section.

(1) Routine delivery. A creditor may routinely provide a copy of an appraisal report to an applicant (whether credit is granted or denied or the application is withdrawn).

(2) Upon request. A creditor that does not routinely provide appraisal reports shall provide a copy upon an applicant’s written request.

(i) Notice. A creditor that provides appraisal reports only upon request shall notify an applicant in writing of the right to receive a copy of an appraisal report. The notice may be given at any time during the application process but no later than when the creditor provides notice of action taken under §1002.9 of this part. The notice shall specify that the applicant’s request must be in writing, give the creditor’s mailing address, and state the time for making the request as provided in paragraph (a)(2)(ii) of this section.

(ii) Delivery. A creditor shall mail or deliver a copy of the appraisal report promptly (generally within 30 days) after the creditor receives an applicant’s request, receives the report, or receives reimbursement from the applicant for the report, whichever is last to occur. A creditor need not provide a copy when the applicant’s request is received more than 90 days after the creditor has provided notice of action taken on the application under §1002.9 of this part or 90 days after the application is withdrawn.

(b) Credit unions. A creditor that is subject to the regulations of the National Credit Union Administration on making copies of appraisal reports available is not subject to this section.

(c) Definitions. For purposes of paragraph (a) of this section, the term dwelling means a residential structure that contains one to four units whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home. The term appraisal report means the document(s) relied upon by a creditor in evaluating the value of the dwelling.

Effective date note: At 78 FR 7248, Jan. 31, 2013, §1002.14 was revised, effective Jan. 18, 2014. For the convenience of the user, the revised text is set forth as follows:

§ 1002.14 Rules on providing appraisals and other valuations.

(a) Providing appraisals and other valuations.

(1) In general. A creditor shall provide an applicant a copy of all appraisals and other written valuations developed in connection with an application for credit that is to be secured by a first lien on a dwelling. A creditor shall provide a copy of each such appraisal or other written valuation promptly upon completion, or three business days prior to consummation of the transaction (for closed-end credit) or account opening (for open-end credit), whichever is earlier. An applicant may waive the timing requirement in this paragraph (a)(1) and agree to receive any copy at or before consummation or account opening, except where otherwise prohibited by law. Any such waiver must be obtained at least three business days prior to consummation or account opening, unless the waiver pertains solely to the applicant’s receipt of a copy of an appraisal or other written valuation that contains only clerical changes from a previous version of the appraisal or other written valuation provided to the applicant three or more business days prior to consummation or account opening. If the applicant provides a waiver and the transaction is not consummated or the account is not opened, the creditor must provide these copies no later than 30 days after the creditor determines consummation will not occur or the account will not be opened.

(2) Disclosure. For applications subject to paragraph (a)(1) of this section, a creditor shall mail or deliver to an applicant, not later than the third business day after the creditor receives an application for credit that is to be secured by a first lien on a dwelling, a notice in writing of the applicant’s right to receive a copy of all written appraisals developed in connection with the application. In the case of an application for credit that is not to be secured by a first lien on a dwelling at the time of application, if the creditor later determines the credit will be secured by a first lien on a dwelling, the creditor shall mail or deliver the same notice in writing not later than the third business day after the creditor determines that the loan is to be secured by a first lien on a dwelling.

(3) Reimbursement. A creditor shall not charge an applicant for providing a copy of appraisals and other written valuations as required under this section, but may require
applicants to pay a reasonable fee to reimburse the creditor for the cost of the appraisal or other written valuation unless otherwise provided by law.

(4) Withdrew, denied, or incomplete applications. The requirements set forth in paragraph (a)(1) of this section apply whether credit is extended or denied or if the application is incomplete or withdrawn.

(5) Copies in electronic form. The copies required by §1002.14(a)(1) may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).

(b) Definitions. For purposes of paragraph (a) of this section:

(1) Consumption. The term “consummation” means the time that a consumer becomes contractually obligated on a closed-end credit transaction.

(2) Dwelling. The term “dwelling” means a residential structure that contains one to four units whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home.

(3) Valuation. The term “valuation” means any estimate of the value of a dwelling developed in connection with an application for credit.

§ 1002.15 Incentives for self-testing and self-correction.

(a) General rules—(1) Voluntary self-testing and correction. The report or results of a self-test that a creditor voluntarily conducts (or authorizes) are privileged as provided in this section. Data collection required by law or by any governmental authority is not a voluntary self-test.

(2) Corrective action required. The privilege in this section applies only if the creditor has taken or is taking appropriate corrective action.

(3) Other privileges. The privilege created by this section does not preclude the assertion of any other privilege that may also apply.

(b) Self-test defined—(1) Definition. A self-test is any program, practice, or study that:

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

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

(2) Types of information privileged. The privilege under this section applies to the report or results of the self-test, data or factual information created by the self-test, and any analysis, opinions, and conclusions pertaining to the self-test report or results. The privilege covers workpapers or draft documents as well as final documents.

(3) Types of information not privileged. The privilege under this section does not apply to:

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

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

(c) Appropriate corrective action—(1) General requirement. For the privilege in this section to apply, appropriate corrective action is required when the self-test shows that it is more likely than not that a violation occurred, even though no violation has been formally adjudicated.

(2) Determining the scope of appropriate corrective action. A creditor must take corrective action that is reasonably likely to remedy the cause and effect of a likely violation by:

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

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

(3) Types of relief. Appropriate corrective action may include both prospective and remedial relief, except that to establish a privilege under this section:

(i) A creditor is not required to provide remedial relief to a tester used in a self-test;

(ii) A creditor is only required to provide remedial relief to an applicant identified by the self-test as one whose rights were more likely than not violated; and
Bur. of Consumer Financial Protection § 1002.16

(iii) A creditor is not required to provide remedial relief to a particular applicant if the statute of limitations applicable to the violation expired before the creditor obtained the results of the self-test or the applicant is otherwise ineligible for such relief.

(4) No admission of violation. Taking corrective action is not an admission that a violation occurred.

(d) Scope of privilege—(1) General rule. The report or results of a privileged self-test may not be obtained or used:

(i) By a government agency in any examination or investigation relating to compliance with the Act or this part; or

(ii) By a government agency or an applicant (including a prospective applicant who alleges a violation of §1002.4(b)) in any proceeding or civil action in which a violation of the Act or this part is alleged.

(2) Loss of privilege. The report or results of a self-test are not privileged under paragraph (d)(1) of this section if the creditor or a person with lawful access to the report or results:

(i) Voluntarily discloses any part of the report or results, or any other information privileged under this section, to an applicant or government agency or to the public;

(ii) Discloses any part of the report or results, or any other information privileged under this section, as a defense to charges that the creditor has violated the Act or regulation; or

(iii) Fails or is unable to produce written or recorded information about the self-test that is required to be retained under §1002.12(b)(6) when the information is needed to determine whether the privilege applies. This paragraph does not limit any other penalty or remedy that may be available for a violation of §1002.12.

(3) Limited use of privileged information. Notwithstanding paragraph (d)(1) of this section, the self-test report or results and any other information privileged under this section may be obtained and used by an applicant or government agency solely to determine a penalty or remedy after a violation of the Act or this part has been adjudicated or admitted. Disclosures for this limited purpose may be used only for the particular proceeding in which the adjudication or admission was made. Information disclosed under this paragraph (d)(3) remains privileged under paragraph (d)(1) of this section.

§ 1002.16 Enforcement, penalties and liabilities.

(a) Administrative enforcement. (1) As set forth more fully in section 704 of the Act, administrative enforcement of the Act and this part regarding certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, National Credit Union Administration, Surface Transportation Board, Civil Aeronautics Board, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission, Small Business Administration, Secretary of Transportation, and Bureau of Consumer Financial Protection.

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

(b) Penalties and liabilities. (1) Sections 702(g) and 706(a) and (b) of the Act provide that any creditor that fails to comply with a requirement imposed by the Act or regulation is subject to civil liability for actual and punitive damages in individual or class actions. Pursuant to sections 702(g) and 704(b), (c), and (d) of the Act, violations of the Act or this part also constitute violations of other Federal laws. Liability for punitive damages can apply only to non-governmental entities and is limited to $10,000 in individual actions and the lesser of $500,000 or 1 percent of the creditor’s net worth in class actions. Section 706(c) provides for equitable and declaratory relief and section 706(d) authorizes the awarding of costs and reasonable attorney’s fees to an aggrieved applicant in a successful action.

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

(3) If an agency responsible for administrative enforcement is unable to obtain compliance with the Act or this part, it may refer the matter to the Attorney General of the United States. If the Bureau, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, or the National Credit Union Administration has reason to believe that one or more creditors have engaged in a pattern or practice of discouraging or denying applications in violation of the Act or this part, the agency shall refer the matter to the Attorney General. If the agency has reason to believe that one or more creditors violated section 701(a) of the Act, the agency may refer a matter to the Attorney General.

(4) On referral, or whenever the Attorney General has reason to believe that one or more creditors have engaged in a pattern or practice in violation of the Act or this part, the Attorney General may bring a civil action for such relief as may be appropriate, including actual and punitive damages and injunctive relief.

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

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

(c) Failure of compliance. A creditor's failure to comply with §§1002.6(b)(6), 1002.9, 1002.10, 1002.12 or 1002.13 is not a violation if it results from an inadvertent error. On discovering an error under §§1002.9 and 1002.10, the creditor shall correct it as soon as possible. If a creditor inadvertently obtains the monitoring information regarding the ethnicity, race, and sex of the applicant in a dwelling-related transaction not covered by §1002.13, the creditor may retain information and act on the application without violating the regulation.

APPENDIX A TO PART 1002—FEDERAL AGENCIES TO BE LISTED IN ADVERSE ACTION NOTICES

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

1. Banks, savings associations, and credit unions with total assets of over $10 billion and their affiliates: Bureau of Consumer Financial Protection, 1700 G Street NW., Washington DC 20006. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the Bureau: FTC Regional Office for region in which the creditor operates or Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

2. To the extent not included in item 1 above:
   b. State member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act: Federal Reserve Consumer Help Center, P.O. Box 1200, Minneapolis, MN 55480
   c. Nonmember Insured Banks, Insured State Branches of Foreign Banks, and Insured State Savings Associations: FDIC Consumer Response Center, 1300 Walnut Street, Box #11, Kansas City, MO 64106.
d. Federal Credit Unions: National Credit Union Administration, Office of Consumer Protection (OCP), Division of Consumer Compliance and Outreach (DCCO), 1775 Duke Street, Alexandria, VA 22314.

3. Air carriers: Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

4. Creditors Subject to Surface Transportation Board: Office of Proceedings, Surface Transportation Board, Department of Transportation, 1225 K Street NW., Washington, DC 20423.

5. Creditors Subject to Packers and Stockyards Act: Nearest Packers and Stockyards Administration area supervisor.

6. Small Business Investment Companies: Associate Deputy Administrator for Capital Access, United States Small Business Administration, 409 Third Street SW., 8th Floor, Washington, DC 20416.


8. Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations: Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

9. Retailers, Finance Companies, and All Other Creditors Not Listed Above: FTC Regional Office for region in which the creditor operates or Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

EFFECTIVE DATE NOTE: At 78 FR 60437, Oct. 1, 2013, appendix A to part 1002 was amended by revising paragraph 2.d, effective Jan. 18, 2014. For the convenience of the user, the revised text is set forth as follows:

APPENDIX A TO PART 1002—FEDERAL AGENCIES TO BE LISTED IN ADVERSE ACTION NOTICES

APPENDIX B TO PART 1002—MODEL APPLICATION FORMS

1. This appendix contains five model credit application forms, each designated for use in a particular type of consumer credit transaction as indicated by the bracketed caption on each form. The first sample form is intended for use in open-end, unsecured transactions; the second for closed-end, secured transactions; the third for closed-end transactions, whether unsecured or secured; the fourth in transactions involving community property or occurring in community property states; and the fifth in residential mortgage transactions which contains a model disclosure for use in complying with §1002.13 for certain dwelling-related loans. All forms contained in this appendix are models; their use by creditors is optional.

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

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

Check appropriate box

☐ If you are applying for an individual account, in your own name and are relying on your own income or assets and the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D.

☐ If you are applying for a joint account or as an account that you and another person will use, complete all Sections, providing information in B about the joint applicant or user.

We wish to apply for your credit.

☐ Co-applicant

☐ If you are applying for an individual account, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections or the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

SECTION A — INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): ___________________________ Birthdate: / /

Present Social Security: ___________________________ Year there: ___________________________

City: ___________________________ State: ___________________________ Zip: ___________________________ Telephone: ___________________________

Social Security No.: ___________________________ Driver’s License No.: ___________________________

Previous Street Address: ___________________________ Year there: ___________________________

City: ___________________________ State: ___________________________ Zip: ___________________________ Telephone: ___________________________

Present Employer: ___________________________ Years there: ___________________________ Telephone: ___________________________

Position or title: ___________________________ Name of supervisor: ___________________________

Employer’s Address: ___________________________ Year there: ___________________________

Previous Employer: ___________________________ Year there: ___________________________

Previous Employer’s Address: ___________________________ Year there: ___________________________

Present net salary or compensation: $ ___________ per ___________ No. Dependents: ___________ Age: ___________

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under court order ☐ written agreement ☐ oral understanding ☐

Other income: $ ___________ per ___________ Source(s) of other income: ___________________________

Is any income listed in this Section likely to be reduced in the next two years?

☐ Yes ☐ No

Here you ever received credit from us?

☐ Yes ☐ No

Checking Account No.: ___________________________ Institution and Branch: ___________________________

Savings Account No.: ___________________________ Institution and Branch: ___________________________

Name of nearest relative not living with you: ___________________________ Telephone: ___________________________

Relationship: ___________________________ Address: ___________________________

SECTION B — INFORMATION REGARDING JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheet if necessary)

Full Name (Last, First, Middle): ___________________________ Birthdate: / /

Relationship to Applicant (if any): ___________________________

Present Street Address: ___________________________ Year there: ___________________________

City: ___________________________ State: ___________________________ Zip: ___________________________ Telephone: ___________________________

Social Security No.: ___________________________ Driver’s License No.: ___________________________

Previous Employer: ___________________________ Years there: ___________________________ Telephone: ___________________________

Position or title: ___________________________ Name of supervisor: ___________________________

Employer’s Address: ___________________________ Year there: ___________________________

Previous Employer: ___________________________ Year there: ___________________________

Previous Employer’s Address: ___________________________ Year there: ___________________________

Present net salary or compensation: $ ___________ per ___________ No. Dependents: ___________ Age: ___________

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under court order ☐ written agreement ☐ oral understanding ☐

Other income: $ ___________ per ___________ Source(s) of other income: ___________________________

Is any income listed in this Section likely to be reduced in the next two years?

☐ Yes ☐ No

Checking Account No.: ___________________________ Institution and Branch: ___________________________

Savings Account No.: ___________________________ Institution and Branch: ___________________________

Name of nearest relative not living with you:

with Joint Applicant, User, or Other Party: ___________________________ Telephone: ___________________________

Relationship: ___________________________ Address: ___________________________

SECTION C — MARITAL STATUS

(Apply only if this is an application for an individual account.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

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SECTION D — ASSET AND DEBT INFORMATION

(If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant, User, or Other Party. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this section.)

ASSETS OWNED (Use separate sheet if necessary)

<table>
<thead>
<tr>
<th>Description of Asset</th>
<th>Value</th>
<th>Subject to Debt?</th>
<th>Yes/No</th>
<th>Name(s) of Owner(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Automobiles (Make, Model, Year)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash Value of Life Insurance (Issuer, Face Value)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Real Estate (Location, Date Acquired)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Merchandise Securities (Issuer, Type, No. of Shares)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (List)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Assets</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credits, notes, mortgage, etc. Use separate sheet if necessary)

<table>
<thead>
<tr>
<th>Credit Reference</th>
<th>Date Paid</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes [ ] No [X] If "yes," for whom? [ ]. To whom? [ ]

Have you been declared bankrupt in the last 8 years? Yes [ ] No [X] Amount $ [ ]. In whom? [ ]

Are there any unsatisfied judgments against you? Yes [ ] No [X] Amount $ [ ]. In whom? [ ]. Year [ ].

Other Obligations — (E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary)

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will review this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature [ ], Date [ ]; Other Signature [ ], Date [ ].
CREDIT APPLICATION

IMPORTANT: Read these directions before completing this Application.

Check appropriate box:

☐ You are applying for individual credit in your own name and are relying on your own income or assets and the income or assets of another person as the basis for repayment of the credit requested, complete Sections A, C, D, and H, striking B and the second part of G.

☐ If this is an application for joint credit with another person, complete all Sections, providing information in B about the joint applicant.

[ ] Amount to be Used For

SECTION A – INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): ________________________________
Present Street Address: _______________________________________
City: __________________________________ State: ___________ Zip: ________ Telephone: ____________________________
Social Security No.: ________________________________ Driver's License No.: _____________________
Previous Street Address: ________________________________ Years there: ____________
City: __________________________________ State: ___________ Zip: ________ Telephone: ____________________________
Present Employer: ________________________________ Years there: ____________
Position or title: ________________________________ Name of supervisor: ____________________________
Previous Employer: ________________________________ Years there: ____________
Present Employer's Address: ________________________________
Name of nearest relative not living with you: ________________________________ Relationship: ________________________________ Address: ________________________________ Telephone: ____________________________
Other income: $ ________________________________ Source(s) of other income: ________________________________

SECTION B – INFORMATION REGARDING JOINT APPLICANT, OR OTHER PARTY (For separate sheets if necessary)

Full Name (Last, First, Middle): ________________________________
Relationship to Applicant (if any): ________________________________
Present Street Address: _______________________________________
City: __________________________________ State: ___________ Zip: ________ Telephone: ____________________________
Social Security No.: ________________________________ Driver's License No.: _____________________
Previous Employer: ________________________________ Years there: ____________
Position or title: ________________________________ Name of supervisor: ____________________________
Previous Employer: ________________________________ Years there: ____________
Present Employer's Address: ________________________________
Name of nearest relative not living with you: ________________________________ Relationship: ________________________________ Address: ________________________________ Telephone: ____________________________
Other income: $ ________________________________ Source(s) of other income: ________________________________

SECTION C – MARITAL STATUS

(Do not complete if this is an application for an individual account.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
**Bur. of Consumer Financial Protection**

**Pt. 1002, App. B**

### Asset and Debt Information

#### Assets Owned

<table>
<thead>
<tr>
<th>Description of Assets</th>
<th>Value</th>
<th>Subject to Debt?</th>
<th>Name(s) of Owner(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Automobiles (Make, Model, Year)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash Value of Life Insurance (Issuer, Face Value)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Real Estate (Location, Date Acquired)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marketable Securities (Issuer, Type, No. of Shares)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (List)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total Assets** $

### Outstanding Debt

| Condition | Type of Debt | Name in Which] | Original Date | Present Balance | Monthly Payments | Due Date? | Yes/No |
|-----------|--------------|----------------|---------------|-----------------|------------------|-----------|
| 1. (Lender or Mortgage Holder) | | | | | | | |
| 2. | | | | | | | |
| 3. | | | | | | | |
| Total Debt | | | | | | | |

**Credit References:**

<table>
<thead>
<tr>
<th>Credit References</th>
<th>Date Paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>$</td>
</tr>
<tr>
<td>2.</td>
<td></td>
</tr>
</tbody>
</table>

**Have you or your spouse ever been in bankruptcy?**

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Other Obligations (E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)</th>
</tr>
</thead>
</table>

### Section E - Secured Credit

Briefly describe the property to be given as security.

and list names and addresses of all co-owners of the property:

Name:  
Address:  

If the security is real estate, give the full name of your spouse (if any):

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will review this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature:  
Date:  
Other Signature (When Applicable):  
Date:  

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[Omitted due to unidentifiable content]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box:
☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete the first part of Section C and Section E.
☐ If you are applying for joint credit with another person, complete all Sections except E, providing information in B about the joint applicant. If the requested credit is to be secured, then complete Section E.

We intend to apply for joint credit:

Applicant: _____________________________ Co-Applicant: _____________________________

☑ If you are applying for joint credit with another person, complete all Sections except E, providing information in B about the joint applicant. If the requested credit is to be secured, then complete Section E.

Amount Requested: $__________ Payment Due Date: ____________ Proceeds of Credit: ________ To be Used For: ____________________________

SECTION A — INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____________________________ Birthday: ____________

Present Street Address: _____________________________ City: _____________ State: ______ Zip: ______ Telephone: _____________________________

Social Security No.: _____________________________ Driver's License No.: _____________________________

Previous Street Address: _____________________________ City: _____________ State: ______ Zip: ______ Telephone: _____________________________

Current Employer: _____________________________ Years there: ____________ Position or title: _____________________________

Previous Employer: _____________________________ Years there: ____________ Name of supervisor: _____________________________

Previous Employer's Address: _____________________________

Present net salary or commission: $__________ per ______. No. Dependents: ______ Age: ______

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received or expected: ______ Court order ______ written agreement ______ oral understanding ______

Other income: $__________ per ______. Source(s) of other income: _____________________________

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) _____________________________

Have you ever received credit from us?
☐ Yes (Explain in detail on a separate sheet.) _____________________________

Checking Account No.: _____________________________ Institution and Branch: _____________________________

Savings Account No.: _____________________________ Institution and Branch: _____________________________

Name of nearest relative not living with you:

Relationship: _____________________________ Address: _____________________________ Telephone: _____________________________

SECTION B — INFORMATION REGARDING JOINT APPLICANT, OR OTHER PARTY (Use separate sheet if necessary)

Full Name (Last, First, Middle): _____________________________ Birthday: ____________

Relationship to Applicant (if any): _____________________________

Present Street Address: _____________________________ City: _____________ State: ______ Zip: ______ Telephone: _____________________________

Social Security No.: _____________________________ Driver's License No.: _____________________________

Previous Employer: _____________________________ Years there: ____________ Position or title: _____________________________

Previous Employer: _____________________________ Years there: ____________ Name of supervisor: _____________________________

Previous Employer's Address: _____________________________

Present net salary or commission: $__________ per ______. No. Dependents: ______ Age: ______

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received or expected: ______ Court order ______ written agreement ______ oral understanding ______

Other income: $__________ per ______. Source(s) of other income: _____________________________

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) _____________________________

Checking Account No.: _____________________________ Institution and Branch: _____________________________

Savings Account No.: _____________________________ Institution and Branch: _____________________________

Name of nearest relative not living with:

Joint Applicant or Other Party: _____________________________ Address: _____________________________ Telephone: _____________________________
### Bur. of Consumer Financial Protection

**Pt. 1002, App. B**

<table>
<thead>
<tr>
<th>Description of Assets</th>
<th>Value</th>
<th>Subject to Debt?</th>
<th>Yes/No</th>
<th>Name(s) of Owner(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Automobiles (Make, Model, Year)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash Value of Life Insurance (Issuer, Face Value)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Real Estate (Location, Date Acquired)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marketable Securities (Issuer, Type, No. of Shares)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (List)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total Assets**

$  

**Outstanding Debts** (Include charge accounts, instalment loans, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

<table>
<thead>
<tr>
<th>Creditor</th>
<th>Type of Debt on Acc. No.</th>
<th>Name in Which Acc. is Carried</th>
<th>Original Date</th>
<th>Present Balance</th>
<th>Monthly Payments</th>
<th>Due Date?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. (Balance or Mortgage Holder)</td>
<td>Retail Payment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Mortgage</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total Debts**

$  

**Credit References**

Date Paid

1.  

**Other Debts**

2.  

**Are you a co-maker, endorser, or guarantor on any loan or contract?**

Yes □ No □ If "yes" for whom?

**Are there any unsecured judgments against you?**

Yes □ No □ Amount $  

**Have you been declared bankrupt in the last 4 years?**

Yes □ No □  

**Other Obligations (e.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)**

**Section E—Secured Credit**

Briefly describe the property to be given as security.

and list names and addresses of all co-owners of the property:

Name:  

Address:  

If the property is real estate, give the full name of your spouse (if any):  

Everywhere that I have stated in this application is correct to the best of my knowledge. I understand that you will ascertain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature  

Date  

Other Signature (Where Applicant)

Date  

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CREDIT APPLICATION

IMPORTANT: Read these Directives before completing this Application.

Check Box If applicable

☐ If you are applying for individual credit in your own name, are not married, and are not relying on spousal, child support, or separate maintenance payments or on the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete Section E.

☐ In all other situations, complete all Sections except E, providing information in it about your spouse, a joint applicant or co-applicant, or the person on whose spousal, child support, or separate maintenance payments or income or assets you are relying. If the requested credit is to be secured, complete Section E.

If you intend to apply for joint credit, please initial here.

Applicant: Co-Applicant:

Amount Requested
$ __________

Payment Date Desired
__________

Purpose of Credit
To be Used For

SECTION A – INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): ___________________________ Birthdate: __________

Present Street Address: ____________________________ Years there:

City: _______ State: _______ Zip: _______ Telephone: _______ Social Security No. _______ Driver’s License No. _______

Previous Street Address: ____________________________ Years there:

City: _______ State: _______ Zip: _______ Telephone: _______

Present Employer: ____________________________ Years there: _______ Position or title: ____________________________ Name of supervisor: ____________________________

Employer’s Address: ____________________________ Years there:

Previous Employer: ____________________________ Years there:

Previous Employer’s Address:

Present net salary or commission: $ ______ per ______ No. Dependents: ______ Age: ______

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under current order: ______ written agreement: ______ oral understanding: ______

Other income: $ ______ per ______ Source(s) of other income: ____________________________

If any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?

☐ Yes (Explain in detail on a separate sheet.) No: ______

Have you ever received credit from us? ______ When? ______ Office: ______

Checking Account No. ______ Institution and Branch: ______

Savings Account No. ______ Institution and Branch: ______

Name of nearest relative not living with you: ______ Telephone: ______ Address: ______

SECTION B – INFORMATION REGARDING SPOUSE, JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary)

Full Name (Last, First, Middle): ___________________________ Birthdate: __________

Relationship to Applicant (if any):

Present Street Address: ____________________________ Years there:

City: _______ State: _______ Zip: _______ Telephone: _______

Social Security No. ______ Driver’s License No. ______

Present Employer: ____________________________ Years there: _______ Telephone: _______

Previous Employer: ____________________________ Years there:

Previous Employer’s Address:

Present net salary or commission: $ ______ per ______ No. Dependents: ______ Age: ______

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under current order: ______ written agreement: ______ oral understanding: ______

Other income: $ ______ per ______ Source(s) of other income: ____________________________

If any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?

☐ Yes (Explain in detail on a separate sheet.) No: ______

Checking Account No. ______ Institution and Branch: ______

Savings Account No. ______ Institution and Branch: ______

Name of nearest relative not living with: ______ Address: ______

Spouse, Joint Applicant, User, or Other Party: ______ Telephone: ______ Relationship: ______

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Bur. of Consumer Financial Protection
Pt. 1002, App. B

SECTION C — MARITAL STATUS
Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D — ASSET AND DEBT INFORMATION (If Section E has been completed, this Section should be completed giving information about both the Applicant and Spouse. If Applicant, Unmarried, or Other Person, please mark Applicant-related information with an "A." If Section E was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary)

<table>
<thead>
<tr>
<th>Description of Assets</th>
<th>Value</th>
<th>Subject to Debt?</th>
<th>Name(s) of Owner(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>$</td>
<td>Yes/No</td>
<td></td>
</tr>
<tr>
<td>Automobiles (Make, Model, Year)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash Value of Life Insurance (Issuer, Face Value)</td>
<td></td>
<td></td>
<td></td>
</tr>
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<td>Real Estate (Location, Date Acquired)</td>
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<td>Marketable Securities (Issuer, Type, No. of Shares)</td>
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<td></td>
</tr>
<tr>
<td>Other (List)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total Assets: $  

OUTSTANDING DEBT (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary)

<table>
<thead>
<tr>
<th>Creditor</th>
<th>Type of Debt or Acc. No.</th>
<th>Name in Which Acc. Carried</th>
<th>Original Date</th>
<th>Current Bal.</th>
<th>Monthly Payments</th>
<th>Past Due? Year/No</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. (Landlord or Mortgage Holder)</td>
<td>☐ Rent Payment ☐ Mortgage</td>
<td>$ (Omit rent) ☐ (Omit rent) ☐</td>
<td>$</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total Debts: $  

Credit References: Date/Paid
1. | $ |
2. | $ |

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes," To whom? ☐

Are there any judgments against you? Yes ☐ No ☐ If "yes" Amount $ ☐

Have you been declared bankrupt in the last 4 years? Yes ☐ No ☐ If "yes" where? ☐

Other Obligations—(E.g., liability to pay alimony, child support, separation maintenance: Use separate sheet if necessary.)

SECTION E — SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security.

and list names and addresses of all co-owners of the property:

Name
Address

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your clients experience with me.

Applicant's Signature Date Other Signature (Where Applicable) Date

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Uniform Residential Loan Application

This application is designed to be completed by the applicant with the Lender’s assistance. Applicants should complete this form as “Borrower” or “Co-Borrower,” as applicable. Co-Borrower information must also be provided and the guarantor must be checked when a loan mortgage is the guarantor. The Borrower’s spouse will be used as a basis for loan qualification if the income of assets of the Borrower’s spouse will not be used as a basis for loan qualification, but his or her liabilities must be considered because the Borrower resides in a community property state, the security property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

### I. TYPE OF MORTGAGE AND TERMS OF LOAN

<table>
<thead>
<tr>
<th>Mortgage</th>
<th>Term</th>
<th>Other</th>
<th>Interest Rate</th>
<th>No. of Months</th>
<th>Acceleration</th>
<th>Fixed Rate</th>
<th>Other (explain)</th>
<th>Lender Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>US</td>
<td>30y</td>
<td></td>
<td>8%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Lender Name</td>
</tr>
</tbody>
</table>

### II. PROPERTY INFORMATION AND PURPOSE OF LOAN

<table>
<thead>
<tr>
<th>Subject Property Address (street, city, state, ZIP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Description of Subject Property (attach description if necessary)</td>
</tr>
<tr>
<td>Net Book Value</td>
</tr>
<tr>
<td>Purpose of Loan</td>
</tr>
<tr>
<td>Property will be</td>
</tr>
<tr>
<td>Completed this if construction or construction-permanent loan:</td>
</tr>
<tr>
<td>Year Lot</td>
</tr>
<tr>
<td>Acquired</td>
</tr>
<tr>
<td>Completed this if a refinance loan:</td>
</tr>
<tr>
<td>Year</td>
</tr>
<tr>
<td>Acquired</td>
</tr>
<tr>
<td>Title will be held in name(s)</td>
</tr>
<tr>
<td>Marital in which Title will be held</td>
</tr>
<tr>
<td>Source of Down Payment, Settlement Charges and/or Subordinate Financing (explain)</td>
</tr>
<tr>
<td>Estate will be held in</td>
</tr>
</tbody>
</table>

### III. BORROWER INFORMATION  

<table>
<thead>
<tr>
<th>Borrower</th>
<th>Co-Borrower</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Security Number</td>
<td>Social Security Number</td>
</tr>
<tr>
<td>Home Phone (incl. area code)</td>
<td>Home Phone (incl. area code)</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Married</td>
<td>Yes</td>
</tr>
<tr>
<td>Separated</td>
<td>No</td>
</tr>
<tr>
<td>Ages</td>
<td></td>
</tr>
<tr>
<td>Present Address (street, city, state, ZIP)</td>
<td>Present Address (street, city, state, ZIP)</td>
</tr>
<tr>
<td>Own</td>
<td>Rent</td>
</tr>
<tr>
<td>Mailing Address, if different from Present Address</td>
<td>Mailing Address, if different from Present Address</td>
</tr>
</tbody>
</table>

### IV. EMPLOYMENT INFORMATION  

<table>
<thead>
<tr>
<th>Borrower</th>
<th>Co-Borrower</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name &amp; Address of Employer</td>
<td>Name &amp; Address of Employer</td>
</tr>
<tr>
<td>Self Employed</td>
<td>Yes</td>
</tr>
<tr>
<td>Yes, on this job</td>
<td>Yes, on this job</td>
</tr>
<tr>
<td>Yes, employed in this line of work</td>
<td>Yes, employed in this line of work</td>
</tr>
<tr>
<td>Position/Title/Type of Business</td>
<td>Position/Title/Type of Business</td>
</tr>
<tr>
<td>Business Phone (incl. area code)</td>
<td>Business Phone (incl. area code)</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Name &amp; Address of Employer</td>
<td>Name &amp; Address of Employer</td>
</tr>
<tr>
<td>Self Employed</td>
<td>Yes</td>
</tr>
<tr>
<td>Yes, on this job</td>
<td>Yes, on this job</td>
</tr>
<tr>
<td>Yes, employed in this line of work</td>
<td>Yes, employed in this line of work</td>
</tr>
<tr>
<td>Position/Title/Type of Business</td>
<td>Position/Title/Type of Business</td>
</tr>
<tr>
<td>Business Phone (incl. area code)</td>
<td>Business Phone (incl. area code)</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Name &amp; Address of Employer</td>
<td>Name &amp; Address of Employer</td>
</tr>
<tr>
<td>Self Employed</td>
<td>Yes</td>
</tr>
<tr>
<td>Yes, on this job</td>
<td>Yes, on this job</td>
</tr>
<tr>
<td>Yes, employed in this line of work</td>
<td>Yes, employed in this line of work</td>
</tr>
<tr>
<td>Position/Title/Type of Business</td>
<td>Position/Title/Type of Business</td>
</tr>
<tr>
<td>Business Phone (incl. area code)</td>
<td>Business Phone (incl. area code)</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

**Fannie Mae Form 508 01/04**
### V. MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION

<table>
<thead>
<tr>
<th>Source of Income</th>
<th>Borrower</th>
<th>Co-Borrower</th>
<th>Total</th>
<th>Housing Expense</th>
<th>Present</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overtime</td>
<td></td>
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<tr>
<td>Bonus,</td>
<td></td>
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<tr>
<td>Commissions</td>
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<tr>
<td>Dividends/Profits</td>
<td></td>
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<tr>
<td>Net Rental Income</td>
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<tr>
<td>Other Income</td>
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<td></td>
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<tr>
<td>Total</td>
<td></td>
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</tbody>
</table>

* Self-employed Borrower(s) may be required to provide additional documentation such as tax returns and financial statements.

Refer to the following section for detailed requirements:

### VI. ASSETS AND LIABILITIES

The Statement and any applicable supporting schedules may be completed jointly by the Borrower and Co-Borrower(s) or separately if their assets and liabilities are sufficiently priced so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise, separate Statements and Schedules are required. If the Co-Borrower section was completed by a spouse, the Statement and supporting schedules must be completed about that spouse also. Completed: [ ] Jointly [ ] Not Jointly

#### Liabilities and Pledged Assets

<table>
<thead>
<tr>
<th>Description</th>
<th>Liabilities and Pledged Assets</th>
<th>Monthly Payment &amp; Months Left to Pay</th>
<th>Unpaid Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>Name and address of Bank, S&amp;L, or Credit Union</td>
<td>Name and address of Company</td>
<td>Payment/Months</td>
</tr>
<tr>
<td>Cash</td>
<td>Name and address of Bank, S&amp;L, or Credit Union</td>
<td>Name and address of Company</td>
<td>Payment/Months</td>
</tr>
<tr>
<td>Cash</td>
<td>Name and address of Bank, S&amp;L, or Credit Union</td>
<td>Name and address of Company</td>
<td>Payment/Months</td>
</tr>
<tr>
<td>Cash</td>
<td>Name and address of Bank, S&amp;L, or Credit Union</td>
<td>Name and address of Company</td>
<td>Payment/Months</td>
</tr>
<tr>
<td>Cash</td>
<td>Name and address of Bank, S&amp;L, or Credit Union</td>
<td>Name and address of Company</td>
<td>Payment/Months</td>
</tr>
<tr>
<td>Stocks &amp; Bonds (Company name/number &amp; description)</td>
<td>Name and address of Company</td>
<td>Payment/Months</td>
<td>Balance</td>
</tr>
<tr>
<td>Life Insurance net cash value</td>
<td>Name and address of Company</td>
<td>Payment/Months</td>
<td>Balance</td>
</tr>
<tr>
<td>Face amount</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rec. Value</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Assets [loan(s)]</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Automobile(s) owned (make and year)</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Assets [loan(s)]</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Monthly Payments</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Assets</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Liabilities</td>
<td>$</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### VI. ASSETS AND LIABILITIES (cont.)

<table>
<thead>
<tr>
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</tbody>
</table>

List any additional names under which credit has previously been received and indicate appropriate creditor name(s) and account number(s):

<table>
<thead>
<tr>
<th>Alternate Name</th>
<th>Creditor Name</th>
<th>Account Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
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</tbody>
</table>

### VII. DETAILS OF TRANSACTION

<table>
<thead>
<tr>
<th>a. Purchase price</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>b. Allocations, improvements, repairs</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>c. Land (if required)</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>d. Reference (incl. debts to be paid off)</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>e. Estimated appraisal</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>f. Estimated closing costs</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>g. PMI, MRF, Funding Fee</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>h. Closing costs</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>i. Other costs (add item before V)</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>j. Closing costs paid by Seller</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>k. Other (explain)</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

### VIII. DECLARATIONS

| a. Loan amount (exclude PMI, MRF, Funding Fee financed) | Yes | No |
| b. PMI, MRF, Funding Fee financed | Yes | No |
| c. Loan amount (add i & j) | Yes | No |

<table>
<thead>
<tr>
<th>a. Do you have any Federal debt or any other loan, mortgage, financial obligation, bond, or lien guarantee?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
</tr>
</tbody>
</table>

### IX. ACKNOWLEDGMENT AND AGREEMENT

This acknowledgment is represented by electronic signatures. The lender or servicers, attorneys, accountants, auditors, and the like agree and acknowledge that the information provided in this application is true and complete as of the date set forth above and that any intentional or negligent falsification of any information contained in this application or any attempt to conceal any material fact or to otherwise violate the requirements of this application, or any of the rules or regulations adopted to implement this application, or any of the rules or regulations adopted to implement this application, is prohibited and punishable by law.

### X. INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is required by the Federal Government to determine whether the lender has been accurate in its determination of whether the lender is subject to any reporting requirements under the Home Mortgage Disclosure Act (HMDA). Lenders are required to report information on all residential mortgage transactions, including both purchase money and refinancing transactions, in accordance with the HMDA. The information must be reported to the appropriate federal agency, and is used to evaluate the lending practices of mortgage lenders and to determine whether lenders are meeting their obligations to provide housing finance opportunities in all areas. The information is also used to track lending patterns and to identify any disparities in lending that may exist.

Type of Loan: 84

**Note:** This application was completed by:
- **Face-to-face interview:** (Interviewer's Name or phone)
- **Telephone:** (Interviewer's Name or phone)
- **Internet:** (Interviewer's Name or phone)

**Fannie Mae Form 1003**

Page 3 of 4
<table>
<thead>
<tr>
<th>Continuation Sheet/Residential Loan Application</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Borrower:</strong></td>
</tr>
<tr>
<td><strong>Agency Case Number:</strong></td>
</tr>
<tr>
<td><strong>Co-Borrower:</strong></td>
</tr>
<tr>
<td><strong>Lender Case Number:</strong></td>
</tr>
</tbody>
</table>

---

I hereby certify that all of the information submitted on this form is true and correct. This statement is made under the penalties of Title 18, United States Code, Section 1001, et seq.

Borrower's Signature: [Signature]

Co-Borrower's Signature: [Signature]

Date: [Date]

Date: [Date]
APPENDIX C TO PART 1002—SAMPLE NOTIFICATION FORMS

1. This appendix contains ten sample notification forms. Forms C-1 through C-4 are intended for use in notifying an applicant that adverse action has been taken on an application or account under §§ 1002.9(a)(1) and (2)(i). Form C-5 is a notice of disclosure of the right to request specific reasons for adverse action under §§ 1002.9(a)(1) and (2)(ii). Form C-6 is designed for use in notifying an applicant, under §1002.9(c)(2), that an application is incomplete. Forms C-7 and C-8 are intended for use in connection with applications for business credit under §1002.9(a)(3). Form C-9 is designed for use in notifying an applicant for nonmortgage credit that the creditor is requesting applicant characteristic information.

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

3. The sample forms are illustrative and may not be appropriate for all creditors. They were designed to include some of the factors that creditors most commonly consider. If a creditor chooses to use the checklist of reasons provided in one of the sample forms in this appendix and if reasons commonly used by the creditor are not provided on the form, the creditor should modify the checklist by substituting or adding other reasons. For example, if “inadequate down payment” or “no deposit relationship with us” are common reasons for taking adverse action on an application, the creditor ought to add or substitute such reasons for those presently contained on the sample forms.

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

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

FORM C-1—SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS

Statement of Credit Denial, Termination or Change

Date:
Applicant’s Name:
Applicant’s Address:
Description of Account, Transaction, or Requested Credit:
Description of Action Taken:

PART I—PRINCIPAL REASON(S) FOR CREDIT DENIAL, TERMINATION, OR OTHER ACTION TAKEN CONCERNING CREDIT

This section must be completed in all instances.

Credit application incomplete
Insufficient number of credit references provided
Unacceptable type of credit references provided
Unable to verify credit references
Temporary or irregular employment

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

**Your Income:**

- [ ] is below our minimum requirement.
- [ ] is insufficient to sustain payments on the amount of credit requested.
- [ ] could not be verified.

**Your Employment:**

- [ ] is not of sufficient length to qualify.
- [ ] could not be verified.

**Your Credit History:**

- [ ] of making payments on time was not satisfactory.
- [ ] could not be verified.

**Your Application:**

- [ ] lacks a sufficient number of credit references.
- [ ] lacks acceptable types of credit references.

---

### Key Factors that Adversely Affected Your Credit Score:

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

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**FEDERAL TRADE COMMISSION**

**Bureau of Consumer Financial Protection**

**Pt. 1002, App. C**

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

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

Date: _____________________________.

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

Key factors that adversely affected your credit score:

_______________________________.

(Number of recent inquiries on consumer report, as a key factor)

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

[(Toll-free) Telephone number: _______.]

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

FORM C-3—SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS (CREDIT SCORING)

Date: _____________________________.

Dear Applicant: Thank you for your recent application for _______. We regret that we are unable to approve your request. [Reasons for Denial of Credit]

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

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

- Insufficient bank references
- Type of occupation
- Insufficient credit experience
- Number of recent inquiries on credit bureau report

[Your Right to Get Your Consumer Report]

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

[Information about Your Credit Score]

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

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

Key factors that adversely affected your credit score:

_______________________________.

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Dear Applicant: Thank you for applying to us for __________________________. We are unable to offer you credit on the terms you requested for the following reason(s):

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

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

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

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

Your credit score: __________________________

Date: __________________________

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

Key factors that adversely affected your credit score:

________________________________________

(Number of recent inquiries on consumer report, as a key factor)

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

(Toll-free) Telephone number: __________________________

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

Creditor’s Name: __________________________

Address: __________________________

Telephone: __________________________

Sincerely,

FORM C–5—SAMPLE DISCLOSURE OF RIGHT TO REQUEST SPECIFIC REASONS FOR CREDIT DENIAL

Date

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

Creditor’s name

Address

Telephone number

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

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

Date:
Scores range from a low of _____ to a high of _____
Key factors that adversely affected your credit score:

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

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:
Address:
[Toll-Free] Telephone number: _____]

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

FORM C-7—SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS (BUSINESS CREDIT)

Creditor’s name
Creditor’s address
Date
Dear Applicant: Thank you for your application for credit. We have given your request careful consideration, and regret that we are unable to extend credit to you at this time for the following reasons:
(Insert appropriate reason, such as: Value or type of collateral not sufficient; Lack of established earnings record; Slow or past due in trade or loan payments)

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

FORM C-8—SAMPLE DISCLOSURE OF RIGHT TO REQUEST SPECIFIC REASONS FOR CREDIT DENIAL GIVEN AT TIME OF APPLICATION (BUSINESS CREDIT)

Creditor’s name
Creditor’s address

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

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

FORM C–9—SAMPLE DISCLOSURE OF RIGHT TO RECEIVE A COPY OF AN APPRAISAL

You have the right to a copy of the appraisal report used in connection with your application for credit. If you wish a copy, please write to us at the mailing address we have provided. We must hear from you no later than 90 days after we notify you about the action taken on your credit application or you withdraw your application.

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

FORM C–10—SAMPLE DISCLOSURE ABOUT VOLUNTARY DATA NOTATION

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

EFFECTIVE DATE NOTE: At 78 FR 7248, Jan. 31, 2013, appendix C to part 1002 was amended by revising Paragraph 1 and Sample Form C–9, effective Jan. 18, 2014. For the convenience of the user, the revised text is set forth as follows:

APPENDIX C TO PART 1002—SAMPLE NOTIFICATION FORMS

1. This Appendix contains ten sample notification forms. Forms C–1 through C–4 are intended for use in notifying an applicant that adverse action has been taken on an application or account under §§1002.9(a)(1) and (2)(i) of this part. Form C–5 is a notice of disclosure of the right to request specific reasons for adverse action under §§1002.9(a)(1) and (2)(ii). Form C–6 is designed for use in notifying an applicant, under §1002.9(c)(2), that an application is incomplete. Forms C–7 and C–8 are intended for use in connection with applications for business credit under §1002.9(a)(3). Form C–9 is designed for use in notifying an applicant of the right to receive a copy of appraisals under §1002.14. Form C–10 is designed for use in notifying an applicant for nonmortgage credit that the creditor is requesting applicant characteristic information.

* * * * *

FORM C–9—Sample Disclosure of Right To Receive a Copy of Appraisals

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

APPENDIX D TO PART 1002—ISSUANCE OF OFFICIAL INTERPRETATIONS

1. Official Interpretations. Interpretations of this part issued by officials of the Bureau provide the protection afforded under section 706(e) of the Act. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to the regulation, which will be amended periodically.

2. Requests for Issuance of Official Interpretations. A request for an official interpretation should be in writing and addressed to the Assistant Director, Office of Regulations, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street, NW., Washington, DC 20006. The request should contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

3. Scope of Interpretations. No interpretations will be issued approving creditors' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

SUPPLEMENT I TO PART 1002—OFFICIAL INTERPRETATIONS

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

INTRODUCTION

1. Official status. Section 706(e) of the Equal Credit Opportunity Act protects a creditor from civil liability for any act done or omitted in good faith in conformity with an interpretation issued by a duly authorized official of the Bureau. This commentary is the
means by which the Bureau of Consumer Financial Protection issues official interpretations of Regulation B. Good-faith compliance with this commentary affords a creditor protection under section 706(c) of the Act.

2. Issuance of interpretations. Under appendix D to the regulation, any person may request an official interpretation. Interpretations will be issued at the discretion of designated officials and incorporated in this commentary following publication for comment in the Federal Register. Except in unusual circumstances, official interpretations will be issued only by means of this commentary.

3. Comment designations. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. For example, comments to §1002.2(c) are further divided by subparagraph, such as comment 2(c)(1)(ii)–1 and comment 2(c)(2)(ii).–1.

Section 1002.1—Authority, Scope, and Purpose

1(a) Authority and scope.

1. Scope. The Equal Credit Opportunity Act and Regulation B apply to all credit—commercial as well as personal—without regard to the nature or type of the credit or the creditor, except for an entity excluded from coverage of this part (but not the Act) by section 1029 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5519). If a transaction provides for the deferral of the payment of a debt, it is credit covered by Regulation B even though it may not be a credit transaction covered by Regulation Z (Truth in Lending) (12 CFR part 1026). Further, the definition of creditor is not restricted to the party or person to whom the obligation is initially payable, as is the case under Regulation Z. Moreover, the Act and regulation apply to all methods of credit evaluation, whether performed judgmentally or by use of a credit scoring system.

2. Foreign applicability. Regulation B generally does not apply to lending activities that occur outside the United States. The regulation does apply to lending activities that take place within the United States (as well as the Commonwealth of Puerto Rico and any territory or possession of the United States), whether or not the applicant is a citizen.

3. Bureau. The term Bureau, as used in this part, means the Bureau of Consumer Financial Protection.

Section 1002.2—Definitions

2(c) Adverse action.

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

1. Application for credit. If the applicant applied in accordance with the creditor’s procedures, a refusal to refinance or extend the term of a business or other loan is adverse action.

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

1. Move from service area. If a credit card issuer terminates the open-end account of a customer because the customer has moved out of the card issuer’s service area, the termination is adverse action unless termination on this ground was explicitly provided for in the credit agreement between the parties. In cases where termination is adverse action, notification is required under §1002.9.

2. Termination based on credit limit. If a creditor terminates credit accounts that have low credit limits (for example, under $400 but keeps open accounts with higher credit limits, the termination is adverse action and notification is required under §1002.9.

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

1. Default—exercise of due-on-sale clause. If a mortgagor sells or transfers mortgaged property without the consent of the mortgagee, and the mortgagee exercises its contractual right to accelerate the mortgage loan, the mortgagee may treat the mortgagor as being in default. An adverse action notice need not be given to the mortgagor or the transferee. (See comment 2(e)–1 for treatment of a purchaser who requests to assume the loan.)

2. Current delinquency or default. The term adverse action does not include a creditor’s termination of an account when the accountholder is currently in default or delinquent on that account. Notification in accordance with §1002.9 of the regulation generally is required, however, if the creditor’s action is based on a past delinquency or default on the account.

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

1. Point-of-sale transactions. Denial of credit at point of sale is not adverse action except under those circumstances specified in the regulation. For example, denial at point of sale is not adverse action in the following situations:

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

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

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

iv. The authorization facilities are not functioning.

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

2. Application for increase in available credit. A refusal or failure to authorize an account transaction at the point of sale or loan is not adverse action except when the refusal is a denial of an application, submitted in accordance with the creditor’s procedures, for an increase in the amount of credit.
Paragraph 2(c)(2)(v).

1. Terms of credit versus type of credit offered. When an applicant applies for credit and the creditor does not offer the credit terms requested (for example, the interest rate, length of maturity, collateral, or amount of downpayment), a denial of the application for that reason is adverse action (unless the creditor makes a counteroffer that is accepted by the applicant) and the applicant is entitled to notification under §1002.9.

2(e) Applicant.

1. Request to assume loan. If a mortgagor sells or transfers the mortgaged property and the buyer makes an application to the creditor to assume the mortgage loan, the mortgagee must treat the buyer as an applicant unless its policy is not to permit assumptions.

2(f) Application.

1. General. A creditor has the latitude under the regulation to establish its own application process and to decide the type and amount of information it will require from credit applicants.

2. Procedures used. The term “procedures” refers to the actual practices followed by a creditor for making credit decisions as well as its stated application procedures. For example, if a creditor’s stated policy is to require all applications to be in writing on the creditor’s application form, but the creditor also makes credit decisions based on oral requests, the creditor’s procedures are to accept both oral and written applications.

3. When an inquiry or prequalification request becomes an application. A creditor is encouraged to provide consumers with information about loan terms. However, if in giving information to the consumer the creditor also evaluates information about the consumer, decides to decline the request, and communicates this to the consumer, the creditor has treated the inquiry or prequalification request as an application and must then comply with the notification requirements under §1002.9. Whether the inquiry or prequalification request becomes an application depends on how the creditor responds to the consumer, not on what the consumer says or asks. (See comment 9–5 for further discussion of prequalification requests; see comment 2(f)–5 for a discussion of preapproval requests.)

4. Examples of inquiries that are not applications. The following examples illustrate situations in which only an inquiry has taken place:

1. A consumer calls to ask about loan terms and an employee explains the creditor’s basic loan terms, such as interest rates, loan-to-value ratio, and debt-to-income ratio.

2. A consumer calls to ask about interest rates for car loans, and, in order to quote the appropriate rate, the loan officer asks for the make and sales price of the car and the amount of the downpayment, then gives the consumer the rate.

3. A consumer asks about terms for a loan to purchase a home and tells the loan officer her income and intended downpayment, but the loan officer only explains the creditor’s loan-to-value ratio policy and other basic lending policies, without telling the consumer whether she qualifies for the loan.

4. A consumer calls to ask about terms for a loan to purchase vacant land and states his income and the sales price of the property to be financed, and asks whether he qualifies for a loan; the employee responds by describing the general lending policies, explaining that he would need to look at all of the consumer’s qualifications before making a decision, and offering to send an application form to the consumer.

5. Examples of an application. An application for credit includes the following situations:

1. A person asks a financial institution to “preapprove” her for a loan (for example, to finance a house or a vehicle she plans to buy) and the institution reviews the request under a program in which the institution, after a comprehensive analysis of her creditworthiness, issues a written commitment valid for a designated period of time to extend a loan up to a specified amount. The written commitment may not be subject to conditions other than conditions that require the identification of adequate collateral, conditions that require no material change in the applicant’s financial condition or creditworthiness prior to funding the loan, and limited conditions that are not related to the financial condition or creditworthiness of the applicant that the lender ordinarily attaches to a traditional application (such as certification of a clear termite inspection for a home purchase loan, or a maximum mileage requirement for a used car loan). But if the creditor’s program does not provide for giving written commitments, requests for preapprovals are treated as prequalification requests for purposes of the regulation.

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

6. Completed application—diligence requirement. The regulation defines a completed application in terms that give a creditor the latitude to establish its own information requirements. Nevertheless, the creditor must act with reasonable diligence to collect information needed to complete the application. For example, the creditor should request information from third parties, such as a credit report, promptly after receiving the application. If additional information is
needed from the applicant, such as an address or a telephone number to verify employment, the creditor should contact the applicant promptly. (But see comment 9(a)–4, which discusses the creditor’s option to deny an application on the basis of incompleteness.)

1. Definition. The test for deciding whether a transaction qualifies as business credit is one of primary purpose. For example, an open-end credit account used for both personal and business purposes is not business credit unless the primary purpose of the account is business-related. A creditor may rely on an applicant’s statement of the purpose for the credit requested.

2. Credit.

1. General. Regulation B covers a wider range of credit transactions than Regulation Z (Truth in Lending). Under Regulation B, a transaction is credit if there is a right to defer payment of a debt—regardless of whether the credit is for personal or commercial purposes, the number of installments required for repayment, or whether the transaction is subject to a finance charge.

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

1. Purpose of definition. The definition under §§1002.2(p)(1)(i) through (iv) sets the criteria that a credit system must meet in order to use age as a predictive factor. Credit systems that do not meet these criteria are judgmental systems and may consider age only for the purpose of determining a “pertinent element of creditworthiness.” (Both types of systems may favor an elderly applicant. See §1002.6(b)(2).)

2. Periodic revalidation. The regulation does not specify how often credit scoring systems must be revalidated. The credit scoring system must be revalidated frequently enough to ensure that it continues to meet recognized professional statistical standards for statistical soundness. To ensure that predictive ability is being maintained, the creditor must periodically review the performance of the system. This could be done, for example, by analyzing the loan portfolio to determine the delinquency rate for each score interval, or by analyzing population stability over time to detect deviations of recent applications from the applicant population used to validate the system. If this analysis indicates that the system no longer predicts risk with statistical soundness, the system must be adjusted as necessary to reestablish its predictive ability. A creditor is responsible for ensuring its system is validated and revalidated based on the creditor’s own data.

3. Pooled data scoring systems. A scoring system or the data from which to develop such a system may be obtained from either a single credit grantor or multiple credit grantors. The resulting system will qualify as an empirically derived, demonstrably and statistically sound, credit scoring system provided the criteria set forth in paragraph (p)(1)(i) through (iv) of this section are met. A creditor is responsible for ensuring its system is validated and revalidated based on the creditor’s own data when it becomes available.

4. Effects test and disparate treatment. An empirically derived, demonstrably and statistically sound, credit scoring system may include age as a predictive factor (provided that the age of an elderly applicant is not assigned a negative factor or value). Besides age, no other prohibited basis may be used as a variable. Generally, credit scoring systems treat all applicants objectively and thus avoid problems of disparate treatment. In cases where a credit scoring system is used in conjunction with individual discretion, disparate treatment could conceivably occur in the evaluation process. In addition, neutral factors used in credit scoring systems could nonetheless be subject to challenge under the effects test. (See comment 6(a)–2 for a discussion of the effects test.)

2. Open-end credit.

1. Open-end real estate mortgages. The term “open-end credit” does not include negotiated advances under an open-end real estate mortgage or a letter of credit.

2. Prohibited basis.

1. Persons associated with applicant. As used in this part, prohibited basis refers not only to characteristics—the race, color, religion, national origin, sex, marital status, or age—of an applicant (or officers of an applicant in the case of a corporation) but also to the characteristics of individuals with whom an applicant is affiliated or with whom an applicant associates. This means, for example, that under the general rule stated in §1002.4(a), a creditor may not discriminate against an applicant because of that person’s personal or business dealings with members of a certain religion, because of the national
origin of any persons associated with the extension of credit (such as the tenants in the apartment complex being financed), or because of the race of other residents in the neighborhood where the property offered as collateral is located.

2. National origin. A creditor may not refuse to grant credit because an applicant comes from a particular country but may take the applicant’s immigration status into account. A creditor may also take into account any applicable law, regulation, or executive order restricting dealings with citizens (or the government) of a particular country or imposing limitations regarding credit extended for their use.

3. Public assistance program. Any Federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need, is “public assistance” for purposes of the regulation. The term includes (but is not limited to) Temporary Aid to Needy Families, food stamps, rent and mortgage supplement or assistance programs, social security and supplemental security income, and unemployment compensation. Only physicians, hospitals, and others to whom the benefits are payable need consider Medicare and Medicaid as public assistance.

Section 1002.3—Limited Exceptions for Certain Classes of Transactions

1. Scope. Under this section, procedural requirements of the regulation do not apply to certain types of credit. All classes of transactions remain subject to §1002.4(a), the general rule barring discrimination on a prohibited basis, and to any other provision not specifically excepted.

3(a) Public-utilities credit.

1. Definition. This definition applies only to credit for the purchase of a utility service, such as electricity, gas, or telephone service. Credit provided or offered by a public utility for some other purpose—such as for financing the purchase of a gas dryer, telephone equipment, or other durable goods, or for insulation or other home improvements—is not excepted.

2. Security deposits. A utility company is a creditor when it supplies utility service and bills the user after the service has been provided. Thus, any credit term (such as a requirement for a security deposit) is subject to the regulation’s bar against discrimination on a prohibited basis.

3. Telephone companies. A telephone company’s credit transactions qualify for the exceptions provided in §1002.3(a)(2) only if the company is regulated by a government unit or files the charges for service, delayed payment, or any discount for prompt payment with a government unit.

3(c) Incidental credit.

1. Examples. If a service provider (such as a hospital, doctor, lawyer, or merchant) allows the client or customer to defer the payment of a bill, this deferral of debt is credit for purposes of the regulation, even though there is no finance charge and no agreement for payment in installments. Because of the exceptions provided by this section, however, these particular credit extensions are excepted from compliance with certain procedural requirements as specified in §1002.3(c).

3(d) Government credit.

1. Credit to governments. The exception relates to credit extended to (not by) governmental entities. For example, credit extended to a local government is covered by this exception, but credit extended to consumers by a Federal or state housing agency does not qualify for special treatment under this category.

Section 1002.4—General Rules

Paragraph 4(a).

1. Scope of rule. The general rule stated in §1002.4(a) covers all dealings, without exception, between an applicant and a creditor, whether or not addressed by other provisions of the regulation. Other provisions of the regulation identify specific practices that the Bureau has decided are impermissible because they could result in credit discrimination on a basis prohibited by the Act. The general rule covers, for example, application procedures, criteria used to evaluate creditworthiness, administration of accounts, and treatment of delinquent or slow accounts. Thus, whether or not specifically prohibited elsewhere in the regulation, a credit practice that treats applicants differently on a prohibited basis violates the law because it violates the general rule. Disparate treatment on a prohibited basis is illegal whether or not it results from a conscious intent to discriminate.

2. Examples.

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

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

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

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

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

ii. Treating applicants differently on a prohibited basis is unlawful if the creditor lacks
Paragraph 4(b). Generally, the regulation’s protections apply only to persons who have requested or received an extension of credit. In keeping with the purpose of the Act—to assure the availability of credit on a nondiscriminatory basis—§1002.4(b) covers acts or practices directed at prospective applicants that could discourage a reasonable person, on a prohibited basis, from applying for credit. Practices prohibited by this section include:

1. A statement that the applicant should not bother to apply, after the applicant states that he is retired.
2. The use of words, symbols, models or other forms of communication in advertising that express, imply, or suggest a discriminatory preference or a policy of exclusion in violation of the Act.
3. The use of interview scripts that discourage applications on a prohibited basis.

Paragraph 4(c).

1. Requirement for written applications. Model application forms are provided in appendix B to the regulation, although use of a printed form is not required. A creditor will satisfy the requirement by writing down the information that it normally considers in making a credit decision. The creditor may complete an application on behalf of an applicant and need not require the applicant to sign the application.
2. Telephone applications. A creditor that accepts applications by telephone for dwelling-related credit covered by §1002.13 can meet the requirement for written applications by writing down pertinent information that is provided by the applicant.
3. Computerized entry. Information entered directly into and retained by a computerized system qualifies as a written application under this paragraph. (See the commentary to §1002.13(b), Applications through electronic media and applications through video.)

Paragraph 4(d).

1. Clear and conspicuous. This standard requires that disclosures be presented in a reasonably understandable format in a way that does not obscure the required information. No minimum type size is mandated, but the disclosures must be legible, whether typed, handwritten, or printed by computer.
2. Form of disclosures. Whether the disclosures required to be on or with an application must be in electronic form depends upon the following:

1. If an applicant accesses a credit application electronically (other than as described under ii below), such as online at a home computer, the creditor must provide the disclosures in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the creditor instead mailed paper disclosures to the applicant, this requirement would not be met.
2. In contrast, if an applicant is physically present in the creditor’s office, and accesses a credit application electronically, such as via a terminal or kiosk (or if the applicant uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the creditor to provide applications to consumers), the creditor may provide disclosures in either electronic or paper form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.

Section 1002.5—Rules Concerning Requests for Information

3(a) General rules.

Paragraph 3(a)(1).

1. Requests for information. This section governs the types of information that a creditor may gather. Section 1002.6 governs how information may be used.

Paragraph 3(a)(2).

1. Local laws. Information that a creditor is allowed to collect pursuant to a “state” statute or regulation includes information required by a local statute, regulation, or ordinance.
2. Information required by Regulation C. Regulation C generally requires creditors covered by the Home Mortgage Disclosure Act (HMDA) to collect and report information about the race, ethnicity, and sex of applicants for home-improvement loans and home-purchase loans, including some types of loans not covered by §1002.13.
3. Collecting information on behalf of creditors. Persons such as loan brokers and correspondents do not violate the ECOA or Regulation B if they collect information that they are otherwise prohibited from collecting, where the purpose of collecting the information is to provide it to a creditor that is subject to the Home Mortgage Disclosure Act or another Federal or state statute or regulation requiring data collection.

5(d) Other limitations on information requests.

Paragraph 5(d)(1).

1. Indirect disclosure of prohibited information. The fact that certain credit-related information may indirectly disclose marital status does not bar a creditor from seeking such information. For example, the creditor may ask about:

1. The applicant’s obligation to pay alimony, child support, or separate maintenance income.
ii. The source of income to be used as the basis for repaying the credit requested, which could disclose that it is the income of a spouse.

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

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

Paragraph 5(d)(2).

1. Disclosure about income. The sample application forms in appendix B to the regulation illustrate how a creditor may inform an applicant of the right not to disclose alimony, child support, or separate maintenance income.

2. General inquiry about source of income. Since a general inquiry about the source of income may lead an applicant to disclose alimony, child support, or separate maintenance income, a creditor making such an inquiry on an application form should preface the request with the disclosure required by this paragraph.

3. Specific inquiry about sources of income. A creditor need not give the disclosure if the inquiry about income is specific and worded in a way that is unlikely to lead the applicant to disclose the fact that income is derived from alimony, child support, or separate maintenance payments. For example, an application form that asks about specific types of income such as salary, wages, or investment income need not include the disclosure.

Section 1002.6—Rules Concerning Evaluation of Applications

6(a) General rule concerning use of information.

1. General. When evaluating an application for credit, a creditor generally may consider any information obtained. However, a creditor may not consider in its evaluation of creditworthiness any information that it is barred by §1002.5 from obtaining or from using for any purpose other than to conduct a self-test under §1002.15.

2. Effects test. The effects test is a judicial doctrine that was developed in a series of employment cases decided by the U.S. Supreme Court under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) and the burdens of proof for such employment cases were codified by Congress in the Civil Rights Act of 1991 (42 U.S.C. 2000e-2). Congressional intent that this doctrine apply to the credit area is documented in the Senate Report that accompanied H.R. 6516, No. 94–589, pp. 3–5; and in the House Report that accompanied H.R. 6516, No. 94–210, p.5. The Act and regulation may prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on its face, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact. For example, requiring that applicants have income in excess of a certain amount to qualify for an overdraft line of credit could mean that women and minority applicants will be rejected at a higher rate than men and nonminority applicants. If there is a demonstrable relationship between the income requirement and creditworthiness for the level of credit involved, however, use of the income standard would likely be permissible.

6(b) Specific rules concerning use of information.

Paragraph 6(b)(1).

1. Prohibited basis—special purpose credit. In a special purpose credit program, a creditor may consider a prohibited basis to determine whether the applicant possesses a characteristic needed for eligibility. (See §1002.8.)

Paragraph 6(b)(2).

1. Favoring the elderly. Any system of evaluating creditworthiness may favor a credit applicant who is age 62 or older. A credit program that offers more favorable credit terms to applicants age 62 or older is also permissible; a program that offers more favorable credit terms to applicants at an age lower than 62 is permissible only if it meets the special-purpose credit requirements of §1002.8.

2. Consideration of age in a credit scoring system. Age may be taken directly into account in a credit scoring system that is “demonstrably and statistically sound,” as defined in §1002.2(p), with one limitation: Applicants age 62 years or older must be treated at least as favorably as applicants who are under age 62. If age is scored by assigning points to an applicant’s age category, elderly applicants must receive the same or a greater number of points as the most favored class of nonelderly applicants.

1. Age-split scorecards. Some credit systems segment the population and use different scorecards based on the age of an applicant. In such a system, one card may cover a narrow age range (for example, applicants in their twenties or younger) who are evaluated under attributes predictive for that age group. A second card may cover all other applicants, who are evaluated under the attributes predictive for that broader class. When a system uses a card covering a wide age range that encompasses elderly applicants, the credit scoring system is not deemed to score age. Thus, the system does not raise the issue of assigning a negative factor or value to the age of elderly applicants. But if a system segments the population by age into multiple scorecards, and includes elderly applicants in a narrower age range, the credit scoring system does score age. To comply with the Act and regulation
in such a case, the creditor must ensure that the system does not assign a negative factor or value to the age of elderly applicants as a class.

3. Consideration of age in a judgmental system. In a judgmental system, defined in §1002.2(c), a creditor may not decide whether to extend credit or set the terms and conditions of credit based on age or information related exclusively to age. Age or age-related information may be considered only in evaluating other “pertinent elements of creditworthiness” that are drawn from the particular facts and circumstances concerning the applicant. For example, a creditor may not reject an application or terminate an account because the applicant is 60 years old. But a creditor that uses a judgmental system may relate the applicant’s age to other information about the applicant that the creditor considers in evaluating creditworthiness. As the following examples illustrate, the evaluation must be made in an individualized, case-by-case manner:

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

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

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

4. Consideration of age in a reverse mortgage. A reverse mortgage is a home-secured loan in which the borrower receives payments from the creditor, and does not become obligated to repay these amounts (other than in the case of default) until the borrower dies, moves permanently from the home, or transfers title to the home, or upon a specified maturity date. Disbursements to the borrower under a reverse mortgage typically are determined by considering the value of the borrower’s home, the current interest rate, and the borrower’s life expectancy. A reverse mortgage program that requires borrowers to be age 62 or older is permissible under §1002.8(b)(2)(iv). In addition, under §1002.8(b)(2)(iii), a creditor may consider a borrower’s age to evaluate a pertinent element of creditworthiness, such as the amount of the credit or monthly payments that the borrower will receive, or the estimated repayment date.

5. Consideration of age in a combined system. A creditor using a credit scoring system that qualifies as “empirically derived” under §1002.2(p) may consider other factors (such as a credit report or the applicant’s cash flow) on a judgmental basis. Doing so will not negate the classification of the credit scoring component of the combined system as “demonstrably and statistically sound.” Age could be used in the credit scoring portion, however, in the judgmental portion age may not be considered directly. It may be used only for the purpose of determining a “pertinent element of creditworthiness.” (See comment 6(b)(2)-3.)

6. Consideration of public assistance. When considering income derived from a public assistance program, a creditor may take into account, for example:

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

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

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

Paragraph 6(b)(5).

1. Consideration of an individual applicant. A creditor must evaluate income derived from part-time employment, alimony, child support, separate maintenance payments, retirement benefits, or public assistance on an individual basis, not on the basis of aggregate statistics; and must assess its reliability or unreliability by analyzing the applicant’s actual circumstances, not by analyzing statistical measures derived from a group.

2. Payments consistently made. In determining the likelihood of consistent payments of alimony, child support, or separate maintenance, a creditor may consider factors such as whether payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; whether the payments are regularly received by the applicant; the availability of court or other procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when it is available to the creditor.

3. Consideration of income.

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

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

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

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

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

4. Part-time employment, sources of income. A creditor may score or take into account the fact that an applicant has more than one source of earned income—a full-time and a part-time job or two part-time jobs. A creditor may also score or treat earned income from a secondary source differently than earned income from a primary source. The creditor may not, however, score or otherwise take into account the number of sources for income such as retirement income, social security, supplemental security income, and alimony. Nor may the creditor treat negatively the fact that an applicant’s only earned income is derived from, for example, a part-time job.

Paragraph 6(b)(6).

1. Types of credit references. A creditor may restrict the types of credit history and credit references that it will consider, provided that the restrictions are applied to all credit applicants without regard to sex, marital status, or any other prohibited basis. On the applicant’s request, however, a creditor must consider credit information not reported through a credit bureau when the information relates to the same types of credit references and history that the creditor would consider if reported through a credit bureau.

Paragraph 6(b)(7).

1. National origin—immigration status. The applicant’s immigration status and ties to the community (such as employment and continued residence in the area) could have a bearing on a creditor’s ability to obtain repayment. Accordingly, the creditor may consider immigration status and differentiate, for example, between a noncitizen who is a long-time resident with permanent resident status and a noncitizen who is temporarily in this country on a student visa.

2. National origin—citizenship. A denial of credit on the ground that an applicant is not a United States citizen is not per se discrimination based on national origin.

Paragraph 6(b)(8).

1. Prohibited basis—marital status. A creditor may consider the marital status of an applicant or joint applicant for the purpose of ascertaining the creditor’s rights and remedies applicable to the particular extension of credit. For example, in a secured transaction involving real property, a creditor could take into account whether state law gives the applicant’s spouse an interest in the property being offered as collateral.

Section 1002.7—Rules Concerning Extensions of Credit

7(a) Individual accounts.

1. Open-end credit—authorized user. A creditor may not require a creditworthy applicant seeking an individual credit account to provide additional signatures. But the creditor may condition the designation of an authorized user by the account holder on the authorized user’s becoming contractually liable for the account, as long as the creditor does not differentiate on any prohibited basis in imposing this requirement.

2. Open-end credit—choice of authorized user. A creditor that permits an account holder to designate an authorized user may not restrict this designation on a prohibited basis. For example, if the creditor allows the designation of spouses as authorized users, the creditor may not refuse to accept a non-spouse as an authorized user.

3. Overdraft authority on transaction accounts. If a transaction account (such as a checking account or NOW account) includes an overdraft line of credit, the creditor may require that all persons authorized to draw on the transaction account assume liability for any overdraft.

7(b) Designation of name.

1. Single name on account. A creditor may require that joint applicants on an account designate a single name for purposes of administering the account and that a single name be embossed on any credit cards issued on the account. But the creditor may not require that the name be the husband’s name. (See §1002.10 for rules governing the furnishing of credit history on accounts held by spouses.)

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

Paragraph 7(c)(1).

1. Termination coincidental with marital status change. When an account holder’s marital status changes, a creditor generally may not terminate the account unless it has evidence that the account holder is now unable or unwilling to repay. But the creditor may terminate an account on which both spouses are jointly liable, even if the action coincides with a change in marital status, when one or both spouses:

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

ii. Request separate accounts in their own names.

iii. Request that the joint account be closed.

2. Updating information. A creditor may periodically request updated information from applicants but may not use events related to
a prohibited basis—such as an applicant’s retirement or reaching a particular age, or a change in name or marital status—to trigger such a request.

1. Procedure pending reapplication. A creditor may require a reapplication from an account holder, even when there is no evidence of unwillingness or inability to repay, if (1) the credit was based on the qualifications of a person who is no longer available to support the credit and (2) the creditor has information indicating that the account holder’s income may be insufficient to support the credit. While a reapplication is pending, the creditor must allow the account holder full access to the account under the existing contract terms. The creditor may specify a reasonable time period within which the account holder must submit the required information.

7(d) Signature of spouse or other person.

1. Qualified applicant. The signature rules ensure that qualified applicants are able to obtain credit in their own names. Thus, when an applicant requests individual credit, a creditor generally may not require the signature of another person unless the creditor has first determined that the applicant alone does not qualify for the credit requested.

2. Unqualified applicant. When an applicant requests individual credit but does not meet a creditor’s standards, the creditor may require a cosigner, guarantor, endorser, or similar party—but cannot require that it be the spouse. (See commentary to §§1002.7(d)(5) and (6).)

Paragraph 7(d)(1).

1. Signature of another person. It is impermissible for a creditor to require an applicant who is individually creditworthy to provide a cosigner—even if the creditor applies the requirement without regard to sex, marital status, or any other prohibited basis. (But see comment 7(d)(6)–1 concerning guarantors of closely held corporations.)

2. Joint applicant. The term “joint applicant” refers to someone who applies contemporaneously with the applicant for shared or joint credit. It does not refer to someone whose signature is required by the creditor as a condition for granting the credit requested.

3. Evidence of joint application. A person’s intent to be a joint applicant must be evidenced at the time of application. Signatures on a promissory note may not be used to show intent to apply for joint credit. On the other hand, signatures or initials on a credit application affirming applicants’ intent to apply for joint credit may be used to establish intent to apply for joint credit. (See appendix B.) The method used to establish intent must be distinct from the means used by individuals to affirm the accuracy of information. For example, signatures on a joint financial statement affirming the veracity of information are not sufficient to establish intent to apply for joint credit.

Paragraph 7(d)(2).

1. Jointly owned property. If an applicant requests unsecured credit, does not own sufficient separate property, and relies on joint property to establish creditworthiness, the creditor must value the applicant’s interest in the jointly owned property. A creditor may not request that a nonapplicant joint owner sign any instrument as a condition of the credit extension unless the applicant’s interest does not support the amount and terms of the credit sought.

1. Valuation of applicant’s interest. In determining the value of an applicant’s interest in jointly owned property, a creditor may consider factors such as the form of ownership and the property’s susceptibility to attachment, execution, severance, or partition; the value of the applicant’s interest after such action; and the cost associated with the action. This determination must be based on the existing form of ownership, and not on the possibility of a subsequent change. For example, in determining whether a married applicant’s interest in jointly owned property is sufficient to satisfy the creditor’s standards of creditworthiness for individual credit, a creditor may not consider that the applicant’s separate property could be transferred into tenancy by the entirety after consummation. Similarly, a creditor may not consider the possibility that the couple may divorce. Accordingly, a creditor may not require the signature of the nonapplicant spouse in these or similar circumstances.

2. Other options to support credit. If the applicant’s interest in jointly owned property does not support the amount and terms of credit sought, the creditor may offer the applicant other options to qualify for the extension of credit. For example:

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

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

C. Providing the signature of the joint owner on an instrument that ensures access to the property in the event of the applicant’s death or default, but does not impose personal liability unless necessary under state law (such as a limited guarantee). A creditor may not routinely require, however, that a joint owner sign an instrument (such as a quitclaim deed) that would result in the forfeiture of the joint owner’s interest in the property.

2. Need for signature—reasonable belief. A creditor’s reasonable belief as to what instruments need to be signed by a person other than the applicant should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

Paragraph 7(d)(3).
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1. Residency. In assessing the creditworthiness of a person who applies for credit in a community property state, a creditor may assume that the applicant is a resident of the state unless the applicant indicates otherwise.

Paragraph 7(d)(4).

1. Creation of enforceable lien. Some state laws require that both spouses join in executing any instrument by which real property is encumbered. If an applicant offers such property as security for credit, a creditor may require the applicant’s spouse to sign the instruments necessary to create a valid security interest in the property. The creditor may not require the spouse to sign the note evidencing the credit obligation if signing only the mortgage or other security agreement is sufficient to make the property available to satisfy the debt in the event of default. However, if under state law both spouses must sign the note to create an enforceable lien, the creditor may require the signatures.

2. Need for signature—reasonable belief. Generally, a signature to make the secured property available will only be needed on a security agreement. A creditor’s reasonable belief that, to ensure access to the property, the spouse’s signature is needed on an instrument that imposes personal liability should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

3. Integrated instruments. When a creditor uses an integrated instrument that combines the note and the security agreement, the spouse cannot be asked to sign the integrated instrument if the signature is only needed to grant a security interest. But the spouse could be asked to sign an integrated instrument that makes clear—for example, by a legend placed next to the spouse’s signature—that the spouse’s signature is only to grant a security interest and that signing the instrument does not impose personal liability.

Paragraph 7(d)(5).

1. Qualifications of additional parties. In establishing guidelines for eligibility of guarantors, cosigners, or similar additional parties, a creditor may restrict the applicant’s choice of additional parties but may not discriminate on the basis of sex, marital status, or any other prohibited basis. For example, the creditor could require that the additional party live in the creditor’s market area.

2. Reliance on income of another person—individual credit. An applicant who requests individual credit relying on the income of another person (including a spouse in a non-community property state) may be required to provide the signature of the other person to make the income available to pay the debt. In community property states, the signature of a spouse may be required if the applicant relies on the spouse’s separate income. If the applicant relies on the spouse’s future earnings that as a matter of state law cannot be characterized as community property until earned, the creditor may require the spouse’s signature, but need not do so—even if it is the creditor’s practice to require the signature when an applicant relies on the future earnings of a person other than a spouse. (See §1002.6(c) on consideration of state property laws.)

3. Renewals. If the borrower’s creditworthiness is reevaluated when a credit obligation is renewed, the creditor must determine whether an additional party is still warranted and, if not warranted, release the additional party.

Paragraph 7(d)(6).

1. Guarantees. A guarantee on an extension of credit is part of a credit transaction and therefore subject to the regulation. A creditor may require personal guarantees of the partners, directors, or officers of a business, and the shareholders of a closely held corporation, even if the business or corporation is creditworthy. The requirement must be based on the guarantor’s relationship with the business or corporation, however, and not on a prohibited basis. For example, a creditor may not require guarantees only for women-owned or minority-owned businesses. Similarly, a creditor may not require guarantees only of the married officers of a business or the married shareholders of a closely held corporation.

2. Spousal guarantees. The rules in §1002.7(d) bar a creditor from requiring the signature of a guarantor’s spouse just as they bar the creditor from requiring the signature of an applicant’s spouse. For example, although a creditor may require all officers of a closely held corporation to personally guarantee a corporate loan, the creditor may not automatically require that spouses of married officers also sign the guarantee. If an evaluation of the financial circumstances of an officer indicates that an additional signature is necessary, however, the creditor may require the signature of another person in appropriate circumstances in accordance with §1002.7(d)(2).

7(e) Insurance.

1. Differences in terms. Differences in the availability, rates, and other terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant does not violate Regulation B.

2. Insurance information. A creditor may obtain information about an applicant’s age, sex, or marital status for insurance purposes. The information may only be used for determining eligibility and premium rates for insurance, however, and not in making the credit decision.
Section 1002.8—Special Purpose Credit Programs

8(a) Standards for programs.

1. Determining qualified programs. The Bureau does not determine whether individual programs qualify for special purpose credit status, or whether a particular program benefits an “economically disadvantaged class of persons.” The agency or creditor administering or offering the loan program must make these decisions regarding the status of its program.

2. Compliance with a program authorized by Federal or state law. A creditor does not violate Regulation B when it compiles in good faith with a regulation promulgated by a government agency implementing a special purpose credit program under §1002.8(a)(1). It is the agency’s responsibility to promulgate a regulation that is consistent with Federal and state law.

3. Expressly authorized. Credit programs authorized by Federal or state law include programs offered pursuant to Federal, state, or local statute, regulation or ordinance, or pursuant to judicial or administrative order.

4. Creditor liability. A refusal to grant credit to an applicant is not a violation of the Act or regulation if the applicant does not meet the eligibility requirements under a special purpose credit program.

5. Determining need. In designing a special purpose credit program under §1002.8(a), a for-profit organization must determine that the program will benefit a class of people who would otherwise be denied credit or would receive it on less favorable terms. This determination can be based on a broad analysis using the organization’s own research or data from outside sources, including governmental reports and studies. For example, a creditor might design new products to reach consumers who would not meet, or have not met, its traditional standards of creditworthiness due to such factors as credit inexperience or the use of credit sources that may not report to consumer reporting agencies. Or, a bank could review Home Mortgage Disclosure Act data along with demographic data for its assessment area and conclude that there is a need for a special purpose credit program for low-income minority borrowers.

6. Elements of the program. The written plan must contain information that supports the need for the particular program. The plan also must either state a specific period of time for which the program will last, or contain a statement regarding when the program will be reevaluated to determine if there is a continuing need for it.

8(b) Rules in other sections.

1. Applicability of rules. A creditor that rejects an application because the applicant does not meet the eligibility requirements (common characteristic or financial need, for example) must nevertheless notify the applicant of action taken as required by §1002.9.

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

1. Request of prohibited basis information. This section permits a creditor to request and consider certain information that would otherwise be prohibited by §§1002.5 and 1002.6 to determine an applicant’s eligibility for a particular program.

2. Examples. Examples of programs under which the creditor can ask for and consider information about a prohibited basis are:

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

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

1. Request of prohibited basis information. This section permits a creditor to request and consider certain information that would otherwise be prohibited by §§1002.5 and 1002.6, and to require signatures that would otherwise be prohibited by §1002.7(d).

2. Examples. Examples of programs in which financial need is a criterion are:

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

3. Student loans. In a guaranteed student loan program, a creditor may obtain the signature of a parent as a guarantor when required by Federal or state law or agency regulation, or when the student does not meet the creditor’s standards of creditworthiness. (See §§1002.7(d)(1) and (5).) The creditor may not require an additional signature when a student has a work or credit history that satisfies the creditor’s standards.

Section 1002.9—Notifications

1. Use of the term adverse action. The regulation does not require that a creditor use the term adverse action in communicating to an applicant that a request for an extension of credit has not been approved. In notifying an applicant of adverse action as defined by §1002.2(e)(1), a creditor may use any words or phrases that describe the action taken on the application.

2. Expressly withdrawn applications. When an applicant expressly withdraws a credit application, the creditor is not required to comply with the notification requirements under §1002.9. (The creditor must comply, however, with the record retention requirements of the regulation. See §1002.12(b)(5).)
3. When notification occurs. Notification occurs when a creditor delivers or mails a notice to the applicant's last known address or, in the case of an oral notification, when the creditor communicates the credit decision to the applicant.

4. Location of notice. The notifications required under §1002.9 may appear on either or both sides of a form or letter.

5. Prequalification requests. Whether a creditor must provide a notice of action taken for a prequalification request depends on the creditor's response to the request, as discussed in comment 2(f)-3. For instance, if a creditor may treat the request as an inquiry if the creditor evaluates specific information about the consumer and tells the consumer the loan amount, rate, and other terms of credit the consumer could qualify for under various loan programs, explaining the process the consumer must follow to submit a mortgage application and the information the creditor will analyze in reaching a credit decision. On the other hand, a creditor has treated a request as an application, and is subject to the adverse action notice requirements of §1002.9 if, after evaluating information, the creditor decides that it will not approve the request and communicates that decision to the consumer. For example, if the creditor tells the consumer that it would not approve an application for a mortgage because of a bankruptcy in the consumer's record, the creditor has denied an application for credit. §1002.9(a)(1)(iv) does not require a creditor to hold a counteroffer open for 90 days or any other particular length of time.

6. Denial of a telephone application. When an application is made by telephone and adverse action is taken, the creditor must request the applicant's name and address in order to provide written notification under this section. If the applicant declines to provide that information, then the creditor has no further notification responsibility.

Paragraph 9(a)(3).

1. Coverage. In determining which rules in this paragraph apply to a given business credit application, a creditor may rely on the applicant's assertion about the revenue size of the business. (Applications to start a business are governed by the rules in §1002.9(a)(3)(ii).) If an applicant applies for credit as a sole proprietor, the revenues of the sole proprietorship will determine which rules govern the application. However, if an applicant applies for business credit as an individual, the rules in §1002.9(a)(3)(i) apply unless the application is for trade or similar credit.

2. Trade credit. The term trade credit generally is limited to a financing arrangement that involves a buyer and a seller—such as a supplier who finances the sale of equipment, supplies, or inventory; it does not apply to an extension of credit by a bank or other financial institution for the financing of such items.

3. Factoring. Factoring refers to a purchase of accounts receivable, and thus is not subject to the Act or regulation. If there is a credit extension incident to the factoring arrangement, the notification rules in §1002.9(a)(3)(ii) apply, as do other relevant sections of the Act and regulation.

4. Manner of compliance. In complying with the notice provisions of the Act and regulation, creditors offering business credit may follow the rules governing consumer credit. Similarly, creditors may elect to treat all business credit the same (irrespective of revenue size) by providing notice in accordance with §1002.9(a)(3)(i).

5. Timing of notification. A creditor subject to §1002.9(a)(3)(ii)(A) is required to notify a
business credit applicant, orally or in writing, of action taken on an application within a reasonable time of receiving a completed application. Notice provided in accordance with the timing requirements of §1002.9(a)(1) is deemed reasonable in all instances.

9(h) Form of ECOA notice and statement of specific reasons

Paragraph 9(h)(1).

1. Substantially similar notice. The ECOA notice sent with a notification of a credit denial or other adverse action will comply with the regulation if it is “substantially similar” to the notice contained in §1002.9(b)(1). For example, a creditor may add a reference to the fact that the ECOA permits age to be considered in certain credit scoring systems, or add a reference to a similar state statute or regulation and to a state enforcement agency.

Paragraph 9(h)(2).

1. Number of specific reasons. A creditor must disclose the principal reasons for denying an application or taking other adverse action. The regulation does not mandate that a specific number of reasons be disclosed, but disclosure of more than four reasons is not likely to be helpful to the applicant.

2. Source of specific reasons. The specific reasons disclosed under §§1002.9(a)(2) and (b)(2) must relate to and accurately describe the factors actually considered or scored by a creditor.

3. Description of reasons. A creditor need not describe how or why a factor adversely affected an applicant. For example, the notice may say “length of residence” rather than “too short a period of residence.”

4. Credit scoring system. If a creditor bases the denial or other adverse action on a credit scoring system, the reasons disclosed must relate only to those factors actually scored in the system. Moreover, no factor that was a principal reason for adverse action may be excluded from disclosure. The creditor must disclose the actual reasons for denial (for example, “age of automobile”) even if the relationship of that factor to predicting creditworthiness may not be clear to the applicant.

5. Credit scoring—method for selecting reasons. The regulation does not require that any one method be used for selecting reasons for a credit denial or other adverse action that is based on a credit scoring system. Various methods will meet the requirements of the regulation. One method is to identify the factors for which the applicant’s score fell furthest below the average score for each of those factors achieved by applicants whose total score was at or slightly above the minimum passing score. Another method is to identify the factors for which the applicant’s score fell furthest below the average score for each of those factors achieved by all applicants. These average scores could be calculated during the development or use of the system. Any other method that produces results substantially similar to either of these methods is also acceptable under the regulation.

6. Judgmental system. If a creditor uses a judgmental system, the reasons for the denial or other adverse action must relate to those factors in the applicant’s record actually reviewed by the person making the decision.

7. Combined credit scoring and judgmental system. If a creditor denies an application based on a credit evaluation system that employs both credit scoring and judgmental components, the reasons for the denial must come from the component of the system that the applicant failed. For example, if a creditor initially credit scores an application and denies the credit request as a result of that scoring, the reasons disclosed to the applicant must relate to the factors scored in the system. If the application passes the credit scoring stage but the creditor then denies the credit request based on a judgmental assessment of the applicant’s record, the reasons disclosed must relate to the factors reviewed judgmentally, even if the factors were also considered in the credit scoring component. If the application is not approved or denied as a result of the credit scoring, but falls into a gray band, and the creditor performs a judgmental assessment and denies the credit after that assessment, the reasons disclosed must come from both components of the system. The same result applies where a judgmental assessment is the first component of the combined system. As provided in comment 9(h)(2)-1, disclosure of more than a combined total of four reasons is not likely to be helpful to the applicant.

8. Automatic denial. Some credit decision methods contain features that call for automatic denial because of one or more negative factors in the applicant’s record (such as the applicant’s previous bad credit history with that creditor, the applicant’s declaration of bankruptcy, or the fact that the applicant is a minor). When a creditor denies the credit request because of an automatic-denial factor, the creditor must disclose that specific factor.

9. Combined ECOA–FCRA disclosures. The ECOA requires disclosure of the principal reasons for denying or taking other adverse action on an application for an extension of credit. The Fair Credit Reporting Act (FCRA) requires a creditor to disclose when it has based its decision in whole or in part on information from a source other than the applicant or its own files. Disclosing that a credit report was obtained and used in the denial of the application, as the FCRA requires, does not satisfy the ECOA requirement to disclose specific reasons. For example, if the applicant’s credit history reveals
delinquent credit obligations and the application is denied for that reason, to satisfy §1002.9(b)(2) the creditor must disclose that the application was denied because of the applicant’s delinquent credit obligations. The FCRA also requires a creditor to disclose, as applicable, a credit score it used in taking adverse action along with related information, including up to four key factors that adversely affected the consumer’s credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor). Disclosing the key factors that adversely affected the consumer’s credit score does not satisfy the ECOA requirement to disclose specific reasons for denying or taking other adverse action on an application or extension of credit. Sample forms C-1 through C-5 of appendix C of the regulation provide for both the ECOA and FCRA disclosures. See also comment 9(b)(2)-1.

9(c) Incomplete applications.
Paragraph 9(c)(1).
1. Exception for preapprovals. The requirement to provide a notice of incompleteness does not apply to preapprovals that constitute applications under §1002.2(f).
Paragraph 9(c)(2).
1. Reapplication. If information requested by a creditor is submitted by an applicant after the expiration of the time period designated by the creditor, the creditor may require the applicant to make a new application.
Paragraph 9(c)(3).

Section 1002.10—Furnishing of Credit Information
1. Scope. The requirements of §1002.10 for designating and reporting credit information apply only to consumer credit transactions. Moreover, they apply only to creditors that opt to furnish credit information to credit bureaus or to other creditors; there is no requirement that a creditor furnish credit information on its accounts.
2. Reporting on all accounts. The requirements of §1002.10 apply only to accounts held or used by spouses. However, a creditor has the option to designate all joint accounts (or all accounts with an authorized user) to reflect the participation of both parties, whether or not the accounts are held by persons married to each other.
3. Designating accounts. In designating accounts and reporting credit information, a creditor need not distinguish between accounts on which the spouse is an authorized user and accounts on which the spouse is a contractually liable party.
4. File and index systems. The regulation does not require the creation or maintenance of separate files in the name of each participant on a joint or user account, or require any other particular system of recordkeeping or indexing. It requires only that a creditor be able to report information in the name of each spouse on accounts covered by §1002.10. Thus, if a creditor receives a credit inquiry about the wife, it should be able to locate her credit file without asking the husband’s name.

Section 1002.11—Relation to State Law
1(a) Designation of accounts.
1. New parties. When new parties who are spouses undertake a legal obligation on an account, as in the case of a mortgage loan assumption, the creditor must change the designation on the account to reflect the new parties and must furnish subsequent credit information on the account in the new names.
2. Request to change designation of account. A request to change the manner in which information concerning an account is furnished does not alter the legal liability of either spouse on the account and does not require a creditor to change the name in which the account is maintained.
1. Preemption determination—New York. The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 23, 1990. The state law preempts the following provisions in the state law of New York are preempted by the Federal law, effective July 23, 1990:
   i. Article 15, section 296a(1)(b). Unlawful discriminatory practices in relation to credit on the basis of race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars taking a prohibited basis into account when establishing eligibility for certain special-purpose credit programs.
   ii. Article 15, section 296a(1)(c). Unlawful discriminatory practice to make any record or inquiry based on race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars a creditor from requesting and considering information regarding the particular characteristics (for example, race, national origin, or sex) required for eligibility for special-purpose credit programs.

2. Preemption determination—Ohio. The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011. The state law of Ohio is preempted by the Federal law, effective July 23, 1990:
   i. Section 4112.021(B)(1)—Unlawful discriminatory practices in credit transactions. This provision is preempted to the extent that it bars asking or favorably considering the age of an elderly applicant; prohibits the consideration of age in real estate transactions; permits without limitation the consideration of age in credit scoring systems; and permits without limitation the consideration of age in a credit scoring system and makes the credit decision mechanically, based only on the items of information entered into the system, if the transaction is subject to §1002.13, however, the creditor is required to enter and retain the data on personal characteristics in order to comply with the requirements of that section.
   ii. Article 15, section 296a(1)(b). Unlawful discriminatory practices in relation to credit on the basis of race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars taking a prohibited basis into account when establishing eligibility for certain special-purpose credit programs.

Paragraph 12(b)(3).
1. Withdrawn and brokered applications. In most cases, the 25-month retention period for applications runs from the date a notice of the action taken is sent to the applicant granting or denying the credit requested. In certain transactions, a creditor is not obligated to provide a notice of the action taken. (See, for example, comment 9–2.) In such cases, the 25-month requirement runs from the date of application, as when:
   i. An application is withdrawn by the applicant.
   ii. An application is submitted to more than one creditor on behalf of the applicant, and the application is approved by one of the other creditors.

12(b)(6) Self-tests.
1. The rule requires all written or recorded information about a self-test to be retained for 25 months after a self-test has been completed. For this purpose, a self-test is completed after the creditor has obtained the results and made a determination about what corrective action, if any, is appropriate. Creditors are required to retain information about the scope of the self-test, the methodology used and time period covered by the self-test, the report or results of the self-test including any analysis or conclusions, and any corrective action taken in response to the self-test.

12(b)(7) Preapplication marketing information.
1. Prescreened credit solicitations. The rule requires creditors to retain copies of prescreened credit solicitations. For purposes of this part, a prescreened solicitation is an "offer of credit" as described in 15 U.S.C. 1681a(1) of the Fair Credit Reporting Act. A creditor complies with this rule if it retains a copy of each solicitation mailing that contains different terms, such as the...
amount of credit offered, annual percentage rate, or annual fee.

2. List of criteria. A creditor must retain the list of criteria used to select potential recipients, or is initial criteria used by the creditor both to determine the potential recipients of the particular solicitation and to determine who will actually be offered credit.

3. Correspondence. A creditor may retain correspondence relating to consumers’ complaints about prescreened solicitations in any manner that is reasonably accessible and is understandable to examiners. There is no requirement to establish a separate database or set of files for such correspondence, or to match consumer complaints with specific solicitation programs.

Section 1002.13—Information for Monitoring Purposes

13(a) Information to be requested.
1. Natural person. Section 1002.13 applies only to applications from natural persons.
2. Principal residence. The requirements of §1002.13 apply only if an application relates to a dwelling that is or will be occupied by the applicant as the principal residence. A credit application related to a vacation home or a rental unit is not covered. In the case of a two-to-four-unit dwelling, the application is covered if the applicant intends to occupy one of the units as a principal residence.
3. Temporary financing. An application for temporary financing to construct a dwelling is not subject to §1002.13. But an application for both a temporary loan to finance construction of a dwelling and a permanent mortgage loan to take effect upon the completion of construction is subject to §1002.13.
4. New principal residence. A person can have only one principal residence at a time. However, if a person buys or builds a new dwelling that will become that person’s principal residence within a year or upon completion of construction, the new dwelling is considered the principal residence for purposes of §1002.13.

13(b) Obtaining of information.
1. Forms for collecting data. A creditor may collect the information specified in §1002.13(a) either on an application form or on a separate form referring to the application. The applicant must be offered the option to select more than one racial designation.
2. Written applications. The regulation requires written applications for the types of credit covered by §1002.13. A creditor can satisfy this requirement by recording on paper or by means of computer the information that the applicant provides orally and that the creditor normally considers in a credit decision.
3. Telephone, mail applications. A creditor that accepts an application by telephone or mail must request the monitoring information.
ii. A creditor that accepts an application by mail need not make a special request for the monitoring information if the applicant has failed to provide it on the application form returned to the creditor.
iii. If it is not evident on the face of an application that it was received by mail, telephone, or via an electronic medium, the creditor should indicate on the form or other application record how the application was received.
4. Video and other electronic-application processes. i. If a creditor takes an application through an electronic medium that allows the creditor to see the applicant, the creditor must treat the application as taken in person. The creditor must note the monitoring information on the basis of visual observation or surname, if the applicant chooses not to provide the information.
ii. If an applicant applies through an electronic medium without video capability, the creditor treats the application as if it were received by mail.
5. Applications through loan-shopping services. When a creditor receives an application through an unaffiliated loan-shopping service, it does not have to request the monitoring information for purposes of the ECOA or Regulation B. Creditors subject to the Home Mortgage Disclosure Act should be aware, however, that data collection may be
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called for under Regulation C (12 CFR part 1003), which generally requires creditors to report, among other things, the sex and race of an applicant on brokered applications or applications received through a correspondent.

6. Inadvertent notation. If a creditor inadvertently obtains the monitoring information in a dwelling-related transaction not covered by §1002.13, the creditor may process and retain the application without violating the regulation.

13(c) Disclosure to applicants.
1. Procedures for providing disclosures. The disclosure to an applicant regarding the monitoring information may be provided in writing. Appendix B contains a sample disclosure. A creditor may devise its own disclosure so long as it is substantially similar. The creditor need not orally request the monitoring information if it is requested in writing.

13(d) Substitute monitoring program.
1. Substitute program. An enforcement agency may adopt, under its established rule-making or enforcement procedures, a program requiring creditors under its jurisdiction to collect information in addition to information required by this section.

Section 1002.14—Rules on Providing Appraisal Reports

14(a) Providing appraisals.
1. Coverage. This section covers applications for credit to be secured by a lien on a dwelling, as that term is defined in §1002.14(c), whether the credit is for a business purpose (for example, a loan to start a business) or a consumer purpose (for example, a loan to finance a child’s education).

2. Renewals. This section applies when an applicant requests the renewal of an existing extension of credit and the creditor obtains a new appraisal report. This section does not apply when a creditor uses the appraisal report previously obtained to evaluate the renewal request.

14(a)(2)(ii) Notice.
1. Multiple applicants. When an application that is subject to this section involves more than one applicant, the notice about the appraisal report need only be given to one applicant, but it must be given to the primary applicant where one is readily apparent.

14(c) Definitions.
1. Appraisal reports. Examples of appraisal reports are:

i. A report prepared by an appraiser (whether or not licensed or certified), including written comments and other documents submitted to the creditor in support of the appraiser’s estimate or opinion of the property’s value.

ii. A document prepared by the creditor’s staff that assigns value to the property, if a third-party appraisal report has not been used.

iii. An internal review document reflecting that the creditor’s valuation is different from a valuation in a third party’s appraisal report (or different from valuations that are publicly available or valuations such as manufacturers’ invoices for mobile homes).

2. Other reports. The term “appraisal report” does not cover all documents relating to the value of the applicant’s property. Examples of reports not covered are:

i. Internal documents, if a third-party appraisal report was used to establish the value of the property.

ii. Governmental agency statements of appraisal value.

iii. Valuations lists that are publicly available (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges) and valuations such as manufacturers’ invoices for mobile homes.

Section 1002.15—Incentives for Self-Testing and Self-Correction

15(a) General rules.
15(a)(1) Voluntary self-testing and correction.
1. Activities required by any governmental authority are not voluntary self-tests. A governmental authority includes both administrative and judicial authorities for Federal, State, and local governments.

15(a)(2) Corrective action required.
1. To qualify for the privilege, appropriate corrective action is required when the results of a self-test show that it is more likely than not that there has been a violation of the ECOA or this part. A self-test is also privileged when it identifies no violations.

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

3. A creditor’s determination about the type of corrective action needed, or a finding that no corrective action is required, is not
A creditor’s evaluation or analysis of its loan files, Home Mortgage Disclosure Act data, or similar types of records (such as broker or loan officer compensation records) does not produce new information about a creditor’s compliance and is not a self-test for purposes of this section. Similarly, a statistical analysis of data derived from existing loan files is not privileged.

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

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

1. Whether a creditor has taken or is taking corrective action that is appropriate will be determined on a case-by-case basis. Generally, the scope of the corrective action that is needed to preserve the privilege is

1. Whether or not the creditor’s assertion of an attorney-client, work-product, or the attorney-client privilege. Self-testing information about the scope of the self-test is not privileged and may be used to determine compliance with other laws or regulations or for other purposes is not privileged under this rule. For example, a self-test designed to evaluate employee efficiency or customers’ satisfaction with the level of service provided by the creditor is not privileged even if evidence of discrimination is uncovered incidentally. If a self-test is designed for multiple purposes, only the portion designed to determine compliance with the ECOA is eligible for the privilege.

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

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

1. The privilege does not protect a creditor’s analysis performed as part of processing or underwriting a credit application.
governed by the scope of the self-test. For example, a creditor that self-tests mortgage loans and discovers evidence of discrimination may focus its corrective actions on mortgage loans, and is not required to expand its testing to other types of loans.

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

3. Depending on the method and scope of the self-test and the results of the test, appropriate corrective action may include one or more of the following:
   1. If the self-test identifies individuals whose applications were inappropriately processed, offering to extend credit if the application was improperly denied and compensating such persons for out-of-pocket costs and other compensatory damages;
   2. Correcting institutional policies or procedures that may have contributed to the likely violation, and adopting new policies as appropriate;
   3. Identifying and then training and/or disciplining the employees involved;
   4. Developing outreach programs, marketing strategies, or loan products to serve more effectively segments of the lender’s markets that may have been affected by the likely discrimination; and
   5. Improving audit and oversight systems to avoid a recurrence of the likely violations.

15(c)(3) Types of relief.
Paragraph 15(c)(3)(ii).
1. The use of pre-application testers to identify policies and practices that illegally discriminate does not require creditors to review existing loan files for the purpose of identifying and compensating applicants who might have been adversely affected.
2. If a self-test identifies a specific applicant who was discriminated against on a prohibited basis, to qualify for the privilege in this section the creditor must provide appropriate remedial relief to that applicant; the creditor is not required to identify other applicants who might also have been adversely affected.

Paragraph 15(c)(3)(iii).
1. A creditor is not required to provide remedial relief to an applicant that would not be available by law. An applicant might also be ineligible for certain types of relief due to changed circumstances. For example, a creditor is not required to offer credit to a denied applicant if the applicant no longer qualifies for the credit due to a change in financial circumstances, although some other type of relief might be appropriate.

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

15(d)(2) Loss of privilege.
Paragraph 15(d)(2)(i).
1. A creditor’s corrective action, by itself, is not considered a voluntary disclosure of the self-test report or results. For example, a creditor does not disclose the results of a self-test merely by offering to extend credit to a denied applicant or by inviting the applicant to reapply for credit. Voluntary disclosure could occur under this paragraph, however, if the creditor disclosed the self-test results in connection with a new offer of credit.
2. The disclosure of self-testing results to an independent contractor acting as an auditor or consultant for the creditor on compliance matters does not result in loss of the privilege.

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

Paragraph 15(d)(2)(iii).
1. A creditor’s claim of privilege may be challenged in a court or administrative law proceeding with appropriate jurisdiction. In resolving the issue, the presiding officer may require the creditor to produce privileged information about the self-test.

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

Section 1002.16—Enforcement, Penalties, and Liabilities

16(c) Failure of compliance.

1. Inadvertent errors. Inadvertent errors include, but are not limited to, clerical mistake, calculation error, computer malfunction, and printing error. An error of legal judgment is not an inadvertent error under the regulation.

2. Correction of error. For inadvertent errors that occur under §§1002.12 and 1002.13, this section requires that they be corrected prospectively.

APPENDIX B—MODEL APPLICATION FORMS

1. Freddie Mac/Fannie Mae form—residential loan application. The uniform residential loan application form (Freddie Mac 65/Fannie Mae S1003), including supplemental form (Freddie Mac 65A/Fannie Mae S1003A), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated October 1986, may be used by creditors without violating this part. Creditors that are governed by the monitoring requirements of this part (which limits collection to applications primarily for the purchase or refinancing of the applicant’s principal residence) should delete, strike, or modify the data-collection section on the form when using it for transactions not covered by §1002.13(a) to ensure that they do not collect the information. Creditors that are subject to more extensive collection requirements by a substitute monitoring program or HMDA, under §1002.13(d) or by the Home Mortgage Disclosure Act (HMDA) may use the form as issued, in compliance with the substitute program or HMDA.

2. FHLMC/FNMA form—home improvement loan application. The home-improvement and energy loan application form (FHLMC 788/FNMA 1012), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated October 1986, complies with the requirements of the regulation for some creditors but not others because of the form’s section “Information for Government Monitoring Purposes.” Creditors that are governed by §1002.13(a) of the regulation (which limits collection to applications primarily for the purchase or refinancing of the applicant’s principal residence) should delete, strike, or modify the data-collection section on the form when using it for transactions not covered by §1002.13(a) to ensure that they do not collect the information. Creditors that are subject to more extensive collection requirements by a substitute monitoring program under §1002.13(d) may use the form as issued, in compliance with that substitute program.

APPENDIX C—SAMPLE NOTIFICATION FORMS

1. Form C-9. Creditors may design their own form, add to, or modify the model form to reflect their individual policies and procedures. For example, a creditor may want to add:

i. A telephone number that applicants may call to leave their name and the address to which an appraisal report should be sent.

ii. A notice of the cost the applicant will be required to pay the creditor for the appraisal or a copy of the report.

Effective Date Notes: 1. At 78 FR 7248, Jan. 31, 2013, supplement I to part 1002 was amended under Section 1002.14, the heading is revised; newly designated Section 1002.14 is revised; under Appendix C—Sample Notification Forms, paragraph 1 is revised, effective Jan. 16, 2014. For the convenience of the user, the revised text is set forth as follows:

Supplement I To Part 1002—Official Interpretations

* * * * *

Section 1002.14—Rules on Providing Appraisals and Valuations

14(a) Providing appraisals and other valuations.

1. Multiple applicants. If there is more than one applicant, the written disclosure about written appraisals, and the copies of appraisals and other written valuations, need only be given to one applicant. However, these materials must be given to the primary applicant where one is readily apparent. Similarly, if there is more than one applicant for credit in the transaction, one applicant may provide a waiver under §1002.14(a)(1), but it must be the primary applicant where one is readily apparent.

14(a)(1) In general.

1. Coverage. Section 1002.14 covers applications for credit to be secured by a first lien on a dwelling, as that term is defined in §1002.14(b)(2), whether the credit is for a business purpose (for example, a loan to start a business) or a consumer purpose (for example, a loan to purchase a home).

2. Renewals. Section 1002.14(a)(1) applies when an applicant requests the renewal of an existing extension of credit and the creditor develops a new appraisal or other written valuation. Section 1002.14(a)(1) does not apply to the extent a creditor uses the appraisals and other written valuations that were previously developed in connection with the prior extension of credit to evaluate the renewal request.

3. Written. For purposes of §1002.14, an “appraisal or other written valuation” includes,
without limitation, an appraisal or other valuation received or developed by the creditor in paper form (hard copy); electronically, such as CD or email; or by any other means such as electronic means including but not limited to those in subparagraphs i, ii, and iii below. Examples in which the “promptly upon completion” standard would not be satisfied include, but are not limited to, those in subparagraphs iv and v below.

4. Timing. Section 1002.14(a)(1) requires that the creditor “provide” copies of appraisals and other written valuations to the applicant “promptly upon completion,” or no later than three business days before consummation (for closed-end credit) or account opening (for open-end credit), whichever is earlier.

i. For purposes of this timing requirement, “provide” means “deliver.” Delivery occurs three business days after mailing or delivering the copies to the last-known address of the applicant, or when evidence indicates actual receipt by the applicant, whichever is earlier. Delivery to or actual receipt by the applicant by electronic means must comply with the E-Sign Act, as provided for in §1002.1(a)(5).

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

iii. “Completion” occurs when the last version is received by the creditor, or when the creditor has reviewed and accepted the appraisal or other written valuation to include any changes or corrections required, whichever is later. See also comment 14(a)(1)-7.

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

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

5. Promptly upon completion—examples. Examples in which the “promptly upon completion” standard would be satisfied include, but are not limited to, those in subparagraphs i, ii, and iii below. Examples in which the “promptly upon completion” standard would not be satisfied include, but are not limited to, those in subparagraphs iv and v below.

1. Sending a copy of an appraisal within a week of completion with sufficient time before consummation (or account opening for open-end credit). On day 15 after receipt of the application, the creditor’s underwriting department reviews an appraisal and determines it is acceptable. One week later, the creditor sends a copy of the appraisal to the applicant. The applicant actually receives the copy more than three business days before the date of consummation (or account opening). The creditor has provided the copy of the appraisal promptly upon completion.

2. Sending a copy of a revised appraisal within a week after completion and with sufficient time before consummation (or account opening for open-end credit). An appraisal is being revised, and the creditor does not receive the revised appraisal until day 45 after the application, when the creditor immediately determines the revised appraisal is acceptable. One week later, the creditor sends a copy of the revised appraisal to the applicant, and does not send a copy of the initial appraisal to the applicant. The applicant actually receives the copy of the revised appraisal three business days before the date of consummation (or account opening). The creditor has provided the appraisal copy promptly upon completion.

3. Sending a copy of an AVM report within a week after its receipt and with sufficient time before consummation (or account opening for open-end credit). The creditor receives an automated valuation model (AVM) report on day 5 after receipt of the application and treats the AVM report as complete when it is received. On day 12 after receipt of the application, the creditor sends the applicant a copy of the valuation. The applicant actually receives the valuation more than three business days before the date of consummation (or account opening). The creditor has provided the copy of the AVM report promptly upon completion.

4. Delay in sending an appraisal. On day 12 after receipt of the application, the creditor’s underwriting department reviews an appraisal and determines it is acceptable. Although the creditor has determined the appraisal is complete, the creditor waits to provide a copy to the applicant until day 42, when the creditor schedules the consummation (or account opening) to occur on day 50. The creditor has not provided the copy of the appraisal promptly upon completion.

5. Delay in sending an AVM report while waiting for completion of a second valuation. The creditor receives an AVM report on day 5 after application and completes its review...
of the AVM report the day it is received. The creditor also has ordered an appraisal, but the initial version of the appraisal received by the creditor is found to be deficient and is sent for review. The creditor waits 30 days to provide a copy of the completed AVM report, until the appraisal is completed on day 35. The creditor then provides the applicant with copies of the AVM report and revised appraisal. While the appraisal report was provided promptly upon completion, the AVM report was not.

6. Waiver. Section 1002.14(a)(1) permits the applicant to waive the timing requirement if the creditor provides the copies at or before consummation or account opening, except where otherwise prohibited by law. Except where otherwise prohibited by law, an applicant’s waiver is effective under §1002.14(a)(1) in either of the following two situations:

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

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

7. Multiple versions of appraisals or valuations. For purposes of §1002.14(a)(1), the reference to “all” appraisals or other written valuations does not refer to all versions of the same appraisal or other valuation. If a creditor has received multiple versions of an appraisal or other written valuation, the creditor is required to provide only a copy of the latest version received. If, however, a creditor already has provided a copy of one version of an appraisal or other written valuation to an applicant, and the creditor later receives a revision of that appraisal or other written valuation, then the creditor also must provide the applicant with a copy of the revision to comply with §1002.14(a)(1). If a creditor receives only one version of an appraisal or other valuation that is developed in connection with the applicant’s application, then that version must be provided to the applicant to comply with §1002.14(a)(1). See also comment 14(a)(1)–4 above.

4(a)(2) Disclosure. 1. Appraisal independence requirements not affected. Nothing in the text of §1002.14(a)(2) should be construed to affect, modify, limit, or supersede the operation of any legal, regulatory, or other requirements or standards governing independence in the conduct of appraisers or the use of applicant-ordered appraisals by creditors.

4(a)(3) Reimbursement. 1. Photocopy, postage, or other costs. Creditors may not charge for photocopy, postage, or other costs incurred in providing a copy of an appraisal or other written valuation in accordance with section 14(a)(1).

2. Reasonable fee for reimbursement. Section 1002.14(a)(3) does not prohibit a creditor from imposing a reasonable fee to reimburse the creditor’s costs of the appraisal or other written valuation, so long as the fee is not increased to cover the costs of providing copies of such appraisals or other written valuations under §1002.14(a)(1). A creditor’s cost may include an administration fee charged to the creditor by an appraisal management company as defined in 12 U.S.C. 3305(1). Section 1002.14(a)(3) does not, however, legally obligate the applicant to pay such fees. Further, creditors may not impose fees for reimbursement of the costs of an appraisal or other valuation where otherwise prohibited by law. For instance, a creditor may not charge a consumer a fee for the performance of a second appraisal if the second appraisal is required under 15 U.S.C. 1639h(b)(2) and 12 CFR 1026.35(c).

4(b) Definitions. 4(b)(1) Consummation. 1. State law governs. When a contractual obligation on the consumer’s part is created is a matter to be determined under applicable law; §1002.14 does not make this determination. A contractual commitment agreement, for example, that under applicable law binds the consumer to the credit terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a non-refundable fee) unless, of course, applicable law holds otherwise.

2. Credit vs. sale. Consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement.


4(b)(3) Valuation. 1. Valuations—examples. Examples of valuations include but are not limited to:
1. A report prepared by an appraiser (whether or not licensed or certified) including the appraiser’s estimate or opinion of the property’s value.

2. A document prepared by the creditor’s staff that assigns value to the property.

3. A report approved by a government-sponsored enterprise for describing to the applicant the estimate of the property’s value developed pursuant to the proprietary methodology or mechanism of the government-sponsored enterprise.

4. A report generated by use of an automated valuation model to estimate the property’s value.

5. A broker price opinion prepared by a real estate broker, agent, or sales person to estimate the property’s value.

2. Attachments and exhibits. The term “valuation” includes any attachments and exhibits that are an integrated part of the valuation.

3. Other documentation. Not all documents that discuss or restate a valuation of an applicant’s property constitute a “valuation” for purposes of §1002.14(b)(3). Examples of documents that discuss the valuation of the applicant’s property or may reflect its value but nonetheless are not “valuations” include but are not limited to:

1. Internal documents that merely restate the estimated value of the dwelling contained in an appraisal or written valuation being provided to the applicant.

2. Governmental agency statements of appraised value that are publicly available.

3. Publicly-available lists of valuations (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges).

4. Manufacturers’ invoices for manufactured homes.

5. Reports reflecting property inspections that do not provide an estimate of the value of the property and are not used to develop an estimate or opinion of the value of the property.

Appendix C—Sample Notification Forms

1. Form C-9. If not otherwise provided under other applicable disclosure requirements, creditors may design their own form, add to, or modify the model form to reflect their individual policies and procedures. For example, a creditor may want to add:

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

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

2. At 78 FR 60437, Oct. 1, 2013, supplement I to part 1002 was amended by revising paragraphs 1.1 and 3.v and adding paragraph 3.vi, effective Jan. 18, 2014. For the convenience of the user, the added and revised text is set forth as follows:

SUPPLEMENT I TO PART 1002—OFFICIAL INTERPRETATIONS

Section 1002.14—Rules on Providing Appraisals and Valuations

14(b)(3) Valuation.

1. A report prepared by an appraiser (whether or not licensed or certified) including the appraiser’s estimate of the property’s value or opinion of value.

3. * * *

v. Reports reflecting property inspections that do not provide an estimate of the value of the property and are not used to develop an estimate of the value of the property.

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

PART 1003—HOME MORTGAGE DISCLOSURE (REGULATION C)

Sec. 1003.1 Authority, purpose, and scope.

1003.2 Definitions.

1003.3 Exempt institutions.

1003.4 Compilation of loan data.

1003.5 Disclosure and reporting.

APPENDIX A TO PART 1003—FORM AND INSTRUCTIONS FOR COMPLETION OF HMDA LOAN/APPLICATION REGISTER

APPENDIX B TO PART 1003—FORM AND INSTRUCTIONS FOR DATA COLLECTION ON ETHNICITY, RACE, AND SEX

SUPPLEMENT I TO PART 1003—STAFF COMMENTARY


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

§ 1003.1 Authority, purpose, and scope.

(a) Authority. This part, known as Regulation C, is issued by the Bureau of Consumer Financial Protection (Bureau) pursuant to the Home Mortgage
Disclosure Act (HMDA) (12 U.S.C. 2801 et seq., as amended. The information-collection requirements have been approved by the U.S. Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq. and have been assigned OMB numbers for institutions reporting data to the Office of the Comptroller of the Currency (1557–0159), the Federal Deposit Insurance Corporation (3064–0046), the Federal Reserve System (2902–0247), the Department of Housing and Urban Development (HUD) (2502–0529), the National Credit Union Administration (3133–0166), and the Bureau of Consumer Financial Protection (3170–0008).

(b) Purpose. (1) This part implements the Home Mortgage Disclosure Act, which is intended to provide the public with loan data that can be used:
   (i) To help determine whether financial institutions are serving the housing needs of their communities;
   (ii) To assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and
   (iii) To assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

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

(c) Scope. This part applies to certain financial institutions, including banks, savings associations, credit unions, and other mortgage lending institutions, as defined in §1003.2. The regulation requires an institution to report data to the appropriate Federal agency about home purchase loans, home improvement loans, and refinancings that it originates or purchases, or for which it receives applications; and to disclose certain data to the public.

§ 1003.2 Definitions.

In this part:


Application.—(1) In general. Application means an oral or written request for a home purchase loan, a home improvement loan, or a refinancing that is made in accordance with procedures used by a financial institution for the type of credit requested.

(2) Preapproval programs. A request for preapproval for a home purchase loan is an application under this section if the request is reviewed under a program in which the financial institution, after a comprehensive analysis of the creditworthiness of the applicant, issues a written commitment to the applicant valid for a designated period of time to extend a home purchase loan up to a specified amount. The written commitment may not be subject to conditions other than:
   (i) Conditions that require the identification of a suitable property;
   (ii) Conditions that require that no material change has occurred in the applicant’s financial condition or creditworthiness prior to closing; and
   (iii) Limited conditions that are not related to the financial condition or creditworthiness of the applicant that the lender ordinarily attaches to a traditional home mortgage application (such as certification of a clear termite inspection).

Branch office means:

(1) Any office of a bank, savings association, or credit union that is approved as a branch by a Federal or state supervisory agency, but excludes free-standing electronic terminals such as automated teller machines; and

(2) Any office of a for-profit mortgage-lending institution (other than a bank, savings association, or credit union) that takes applications from the public for home purchase loans, home improvement loans, or refinancings. A for-profit mortgage-lending institution is also deemed to have a branch office in an MSA or in a Metropolitan Division, if, in the preceding calendar year, it received applications for, originated, or purchased five or more home purchase loans, home improvement loans, or refinancings related to property located in that MSA or Metropolitan Division, respectively.

Dwelling means a residential structure (whether or not attached to real property) located in a state of the United States of America, the District of Columbia, or the Commonwealth of Puerto Rico. The term includes an individual condominium unit, cooperative unit, or mobile or manufactured home.

Financial institution means:
§ 1003.2 12 CFR Ch. X (1–1–14 Edition)

(1) A bank, savings association, or credit union that:
   (i) On the preceding December 31 had assets in excess of the asset threshold established and published annually by the Bureau for coverage by the act, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve month period ending in November, with rounding to the nearest million;
   (ii) On the preceding December 31, had a home or branch office in an MSA;
   (iii) In the preceding calendar year, originated at least one home purchase loan (excluding temporary financing such as a construction loan) or refinancing of a home purchase loan, secured by a first lien on a one-to four-family dwelling; and
   (iv) Meets one or more of the following three criteria:
      (A) The institution is Federally insured or regulated;
      (B) The mortgage loan referred to in paragraph (1)(iii) of this definition was insured, guaranteed, or supplemented by a Federal agency; or
      (C) The mortgage loan referred to in paragraph (1)(iii) of this definition was intended by the institution for sale to Fannie Mae or Freddie Mac; and
   (2) A for-profit mortgage-lending institution (other than a bank, savings association, or credit union) that:
      (i) In the preceding calendar year, either:
         (A) Originated home purchase loans, including refinancings of home purchase loans, that equaled at least 10 percent of its loan-origination volume, measured in dollars; or
         (B) Originated home purchase loans, including refinancings of home purchase loans, that equaled at least $25 million; and
      (ii) On the preceding December 31, had a home or branch office in an MSA; and
      (iii) Either:
         (A) On the preceding December 31, had total assets of more than $10 million, counting the assets of any parent corporation; or
         (B) In the preceding calendar year, originated at least 100 home purchase loans, including refinancings of home purchase loans.

Home-equity line of credit means an open-end credit plan secured by a dwelling as defined in Regulation Z (Truth in Lending), 12 CFR part 1026.

Home improvement loan means:
   (1) A loan secured by a lien on a dwelling that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which it is located; and
   (2) A non-dwelling secured loan that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which it is located, and that is classified by the financial institution as a home improvement loan.

Home purchase loan means a loan secured by and made for the purpose of purchasing a dwelling.

Manufactured home means any residential structure as defined under regulations of the Department of Housing and Urban Development establishing manufactured home construction and safety standards (24 CFR 3280.2).

Metropolitan Statistical Area or MSA and Metropolitan Division or MD—(1) Metropolitan Statistical Area or MSA means a metropolitan statistical area as defined by the U.S. Office of Management and Budget.
   (2) Metropolitan Division or MD means a metropolitan division of an MSA, as defined by the U.S. Office of Management and Budget.

Refinancing means a new obligation that satisfies and replaces an existing obligation by the same borrower, in which:
   (1) For coverage purposes, the existing obligation is a home purchase loan (as determined by the lender, for example, by reference to available documents; or as stated by the applicant), and both the existing obligation and the new obligation are secured by first liens on dwellings; and
   (2) For reporting purposes, both the existing obligation and the new obligation are secured by liens on dwellings.
§ 1003.3 Exempt institutions.

(a) Exemption based on state law. (1) A state-chartered or state-licensed financial institution is exempt from the requirements of this part if the Bureau determines that the institution is subject to a state disclosure law that contains requirements substantially similar to those imposed by this part and that contains adequate provisions for enforcement.

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

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

(b) Loss of exemption. An institution losing a state-law exemption under paragraph (a) of this section shall comply with this part beginning with the calendar year following the year for which it last reported loan data under the state disclosure law.

§ 1003.4 Compilation of loan data.

(a) Data format and itemization. A financial institution shall collect data regarding applications for, and originations and purchases of, home purchase loans, home improvement loans, and refinancings for each calendar year. An institution is required to collect data regarding requests under a preapproval program (as defined in §1003.2) only if the preapproval request is denied or results in the origination of a home purchase loan. All reportable transactions shall be recorded, within thirty calendar days after the end of the calendar quarter in which final action is taken (such as origination or purchase of a loan, or denial or withdrawal of an application), on a register in the format prescribed in appendix A of this part. The data recorded shall include the following items:

(1) An identifying number for the loan or loan application, and the date the application was received.

(2) The type of loan or application.

(3) The purpose of the loan or application.

(4) Whether the application is a request for preapproval and whether it resulted in a denial or in an origination.

(5) The property type to which the loan or application relates.

(6) The owner-occupancy status of the property to which the loan or application relates.

(7) The amount of the loan or the amount applied for.

(8) The type of action taken, and the date.

(9) The location of the property to which the loan or application relates, by MSA or by Metropolitan Division, by state, by county, and by census tract, if the institution has a home or branch office in that MSA or Metropolitan Division.

(10) The ethnicity, race, and sex of the applicant or borrower, and the gross annual income relied on in processing the application.

(11) The type of entity purchasing a loan that the institution originates or purchases and then sells within the same calendar year (this information need not be included in quarterly updates).

(12)(i) For originated loans subject to Regulation Z, 12 CFR part 1026, the difference between the loan’s annual percentage rate (APR) and the average prime offer rate for a comparable transaction as of the date the interest rate is set, if that difference is equal to or greater than 1.5 percentage points for loans secured by a first lien on a dwelling, or equal to or greater than 3.5 percentage points for loans secured by a subordinate lien on a dwelling.

(ii) “Average prime offer rate” means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage loans that have low-risk pricing characteristics. The Bureau publishes average prime offer rates for a broad range of types of transactions in tables updated at least weekly, as well as the methodology the Bureau uses to derive these rates.

(13) Whether the loan is subject to the Home Ownership and Equity Protection Act of 1994, as implemented in Regulation Z (12 CFR 1026.32).
§ 1003.5 Disclosure and reporting.

(a) Reporting to agency. (1) By March 1 following the calendar year for which the loan data are compiled, a financial institution shall send its complete loan/application register to the agency office specified in appendix A of this part. The institution shall retain a copy for its records for at least three years.

(2) A subsidiary of a bank or savings association shall complete a separate loan/application register. The subsidiary shall submit the register, directly or through its parent, to the same agency as its parent.

(b) Public disclosure of statement. (1) The Federal Financial Institutions Examination Council (FFIEC) will prepare a disclosure statement from the data each financial institution submits.

(2) An institution shall make its disclosure statement (prepared by the FFIEC) available to the public at the institution’s home office no later than three business days after receiving the disclosure statement from the FFIEC.

(3) In addition, an institution shall either:

(i) Make its disclosure statement available to the public, within ten business days of receiving it, in at least one branch office in each other MSA and each other Metropolitan Division where the institution has offices (the disclosure statement need only contain data relating to the MSA or Metropolitan Division where the branch is located); or

(ii) Post the address for sending written requests in the lobby of each branch office in other MSAs and Metropolitan Divisions where the institution has offices; and mail or deliver a copy of the disclosure statement within fifteen calendar days of receiving a written request (the disclosure statement need only contain data relating to the MSA or Metropolitan Division for which the request is made). Including the address in the general notice required under paragraph (e) of this section satisfies this requirement.

(c) Public disclosure of modified loan/application register. A financial institution shall make its loan/application register available to the public after

(14) The lien status of the loan or application (first lien, subordinate lien, or not secured by a lien on a dwelling).

(b) Collection of data on ethnicity, race, sex, and income. (1) A financial institution shall collect data about the ethnicity, race, and sex of the applicant or borrower as prescribed in appendix B of this part.

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

(c) Optional data. A financial institution may report:

(1) The reasons it denied a loan application;

(2) Requests for preapproval that are approved by the institution but not accepted by the applicant; and

(3) Home-equity lines of credit made in whole or in part for the purpose of home improvement or home purchase.

(d) Excluded data. A financial institution shall not report:

(1) Loans originated or purchased by the financial institution acting in a fiduciary capacity (such as trustee);

(2) Loans on unimproved land;

(3) Temporary financing (such as bridge or construction loans);

(4) The purchase of an interest in a pool of loans (such as mortgage-participation certificates, mortgage-backed securities, or real estate mortgage investment conduits);

(5) The purchase solely of the right to service loans; or

(6) Loans acquired as part of a merger or acquisition, or as part of the acquisition of all of the assets and liabilities of a branch office as defined in §1003.2.

(e) Data reporting for banks and savings associations that are required to report data on small business, small farm, and community development lending under CRA. Banks and savings associations that are required to report data on small business, small farm, and community development lending under regulations that implement the Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) shall also collect the location of property located outside MSAs and Metropolitan Divisions in which the institution has a home or branch office, or outside any MSA.
removing the following information regarding each entry: The application or loan number, the date that the application was received, and the date action was taken. An institution shall make its modified register available following the calendar year for which the data are compiled, by March 31 for a request received on or before March 1, and within thirty calendar days for a request received after March 1. The modified register need only contain data relating to the MSA or Metropolitan Division for which the request is made.

(d) Availability of data. A financial institution shall make its modified register available to the public for a period of three years and its disclosure statement available for a period of five years. An institution shall make the data available for inspection and copying during the hours the office is normally open to the public for business. It may impose a reasonable fee for any cost incurred in providing or reproducing the data.

(e) Notice of availability. A financial institution shall post a general notice about the availability of its HMDA data in the lobby of its home office and of each branch office located in an MSA and Metropolitan Division. An institution shall provide promptly upon request the location of the institution’s offices where the statement is available for inspection and copying, or it may include the location in the lobby notice.

(f) Loan aggregation and central data depositories. Using the loan data submitted by financial institutions, the FFIEC will produce reports for individual institutions and reports of aggregate data for each MSA and Metropolitan Division, showing lending patterns by property location, age of housing stock, and income level, sex, ethnicity, and race. These reports will be available to the public at central data depositories located in each MSA and Metropolitan Division. A listing of central data depositories can be obtained from the Federal Financial Institutions Examination Council, Washington, DC 20006.

§ 1003.6 Enforcement.
(a) Administrative enforcement. A violation of the Act or this part is subject to administrative sanctions as provided in section 305 of the Act, including the imposition of civil money penalties, where applicable. Compliance is enforced by the agencies listed in section 305 of the Act (12 U.S.C. 2804).

(b) Bona fide errors. (1) An error in compiling or recording loan data is not a violation of the Act or this part if the error was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such errors.

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

(3) If an institution makes a good-faith effort to record all data concerning covered transactions fully and accurately within thirty calendar days after the end of each calendar quarter, and some data are nevertheless inaccurate or incomplete, the error or omission is not a violation of the Act or this part provided that the institution corrects or completes the information prior to submitting the loan/application register to its regulatory agency.

APPENDIX A TO PART 1003—FORM AND INSTRUCTIONS FOR COMPLETION OF HMDA LOAN/APPLICATION REGISTER

PAPERWORK REDUCTION ACT NOTICE

This report is required by law (12 U.S.C. 2601–2610 and 12 CFR 1003). An agency may not conduct or sponsor, and an organization is not required to respond to, a collection of information unless it displays a valid Office of Management and Budget (OMB) Control Number. See 12 CFR 1003.1(a) for the valid OMB Control Numbers applicable to this information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the respective agencies and to OMB, Office of Information and Regulatory Affairs, Paperwork Reduction Project, Washington, DC 20503. Be sure to reference the applicable agency and the OMB Control Number, as found in 12 CFR 1003.1(a), when submitting comments to OMB.
I. INSTRUCTIONS FOR COMPLETION OF LOAN/ APPLICATION REGISTER

A. Application or Loan Information

1. Application or Loan Number. Enter an identifying loan number that can be used later to retrieve the loan or application file. It can be any number of your institution’s choosing (not exceeding 25 characters). You may use letters, numerals, or a combination of both.

2. Date Application Received. Enter the date the loan application was received by your institution by month, day, and year. If your institution normally records the date shown on the application form you may use that date instead. Enter “NA” for loans purchased by your institution. For paper submissions only, use numerals in the form MM/DD/YYYY (for example, 01/15/2003). For submissions in electronic form, the proper format is YYYYMMDD.

3. Type of Loan or Application. Indicate the type of loan or application by entering the applicable Code from the following:
   - Code 1—Conventional (any loan other than FHA, VA, FSA, or RHS loans)
   - Code 2—FHA-insured (Federal Housing Administration)
   - Code 3—VA-guaranteed (Veterans Administration)
   - Code 4—FSA/RHS-guaranteed (Farm Service Agency or Rural Housing Service)

4. Property Type. Indicate the property type by entering the applicable Code from the following:
   - Code 1—One-to four-family dwelling (other than manufactured housing)
   - Code 2—Manufactured housing
   - Code 3—Multifamily dwelling
     a. Use Code 1, not Code 3, for loans on individual condominium or cooperative units.
     b. If you cannot determine (despite reasonable efforts to find out) whether the loan or application relates to a manufactured home, use Code 1.

5. Purpose of Loan or Application. Indicate the purpose of the loan or application by entering the applicable Code from the following:
   - Code 1—Home purchase
   - Code 2—Home improvement
   - Code 3—Refinancing
     a. Do not report a refinancing if, under the loan agreement, you were unconditionally obligated to refinance the obligation, or you were obligated to refinance the obligation subject to conditions within the borrower’s control.
     b. Enter Code 2 if your institution has a covered preapproval program but the applicant does not request a preapproval.
     c. Enter Code 3 for applications or loans for home improvement or refinancing, and for purchased loans.

Code 1—Owner-occupied as a principal dwelling
Code 2—Not owner-occupied as a principal dwelling
Code 3—Not applicable
   a. For purchased loans, use Code 1 unless the loan documents or application indicate that the property will not be owner-occupied as a principal residence.
   b. Use Code 2 for second homes or vacation homes, as well as for rental properties.
   c. Use Code 3 if the property to which the loan relates is a multifamily dwelling; is not located in an MSA; or is located in an MSA or an MD in which your institution has neither a home nor a branch office. Alternatively, at your institution’s option, you may report the actual occupancy status, using Code 1 or 2 as applicable.

6. Owner Occupancy. Indicate whether the property to which the loan or loan application relates is to be owner-occupied as a principal residence by entering the applicable Code from the following:
   - Code 1—Owner-occupied as a principal dwelling
   - Code 2—Not owner-occupied as a principal dwelling
   - Code 3—Not applicable
     a. For a home purchase loan that you originated, enter the principal amount of the loan.
     b. For a home purchase loan that you purchased, enter the unpaid principal balance of the loan at the time of purchase.
     c. For a home improvement loan, enter the entire amount of the loan—including unpaid finance charges if that is how such loans are recorded on your books—even if only a part of the proceeds is intended for home improvement.
     d. If you opt to report home-equity lines of credit, report only the portion of the line intended for home improvement or home purchase.
     e. For a refinancing, indicate the total amount of the refinancing, including both the amount outstanding on the original loan and any amount of “new money.”
     f. For a loan application that was denied or withdrawn, enter the amount for which the applicant applied.

7. Loan Amount. Enter the amount of the loan or application. Do not report loans below $500. Show the amount in thousands, rounding to the nearest thousand (round $500 up to the next $1,000). For example, a loan for $167,300 should be entered as 167 and one for $15,500 as 16.
   a. For a home purchase loan that you originated, enter the principal amount of the loan.
   b. For a home purchase loan that you purchased, enter the unpaid principal balance of the loan at the time of purchase.
   c. For a home improvement loan, enter the amount outstanding on the original loan and any amount of “new money.”
   d. If you opt to report home-equity lines of credit, report only the portion of the line intended for home improvement or home purchase.
   e. For a refinancing, indicate the total amount of the refinancing, including both the amount outstanding on the original loan and any amount of “new money.”
   f. For a loan application that was denied or withdrawn, enter the amount for which the applicant applied.

8. Request for Preapproval of a Home Purchase Loan. Indicate whether the application or loan involved a request for preapproval of a home purchase loan by entering the applicable Code from the following:
   - Code 1—Preapproval requested
   - Code 2—Preapproval not requested
   - Code 3—Not applicable
     a. Enter Code 2 if your institution has a covered preapproval program but the applicant does not request a preapproval.
     b. Enter Code 3 if your institution does not have a preapproval program as defined in §1003.2.
     c. Enter Code 3 for applications or loans for home improvement or refinancing, and for purchased loans.
B. Action Taken

1. Type of Action. Indicate the type of action taken on the application or loan by using one of the following Codes.
   - Code 1—Loan originated
   - Code 2—Application approved but not accepted
   - Code 3—Application denied
   - Code 4—Application withdrawn
   - Code 5—File closed for incompleteness
   - Code 6—Loan purchased by your institution
   - Code 7—Preapproval request denied
   - Code 8—Preapproval request approved but not accepted (optional reporting)

   a. Use Code 1 for a loan that is originated, including one resulting from a request for preapproval.
   b. For a counteroffer (your offer to the applicant to make the loan on different terms or in a different amount from the terms or amount applied for), use Code 1 if the applicant accepts. Use Code 3 if the applicant turns down the counteroffer or does not respond.
   c. Use Code 2 when the application is approved but the applicant (or the loan broker or correspondent) fails to respond to your notification of approval or your commitment letter within the specified time. Do not use this Code for a preapproval request.
   d. Use Code 4 only when the application is expressly withdrawn by the applicant before a credit decision is made. Do not use Code 4 if a request for preapproval is withdrawn; preapproval requests that are withdrawn are not reported under HMDA.
   e. Use Code 5 if you sent a written notice of incompleteness under §1002.9(c)(2) of Regulation B (Equal Credit Opportunity) and the applicant did not respond to your request for additional information within the period of time specified in your notice. Do not use this Code for requests for preapproval that are incomplete; these preapproval requests are not reported under HMDA.
   f. Use Code 8 only when the application is expressly withdrawn by the applicant before a credit decision is made. Do not use Code 8 if a request for preapproval is withdrawn; preapproval requests that are withdrawn are not reported under HMDA.

2. Date of Action. For paper submissions only, enter the date by month, day, and year, using numerals in the form MM/DD/YYYY (for example, 02/22/2003). For submissions in electronic form, the proper format is YYYYMMDD.
   a. For loans originated, enter the settlement or closing date.
   b. For loans purchased, enter the date of purchase by your institution.
   c. For applications and preapprovals denied, applications and preapprovals approved but not accepted by the applicant, and files closed for incompleteness, enter the date that the action was taken by your institution or the date the notice was sent to the applicant.
   d. For applications withdrawn, enter the date you received the applicant’s express withdrawal, or enter the date shown on the notification from the applicant, in the case of a written withdrawal.
   e. For preapprovals that lead to a loan origination, enter the date of the origination.

C. Property Location

- Except as otherwise provided, enter in these columns the applicable Codes for the MSA, or the MD if the MSA is divided into MDs, state, county, and census tract to indicate the location of the property to which a loan relates.

1. MSA or Metropolitan Division.—For each loan or loan application, enter the MSA or the MD number if the MSA is divided into MDs. MSA and MD boundaries are defined by OMB; use the boundaries that were in effect on January 1 of the calendar year for which you are reporting. A listing of MSAs and MDs is available from the appropriate Federal agency to which you report data or the FFIEC.

2. State and County. Use the Federal Information Processing Standard (FIPS) two-digit numerical code for the state and the three-digit numerical code for the county. These codes are available from the appropriate Federal agency to which you report data or the FFIEC.

3. Census Tract.—Indicate the census tract where the property is located. Notwithstanding paragraph 6, if the property is located in a county with a population of 30,000 or less in the 2000 Census, enter “NA” (even if the population has increased above 30,000 since 2000), or enter the census tract number. County population data can be obtained from the U.S. Census Bureau.

4. Census Tract Number.—For the census tract number, consult the resources provided by the U.S. Census Bureau or the FFIEC.

5. Property Located Outside MSAs or Metropolitan Divisions.—For loans on property located outside the MSAs and MDs in which an institution has a home or branch office, or for property located outside of any MSA or MD, the institution may choose one of the following two options. Under option one, the institution may enter the MSA or MD, state and county codes and the census tract number; and if the property is not located in any MSA or MD, the institution may enter “NA” in the MSA or MD column. (Codes exist for all states and counties and numbers exist for all census tracts.) Under this first option, the codes and census tract number must accurately identify the property location. Under the second option, which is not available if paragraph 6 applies, an institution may enter “NA” in all four columns, whether or not the codes or numbers exist for the property location.

6. Data Reporting for Banks and Savings Associations Required To Report Data on Small Business, Small Farm, and Community Development Lending Under the CRA
D. Applicant Information—Ethnicity, Race, Sex, and Income

Appendix B contains instructions for the collection of data on ethnicity, race, and sex, and also contains a sample form for data collection.

1. Applicability. Report this information for loans that you originate as well as for applications that do not result in an origination.

a. You need not collect or report this information for loans purchased. If you choose not to report this information, use the Codes for “not applicable.”

b. If the borrower or applicant is not a natural person (a corporation or partnership, for example), use the Codes for “not applicable.”

c. If no income information is asked for or received, enter the Code for “not applicable.”

2. Mail, Internet, or Telephone Applications.—All loan applications, including applications taken by mail, internet, or telephone must use a collection form similar to that shown in appendix B regarding ethnicity, race, and sex. For applications taken by telephone, the information in the collection form must be stated orally by the lender, except for information that pertains uniquely to applications taken in writing. If the applicant does not provide these data in an application taken by mail or telephone or on the internet, enter the Code for “information not provided by applicant in mail, internet, or telephone application” specified in paragraphs I.D.3., 4., and 5. of this appendix. (See appendix B for complete information on the collection of these data in mail, Internet, or telephone applications.)

3. Ethnicity of Borrower or Applicant. Use the following Codes to indicate the ethnicity of the applicant or borrower under column “A” and of any co-applicant or co-borrower under column “CA.”

Code 1—Hispanic or Latino
Code 2—Not Hispanic or Latino
Code 3—Information not provided by applicant in mail, internet, or telephone application
Code 4—Not applicable
Code 5—No co-applicant

4. Race of Borrower or Applicant. Use the following Codes to indicate the race of the applicant or borrower under column “A” and of any co-applicant or co-borrower under column “CA.”

Code 1—American Indian or Alaska Native
Code 2—Asian
Code 3—Black or African American
Code 4—Native Hawaiian or Other Pacific Islander
Code 5—White
Code 6—Information not provided by applicant in mail, internet, or telephone application
Code 7—Not applicable
Code 8—No co-applicant

5. Sex of Borrower or Applicant. Use the following Codes to indicate the sex of the applicant or borrower under column “A” and of any co-applicant or co-borrower under column “CA.”

Code 1—Male
Code 2—Female
Code 3—Information not provided by applicant in mail, internet, or telephone application
Code 4—Not applicable
Code 5—No co-applicant or co-borrower

6. Income. Enter the gross annual income that your institution relied on in making the credit decision.

a. Round all dollar amounts to the nearest thousand (round $600 up to the next $1,000), and show in thousands. For example, report $35,500 as 36.

b. For loans on multifamily dwellings, enter “NA.”

c. If no income information is asked for or relied on in the credit decision, enter “NA.”

d. If the applicant or co-applicant is not a natural person or the applicant or co-applicant information is unavailable because the
E. Type of Purchaser

Enter the applicable Code to indicate whether a loan that your institution originated or purchased was sold to a secondary market entity within the same calendar year:

Code 0—Loan was not originated or was not sold in calendar year covered by register
Code 1—Fannie Mae
Code 2—Ginnie Mae
Code 3—Freddie Mac
Code 4—Farmer Mac
Code 5—Private securitization
Code 6—Commercial bank, savings bank, or savings association
Code 7—Life insurance company, credit union, mortgage bank, or finance company
Code 8—Affiliate institution
Code 9—Other type of purchaser

a. Use Code 0 for applications that were denied, withdrawn, or approved but not accepted by the applicant; and for files closed for incompleteness.
b. Use Code 0 if you originated or purchased a loan and did not sell it during that same calendar year. If you sell the loan in a succeeding year, you need not report the sale.
c. Use Code 2 if you conditionally assign a loan to Ginnie Mae in connection with a mortgage-backed security transaction.
d. Use Code 8 for loans sold to an institution affiliated with you, such as your subsidiary or a subsidiary of your parent corporation.

e. Code 9 for: Income insufficient for purchase; Income insufficient for amount of credit requested, and Excessive obligations in relation to income.

F. Reasons for Denial

1. You may report the reason for denial, and you may indicate up to three reasons, using the following Codes. Leave this column blank if the “action taken” on the application is not a denial. For example, do not complete this column if the application was withdrawn or the file was closed for incompleteness.

Code 1—Debt-to-income ratio
Code 2—Employment history
Code 3—Credit history
Code 4—Collateral
Code 5—Insufficient cash (downpayment, closing costs)
Code 6—Unverifiable information
Code 7—Credit application incomplete
Code 8—Mortgage insurance denied
Code 9—Other

2. If your institution uses the model form for adverse action contained in appendix C to Regulation B (Form C-1, Sample Notification Form), use the foregoing Codes as follows:

a. Code 1 for: Income insufficient for amount of credit requested, and Excessive obligations in relation to income.

b. Code 2 for: Temporary or irregular employment, and Length of employment.

c. Code 3 for: Insufficient number of credit references provided; Unacceptable type of credit references provided; No credit; Limited credit experience; Poor credit performance with us; Delinquent past or present credit obligations with others; Garnishment, attachment, foreclosure, repossession, collection action, or judgment; and Bankruptcy.

d. Code 4 for: Value or type of collateral not sufficient.

e. Code 6 for: Unable to verify credit references; Unable to verify employment; Unable to verify income; and Unable to verify residence.

f. Code 7 for: Credit application incomplete.

g. Code 9 for: Length of residence; Temporary residence; and Other reasons specified on notice.

G. Pricing-Related Data

1. Rate Spread. a. For a home-purchase loan, a refinancing, or a dwelling-secured home improvement loan that you originated, report the spread between the annual percentage rate (APR) and the average prime offer rate for a comparable transaction if the spread is equal to or greater than 1.5 percentage points for first-lien loans or 3.5 percentage points for substitute-lien loans. To determine whether the rate spread meets this threshold, use the average prime offer rate in effect for the type of transaction as of the date the interest rate was set, and use the APR for the loan, as calculated and disclosed to the consumer under §§ 1026.6 or 1026.18, as applicable, of Regulation Z (12 CFR part 1026). Current and historic average prime offer rates are set forth in the tables published on the FFIEC’s Web site (http://www.ffiec.gov/hmda) entitled “Average Prime Offer Rates-Fixed” and “Average Prime Offer Rates-Adjustable.” Use the most recently available average prime offer rate. “Most recently available” means the average prime offer rate set forth in the applicable table with the most recent effective date as of the date the interest rate was set. Do not use an average prime offer rate before its effective date.

b. If the loan is not subject to Regulation Z, or is a home improvement loan that is not dwelling-secured, or is a loan that you purchased, enter “NA.”

c. Enter “NA” in the case of an application that does not result in a loan origination.

d. Enter the rate spread to two decimal places, and use a leading zero. For example, enter 03.29. If the difference between the APR and the average prime offer rate is a figure with more than two decimal places, round the figure or truncate the digits beyond two decimal places.
Pt. 1003, App. A

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e. If the difference between the APR and the average prime offer rate is less than 1.5 percentage points for a first-lien loan and less than 3.5 percentage points for a subordinate-lien loan, enter “NA.”

2. Date the interest rate was set. The relevant date to use to determine the average prime offer rate for a comparable transaction is the date on which the loan’s interest rate was set by the financial institution for the final time before closing. If an interest rate is set pursuant to a "lock-in" agreement between the lender and the borrower, then the date on which the agreement fixes the interest rate is the date the rate was set. If a rate is re-set after a lock-in agreement is executed (for example, because the borrower exercises a float-down option or the agreement expires), then the relevant date is the date the rate is re-set for the final time before closing. If no lock-in agreement is executed, then the relevant date is the date on which the institution sets the rate for the final time before closing.

3. HOEPA Status. a. For a loan that you originated or purchased that is subject to the Home Ownership and Equity Protection Act of 1994 (HOEPA), as implemented in Regulation Z (12 CFR 1026.32), because the APR or the points and fees on the loan exceed the HOEPA triggers, enter Code 1.

b. Enter Code 2 in all other cases. For example, enter Code 2 for a loan that you originated or purchased that is not subject to the requirements of HOEPA for any reason; also enter Code 2 in the case of an application that does not result in a loan origination.

H. Lien Status

Use the following Codes for loans that you originate and for applications that do not result in an origination:

Code 1—Secured by a first lien.

Code 2—Secured by a subordinate lien.

Code 3—Not secured by a lien.

Code 4—Not applicable (purchased loan).

a. Use Codes 1 through 3 for loans that you originate, as well as for applications that do not result in an origination (applications that are approved but not accepted, denied, withdrawn, or closed for incompleteness).

b. Use Code 4 for loans that you purchase.

II. APPROPRIATE FEDERAL AGENCIES FOR HMDA REPORTING

A. You are strongly encouraged to submit your loan/application register via email. If you elect to use this method of transmission and the appropriate Federal agency for your institution is the Bureau of Consumer Financial Protection, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, then you should submit your institution's files to the email address dedicated to that purpose by the Bureau, which can be found on the Web site of the FFIEC. If one of the foregoing agencies is the appropriate Federal agency for your institution and you elect to submit your data by regular mail, then use the following address: HMDA, Federal Reserve Board, Attention: HMDA Processing, (insert name of the appropriate Federal agency for your institution), 20th & Constitution Ave NW., MS N502, Washington, DC 20551–0001.

B. If the Federal Reserve System (but not the Bureau of Consumer Financial Protection) is the appropriate Federal agency for your institution, you should use the email or regular mail address of your district bank indicated on the Web site of the FFIEC. If the Department of Housing and Urban Development is the appropriate Federal agency for your institution, then you should use the email or regular mail address indicated on the Web site of the FFIEC.
LOAN/APPLICATION REGISTER
TRANSMITTAL SHEET

You must complete this transmittal sheet (please type or print) and attach it to the Loan/Application Register, required by the Home Mortgage Disclosure Act, that you submit to your supervisory agency.

<table>
<thead>
<tr>
<th>Reporter's Identification Number</th>
<th>Agency Code</th>
<th>Reporter's Tax Identification Number</th>
<th>Total line entries contained in attached Loan/Application Register</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The Loan/Application Register that is attached covers activity during the year ______ and contains a total of ______ pages.

Enter the name and address of your institution. The disclosure statement that is produced by the Federal Financial Institutions Examination Council will be mailed to the address you supply below:

Name of Institution

Address

City, State, ZIP

Enter the name and address of any parent company:

Name of Parent Company

Address

City, State, ZIP

Enter the name, telephone number, facsimile number, and e-mail address of a person who may be contacted about questions regarding your register:

<table>
<thead>
<tr>
<th>Name</th>
<th>Telephone Number</th>
<th>Facsimile Number</th>
<th>E-Mail Address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

An officer of your institution must complete the following section.

I certify to the accuracy of the data contained in this register.

Name of Officer

Signature

Date
## LOAN/APPLICATION REGISTER

### CODE SHEET

Use the following codes to complete the Loan/Application Register. The instructions to the HMDA-LAR explain the proper use of each code.

### Application or Loan Information

**Loan Type:**
- 1 — Conventional (any loan other than FHA, VA, FSA, or RHS loans)
- 2 — FHA-insured (Federal Housing Administration)
- 3 — VA-guaranteed (Veterans Administration)
- 4 — FSA/RHS (Farm Service Agency or Rural Housing Service)

**Property Type:**
- 1 — One to four-family (other than manufactured housing)
- 2 — Manufactured housing
- 3 — Multifamily

**Purpose of Loan:**
- 1 — Home purchase
- 2 — Home improvement
- 3 — Refinancing

**Owner-Occupancy:**
- 1 — Owner-occupied as a principal dwelling
- 2 — Not owner-occupied
- 3 — Not applicable

**Preapproval (home purchase loans only):**
- 1 — Preapproval was requested
- 2 — Preapproval was not requested
- 3 — Not applicable

**Action Taken:**
- 1 — Loan originated
- 2 — Application approved but not accepted
- 3 — Application denied by financial institution
- 4 — Application withdrawn by applicant
- 5 — File closed for incompleteness
- 6 — Loan purchased by financial institution
- 7 — Preapproval request denied by financial institution
- 8 — Preapproval request approved but not accepted (optional reporting)

### Applicant Information

**Ethnicity:**
- 1 — Hispanic or Latino
- 2 — Not Hispanic or Latino
- 3 — Information not provided by applicant in mail, internet, or telephone application
- 4 — Not applicable (see App. A, I.D.)
- 5 — No co-applicant

**Race:**
- 1 — American Indian or Alaska Native
- 2 — Asian
- 3 — Black or African American
- 4 — Native Hawaiian or Other Pacific Islander
- 5 — White
- 6 — Information not provided by applicant in mail, internet, or telephone application
- 7 — Not applicable (see App. A, I.D.)
- 8 — No co-applicant

**Sex:**
- 1 — Male
- 2 — Female
- 3 — Information not provided by applicant in mail, internet, or telephone application
- 4 — Not applicable (see App. A, I.D.)
- 5 — No co-applicant

### Reasons for Denial (optional reporting)

- 1 — Debt-to-income ratio
- 2 — Employment history
- 3 — Credit history
- 4 — Collateral
- 5 — Insufficient cash (downpayment, closing costs)
- 6 — Unverifiable information
- 7 — Credit application incomplete
- 8 — Mortgage insurance denied
- 9 — Other

### Other Data

**HOEPA Status** (only for loans originated or purchased):
- 1 — HOEPA loan
- 2 — Not a HOEPA loan

**Lien Status** (only for applications and originations):
- 1 — Secured by a first lien
- 2 — Secured by a subordinate lien
- 3 — Not secured by a lien
- 4 — Not applicable (purchased loans)
APPENDIX B TO PART 1003—FORM AND INSTRUCTIONS FOR DATA COLLECTION ON ETHNICITY, RACE, AND SEX

I. INSTRUCTIONS ON COLLECTION OF DATA ON ETHNICITY, RACE, AND SEX

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

II. PROCEDURES

A. You must ask the applicant for this information (but you cannot require the applicant to provide it) whether the application is taken in person, by mail or telephone, or on the internet. For applications taken by telephone, the information in the collection form must be stated orally by the lender, except for that information which pertains uniquely to applications taken in writing.

B. Inform the applicant that the Federal government requests this information in order to monitor compliance with Federal statutes that prohibit lenders from discriminating against applicants on these bases. Inform the applicant that if the information is not provided where the application is taken in person, you are required to note the data on the basis of visual observation or surname.

C. You must offer the applicant the option of selecting one or more racial designations.

D. If the applicant declines to answer these questions or fails to provide the information on an application taken by mail or telephone or on the internet, the data need not be provided. In such a case, indicate that the application was received by mail, telephone, or Internet, if it is not otherwise evident on the face of the application.
Section 1003.1—Authority, Purpose, and Scope

1(c) Scope.

1. General. The comments in this section address issues affecting coverage of institutions and exemptions from coverage.

The broker rule and the meaning of "broker" and "investor." For the purposes of the guidance given in this commentary, an institution that takes and processes a loan application and arranges for another institution to acquire the loan at or after closing is...
acting as a “broker,” and an institution that acquires a loan from a broker at or after closing is acting as an “investor.” (The terms used in this commentary may have different meanings in certain parts of the mortgage lending industry, and other terms may be used in place of these terms, for example in the Federal Housing Administration’s mortgage insurance programs.) Depending on the facts, a broker may or may not make a credit decision on an application (and thus it may or may not have reporting responsibilities). If the broker makes a credit decision, it reports that decision; if it does not make a credit decision, it does not report. If an investor reviews an application and makes a credit decision prior to closing, the investor reports that decision. If the investor does not review the application prior to closing, it reports only the loans that it purchases; it does not report the loans it does not purchase. An institution that makes a credit decision on an application prior to closing reports that decision regardless of whose name the loan closes in.

3. Illustrations of the broker rule. Assume that, prior to closing, four investors receive the same application from a broker; two deny it, one approves it, and one approves it and acquires the loan. In these circumstances, the first two report denials, the third reports the transaction as approved but not accepted, and the fourth reports an origination (whether the loan closes in the name of the broker or the investor). Alternatively, assume that the broker denies a loan before sending it to an investor; in this situation, the broker reports a denial.

4. Broker’s use of investor’s underwriting criteria. If a broker makes a credit decision based on underwriting criteria set by an investor, but without the investor’s review prior to closing, the broker has made the credit decision. The broker reports as an origination a loan that it approves and closes, and reports as a denial an application that it turns down (either because the application does not meet the investor’s underwriting guidelines or for some other reason). The investor reports as purchases only those loans it purchases.

5. Insurance and other criteria. If an institution evaluates an application based on the criteria or actions of a third party other than an investor (such as a government or private insurer or guarantor), the institution must report the action taken on the application (loan originated, approved but not accepted, or denied, for example).

6. Credit decision of agent is decision of principal. If an institution approves loans through the actions of an agent, the institution must report the action taken on the application (loan originated, approved but not accepted, or denied, for example). State law determines whether one party is the agent of another.

7. Affiliate bank underwriting (250.250 review). If an institution makes an independent evaluation of the creditworthiness of an applicant (for example, as part of a preclosing review by an affiliate bank under 12 CFR 250.250, a regulation of the Board of Governors of the Federal Reserve System that interprets section 23A of the Federal Reserve Act), the institution is making a credit decision. If the institution then acquires the loan, it reports the loan as an origination whether the loan closes in the name of the institution or its affiliate. An institution that does not acquire the loan but takes some other action reports that action.

8. Participation loan. An institution that originates a loan and then sells partial interests to other institutions reports the loan as an origination. An institution that acquires only a partial interest in such a loan does not report the transaction even if it has participated in the underwriting and origination of the loan.

9. Assumptions. An assumption occurs when an institution enters into a written agreement accepting a new borrower as the obligor on an existing obligation. An institution reports an assumption (or an application for an assumption) as a home purchase loan in the amount of the outstanding principal. If a transaction does not involve a written agreement between a new borrower and the institution, it is not an assumption for HMDA purposes and is not reported.

Section 1003.2—Definitions

Application.

1. Consistency With Regulation B. Bureau interpretations that appear in the official staff commentary to Regulation B (Equal Credit Opportunity, 12 CFR part 1002, Supplement I) are generally applicable to the definition of an application under Regulation C. However, under Regulation C the definition of an application does not include prequalification requests.

2. Prequalification. A prequalification request is a request by a prospective loan applicant (other than a request for preapproval) for a preliminary determination on whether the prospective applicant would likely qualify for credit under an institution’s standards, or for a determination on the amount of credit for which the prospective applicant would likely qualify. Some institutions evaluate prequalification requests through a procedure that is separate from the institution’s normal loan application process; others use the same process. In either case, Regulation C does not require an institution to report prequalification requests on the HMDA/LAR, even though these requests may constitute applications under Regulation B for purposes of adverse action notices.
3. Requests for preapproval. To be a covered preapproval program, the written commitment issued under the program must result from a full review of the creditworthiness of the applicant, including such verification of income, resources and other matters as is typically done by the institution as part of its normal credit evaluation program. In addition to conditions involving the identification of a suitable property and verification that no material change has occurred in the applicant's financial condition or creditworthiness, the written commitment may be subject only to other conditions (unrelated to the financial condition or creditworthiness of the applicant) that the lender ordinarily attaches to a traditional home mortgage application approval. These conditions are limited to conditions such as requiring an acceptable title insurance binder or a certificate indicating clear termite inspection, and, in the case where the applicant plans to use the proceeds from the sale of the applicant's present home to purchase a new home, a settlement statement showing adequate proceeds from the sale of the present home.

Branch office.

1. Credit union. For purposes of Regulation C, a "branch" of a credit union is any office where member accounts are established or loans are made, whether or not the office has been approved as a branch by a Federal or state agency. (See 12 U.S.C. 1752.)

2. Depository institution. A branch of a depository institution does not include a loan-production office, the office of an affiliate, or the office of a third party such as a loan broker. (But see appendix A, paragraph I.C.6, which requires certain depository institutions to report property location even for properties located outside those MSAs or Metropolitan Divisions in which the institution has a home or branch office.)

3. Nondepository institution. For a non-depository institution, "branch office" does not include the office of an affiliate or other third party such as a loan broker. (But note that certain nondepository institutions must report property location even in MSAs or Metropolitan Divisions where they do not have a physical location.)

Dwelling.

1. Coverage. The definition of "dwelling" is not limited to the principal or other residence of the applicant or borrower, and thus includes vacation or second homes and rental properties. A dwelling also includes a multifamily structure such as an apartment building.

2. Exclusions. Recreational vehicles such as boats or campers are not dwellings for purposes of HMDA. Also excluded are transitory residences such as hotels, hospitals, and college dormitories, whose occupants have principal residences elsewhere.

Financial institution.

1. General. An institution that met the test for coverage under HMDA in year 1, and then ceases to meet the test (for example, because its assets fall below the threshold on December 31 of year 2) stops collecting HMDA data beginning with year 3. Similarly, an institution that did not meet the coverage test for a given year, and then meets the test in the succeeding year, begins collecting HMDA data in the calendar year following the year in which it meets the test for coverage. For example, a for-profit mortgage lending institution (other than a bank, savings association, or credit union) that, in year 1, falls below the thresholds specified in the definition of Financial institution in §1003.2, but meets one of them in year 2, need not collect data in year 2, but begins collecting data in year 3.

2. Adjustment of exemption threshold for banks, savings associations, and credit unions. For data collection in 2014, the asset-size exemption threshold is $43 million. Banks, savings associations, and credit unions with assets at or below $43 million as of December 31, 2013, are exempt from collecting data for 2014.

3. Coverage after a merger. Several scenarios of data-collection responsibilities for the calendar year of a merger are described below. Under all the scenarios, if the merger results in a covered institution, that institution must begin data collection January 1 of the following calendar year.

i. Two institutions are not covered by Regulation C because of asset size. The institutions merge. No data collection is required for the year of the merger (even if the merger results in a covered institution).

ii. A covered institution and an exempt institution merge. The covered institution is the surviving institution. For the year of the merger, data collection is required for the covered institution's transactions. Data collection is optional for transactions handled in offices of the previously exempt institution.

iii. A covered institution and an exempt institution merge. The exempt institution is the surviving institution, or a new institution is formed. Data collection is required for transactions of the covered institution that take place prior to the merger. Data collection is optional for transactions taking place after the merger date.

iv. Two covered institutions merge. Data collection is required for transactions of the covered institution that take place prior to the merger. The surviving or resulting institution files either a consolidated submission or separate submissions for that year.

4. Originations. HMDA coverage depends in part on whether an institution has originated home purchase loans. To determine whether activities with respect to a particular loan constitute an origination, institutions should consult, among other parts of
the staff commentary, the discussion of the broker rule under §§1003.1(c) and 1003.4(a).

5. Branches of foreign banks—treated as banks. A Federal branch or a state-licensed uninsured branch of a foreign bank is a "bank" under section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)), and is covered by HMDA if it meets the tests for a depository institution found in §1003.2 of Regulation C.

6. Branches and offices of foreign banks—treated as for-profit mortgage lending institutions. Federal agencies, state-licensed agencies, state-licensed uninsured branches of foreign banks, commercial lending companies owned or controlled by foreign banks, and entities operating under section 25 or 25A of the Federal Reserve Act, 12 U.S.C. 601 and 611 (Edge Act and agreement corporations) are not "banks" under the Federal Deposit Insurance Act. These entities are nonetheless covered by HMDA if they meet the tests for a for-profit nondepository mortgage lending institution found in §1003.2 of Regulation C.

Home improvement loan.
1. Classification requirement for loans not secured by a lien on a dwelling. An institution has "classified" a loan that is not secured by a lien on a dwelling as a home improvement loan if it has entered the loan on its books as a home improvement loan, or has otherwise coded or identified the loan as a home improvement loan. For example, an institution that has booked a loan or reported it on a "call report" as a home improvement loan has classified it as such. An institution may also classify loans as home improvement loans in other ways (for example, by color-coding loan files).

2. Improvements to real property. Home improvements include improvements both to a dwelling and to the real property on which the dwelling is located (for example, installation of a swimming pool, construction of a garage, or landscaping).

3. Commercial and other loans. A home improvement loan may include a loan originated outside an institution's residential mortgage lending division (such as a loan to improve an apartment building made through the commercial loan department).

4. Mixed-use property. A loan to improve property used for both residential and commercial purposes (for example, a building containing apartment units and retail space) is a home improvement loan if the loan proceeds are used primarily to improve the residential portion of the property. If the loan proceeds are used to improve the entire property (for example, to replace the heating system), the loan is a home improvement loan if the property itself is primarily residential. An institution may use any reasonable standard to determine the primary use of the property, such as by square footage or by the income generated. An institution may select the standard to apply on a case-by-case basis. If the loan is unsecured, to report the loan as a home improvement loan the institution must also have classified it as such.

5. Multiple-category loans. If a loan is a home improvement loan as well as a refinancing, an institution reports the loan as a home improvement loan.

Home purchase loan.
1. Multiple properties. A home purchase loan includes a loan secured by one dwelling and used to purchase another dwelling.

2. Mixed-use property. A dwelling-secured loan to purchase property used primarily for residential purposes (for example, an apartment building containing a convenience store) is a home purchase loan. An institution may use any reasonable standard to determine the primary use of the property, such as by square footage or by the income generated. An institution may select the standard to apply on a case-by-case basis.

3. Farm loan. A loan to purchase property used primarily for agricultural purposes is not a home purchase loan even if the property includes a dwelling. An institution may use any reasonable standard to determine the primary use of the property, such as by reference to the exemption from Regulation X (Real Estate Settlement Procedures, 12 CFR 1024.5(b)(1)) for a loan on property of 25 acres or more. An institution may select the standard to apply on a case-by-case basis.

4. Commercial and other loans. A home purchase loan may include a loan originated outside an institution's residential mortgage lending division (such as a loan for the purchase of an apartment building made through the commercial loan department).

5. Construction and permanent financing. A home purchase loan includes both a combined construction/permanent loan and the permanent financing that replaces a construction-only loan. It does not include a construction-only loan, which is considered "temporary financing" under Regulation C and is not reported.

6. Second mortgages that finance the downpayments on first mortgages. If an institution making a first mortgage loan to a home purchaser also makes a second mortgage loan to the same purchaser to finance part or all of the home purchaser's downpayment, the institution reports each loan separately as a home purchase loan.

7. Multiple-category loans. If a loan is a home purchase loan as well as a home improvement loan, or a refinancing, an institution reports the loan as a home purchase loan.

Manufactured home.
1. Definition of a manufactured home. The definition in §1003.2 refers to the Federal building code for factory-built housing established by the Department of Housing and Urban Development (HUD). The HUD code
requires generally that housing be essentially ready for occupancy upon leaving the factory and being transported to a building site. Modular homes that meet all of the HUD code standards are included in this definition because they are ready for occupancy upon leaving the factory. Other factory-built homes, such as panelized and pre-cut homes, generally do not meet the HUD code because they require a significant amount of construction on site before they are ready for occupancy. Loans and applications relating to manufactured homes that do not meet the HUD code should not be identified as manufactured housing under HMDA.

Metropolitan Statistical Areas and Metropolitan Divisions.

1. Use of terms “Metropolitan Statistical Area” and “Metropolitan Division.” The U.S. Office of Management and Budget defines Metropolitan Statistical Areas and Metropolitan Divisions to provide nationally consistent definitions for collecting, tabulating, and publishing Federal statistics for a set of geographic areas. OMB divides every Metropolitan Statistical Area (MSA) with a population of 2.5 million or more into Metropolitan Divisions (MDs). MSAs with populations under 2.5 million population are not so divided. 67 FR 82228 (December 27, 2000). For all purposes under Regulation C, if an MSA is divided by OMB into MDs, the appropriate geographic unit to be used is the MD; if an MSA is not so divided by OMB into MDs, the appropriate geographic unit to be used is the MSA.

Section 1003.4—Compilation of Loan Data

4(a) Data format and itemization

1. Reporting requirements. i. An institution reports data on loans that it originated and loans that it purchased during the calendar year described in the report. An institution reports these data even if the loans were subsequently sold by the institution.

ii. An institution reports the data for loan applications that did not result in originations—for example, applications that the institution denied or that the applicant withdrew during the calendar year covered by the report.

iii. In the case of brokered loan applications or applications forwarded through a correspondent, the institution reports as originations the loans that it approved and subsequently acquired per a pre-closing arrangement (whether or not they closed in the institution’s name). Additionally, the institution reports the data for all applications that did not result in originations—for example, applications that the institution denied or that the applicant withdrew during the calendar year covered by the report (whether or not they would have closed in the institution’s name). For all of these loans and applications, the institution reports the required data regarding theborrower’s or applicant’s ethnicity, race, sex, and income.

iv. Loan originations are to be reported only once. If the institution is the loan broker or correspondent, it does not report as originations the loans that it forwarded to another lender for approval prior to closing, and that were approved and subsequently acquired by that lender (whether or not they closed in the institution’s name).

v. An institution reports applications that were received in the previous calendar year but were acted upon during the calendar year covered by the current register.

vi. A financial institution submits all required data to the appropriate Federal agency in one package, with the prescribed transmittal sheet. An officer of the institution certifies to the accuracy of the data.

vii. The transmittal sheet states the total number of line entries contained in the accompanying data transmission.

2. Updating—agency requirements. Certain state or Federal regulations, such as the Federal Deposit Insurance Corporation’s regulations, may require an institution to update its data more frequently than is required under Regulation C.

3. Form of quarterly updating. An institution may maintain the quarterly updates of the HMDA/LAR in electronic or any other format, provided the institution can make the information available to its regulatory agency in a timely manner upon request.

Paragraph 4(a)(1).

1. Application date—consistency. In reporting the date of application, an institution reports the date the application was received or the date shown on the application. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans).

2. Application date—application forwarded by a broker. For an application forwarded by a broker, an institution reports the date the application was received by the broker, the date the application was received by the institution, or the date shown on the application. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans).

3. Application date—reinstated application. If, within the same calendar year, an applicant asks an institution to reinstate a counteroffer that the applicant previously did not accept (or asks the institution to reconsider an application that was denied, withdrawn, or closed for incompleteness), the institution may treat that request as the continuation of the earlier transaction or as a new transaction. If the institution treats
the request for reinstatement or reconsideration as a new transaction, it reports the date of the request as the application date.

4. Application or loan number. An institution must ensure that each identifying number is unique within the institution. If an institution’s register contains data for branch offices, for example, the institution could use a letter or a numerical code to identify the loans or applications of different branches, or could assign a certain series of numbers to particular branches to avoid duplicate numbers. Institutions are strongly encouraged not to use the applicant’s or borrower’s name or social security number, for privacy reasons.

5. Application—year action taken. An institution must report an application in the calendar year in which the institution takes final action on the application.

Paragraph 4(a)(3).
1. Purpose—statement of applicant. An institution may rely on the oral or written statement of an applicant regarding the proposed use of loan proceeds. For example, a lender could use a check-box, or a purpose line, on a loan application to determine whether or not the applicant intends to use loan proceeds for home improvement purposes.

2. Purpose—multiple-purpose loan. If a loan is a home purchase loan as well as a home improvement loan, or a refinancing, an institution reports the loan as a home purchase loan. If a loan is a home improvement loan as well as a refinancing, an institution reports the loan as a home improvement loan.

Paragraph 4(a)(6).
1. Occupancy—multiple properties. If a loan relates to multiple properties, the institution reports the owner occupancy status of the property for which property location is being reported. (See the comments to paragraph 4(a)(9)).

Paragraph 4(a)(7).
1. Loan amount—counteroffer. If an applicant accepts a counteroffer for an amount different from the amount initially requested, the institution reports the loan amount granted. If an applicant does not accept a counteroffer or fails to respond, the institution reports the loan amount initially requested.

2. Loan amount—multiple-purpose loan. Except in the case of a home-equity line of credit, an institution reports the entire amount of the loan, even if only a part of the proceeds is intended for home purchase or home improvement.

3. Loan amount—home-equity line. An institution that has chosen to report home-equity lines of credit reports only the part that is intended for home-improvement or home-purchase purposes.

4. Loan amount—assumption. An institution that enters into a written agreement accepting a new party as the obligor on a loan reports the amount of the outstanding principal on the assumption as the loan amount.

Paragraph 4(a)(8).
1. Action taken—counteroffers. If an institution makes a counteroffer to lend on terms different from the applicant’s initial request (for example, for a shorter loan maturity or in a different amount) and the applicant does not accept the counteroffer or fails to respond, the institution reports the action taken as a denial on the original terms requested by the applicant.

2. Action taken—rescinded transactions. If a borrower rescinds a transaction after closing, the institution may report the transaction either as an origination or as an application that was approved but not accepted.

3. Action taken—purchased loans. An institution reports the loans that it purchased during the calendar year, and does not report the loans that it declined to purchase.

4. Action taken—conditional approvals. If an institution issues a loan approval subject to the applicant’s meeting underwriting conditions (other than customary loan commitment or loan-closing conditions, such as a clear-title requirement or an acceptable property survey) and the applicant does not meet them, the institution reports the action taken as a denial.

5. Action taken date—approved but not accepted. For a loan approved by an institution but not accepted by the applicant, the institution reports any reasonable date, such as the approval date, the deadline for accepting the offer, or the date the file was closed. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans).

6. Action taken date—originations. For loan originations, an institution generally reports the settlement or closing date. For loan originations that an institution acquires through a broker, the institution reports either the settlement or closing date, or the date the institution acquired the loan from the broker. If the disbursement of funds takes place on a date later than the settlement or closing date, the institution may use the date of disbursement. For a construction-permanent loan, the institution reports either the settlement or closing date, or the date the loan converts to the permanent financing. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans). Notwithstanding this flexibility regarding the use of the closing date in connection with reporting the date action was taken, the year in which an origination goes to closing is the
year in which the institution must report the origination.

7. Action taken—pending applications. An institution does not report any loan applications that are still pending at the end of the calendar year; it reports that application on its register for the year in which final action is taken.

Paragraph 4(a)(9).

1. Property location—multiple properties (home improvement/ refinace of home improvement). For a home improvement loan, an institution reports the property being improved. If more than one property is being improved, the institution reports the location of one of the properties or reports the loan using multiple entries on its HMDA/LAR (with unique identifiers) and allocating the loan amount among the properties.

2. Property location—multiple properties (home purchase/refinance of home purchase). For a home purchase loan, an institution reports the property taken as security. If an institution takes more than one property as security, the institution reports the location of the property being purchased if there is just one. If the loan is to purchase multiple properties and is secured by multiple properties, the institution reports the location of one of the properties or reports the loan using multiple entries on its HMDA/LAR (with unique identifiers) and allocating the loan amount among the properties.

3. Property location—loans purchased from another institution. The requirement to report the property location by census tract in an MSA or Metropolitan Division where the institution has a home or branch office applies not only to loan applications and origination but also to loans purchased from another institution. This includes loans purchased from an institution that did not have a home or branch office in that MSA or Metropolitan Division and did not collect the property-location information.

4. Property location—mobile or manufactured home. If information about the potential site of a mobile or manufactured home is not available, an institution reports using the Code for “not applicable.”

Paragraph 4(a)(10).

1. Applicant data—completion by applicant. An institution reports the monitoring information as provided by the applicant. For example, if an applicant checks the “Asian” box the institution reports using the “Asian” Code.

2. Applicant data—completion by lender. If an applicant fails to provide the requested information for an application taken in person, the institution reports the data on the basis of visual observation or surname.

3. Applicant data—application completed in person. When an applicant meets in person with a lender to complete an application that was begun by mail, internet, or telephone, the institution must request the monitoring information. If the meeting occurs after the application process is complete, for example, at closing, the institution is not required to obtain monitoring information.

4. Applicant data—video and other electronic application processes. An institution that accepts applications through electronic media with a video component treats the applications as taken in person and collects the information about the ethnicity, race, and sex of applicants. An institution that accepts applications through electronic media without a video component (for example, the internet or facsimile) treats the applications as accepted by mail.

5. Applicant data—income not provided by applicant in mail. An institution reports the monitoring information on behalf of an absent joint applicant. If the information is not provided, the institution reports using the Code for “information not provided by applicant in mail, internet, or telephone application.”

6. Income data—income relied on. An institution reports the gross annual income relied on in evaluating the creditworthiness of applicants. For example, if an institution relies on an applicant’s salary to compute a debt-to-income ratio but also relies on the applicant’s annual bonus to evaluate creditworthiness, the institution reports the salary and the bonus to the extent relied upon. Similarly, if an institution relies on the income of a cosigner to evaluate creditworthiness, the institution includes this income to the extent relied upon. But an institution does not include the income of a guarantor who is only secondarily liable.

7. Income data—co-applicant. If two persons jointly apply for a loan and both list income on the application, but the institution relies only on the income of one applicant in computing ratios and in evaluating creditworthiness, the institution reports only the income relied on.

8. Income data—loan to employee. An institution may report “NA” in the income field for loans to its employees to protect their privacy, even though the institution relied on their income in making its credit decisions.

Paragraph 4(a)(11).

1. Type of purchaser—loan-participation interests sold to more than one entity. An institution that originates a loan, and then sells it to more than one entity, reports the “type of purchaser” based on the entity purchasing the greatest interest, if any. If an institution retains a majority interest, it does not report the sale.

2. Type of purchaser—swapped loans. Loans “swapped” for mortgage-backed securities are to be treated as sales; the purchaser is the type of entity receiving the loans that are swapped.


1. Average prime offer rate. Average prime offer rates are annual percentage rates derived from average interest rates, points, and
other loan pricing terms offered to borrowers by a representative sample of lenders for mortgage loans that have low-risk pricing characteristics. Other pricing terms include commonly used indices, margins, and initial fixed-rate periods for variable-rate transactions. Relevant pricing characteristics include a consumer’s credit history and transaction terms, such as the loan-to-value ratio, owner-occupant status, and purpose of the transaction. To obtain average prime offer rates, the Bureau uses a survey of lenders that both meets the criteria of §1003.4(a)(12)(ii) and provides pricing terms for at least two types of variable-rate transactions and at least two types of non-variable-rate transactions. An example of such a survey is the Freddie Mac Primary Mortgage Market Survey®.

2. Comparable transaction. The rate spread reporting requirement applies to a reportable loan with an annual percentage rate that exceeds by the specified margin (or more) the average prime offer rate for a comparable transaction as of the date the interest rate is set. The tables of average prime offer rates published by the Bureau (see comment 4(a)(12)(ii)-3) indicate how to identify the comparable transaction.

3. Bureau tables. The Bureau publishes on the FFIEC’s Web site (http://www.ffiec.gov/hmda), in table form, average prime offer rates for a wide variety of transaction types. The Bureau calculates an annual percentage rate, consistent with Regulation Z (see 12 CFR 1026.22 and part 1026, appendix J), for each transaction type for which pricing terms are available from the survey described in comment 4(a)(12)(ii)-1. The Bureau estimates annual percentage rates for other types of transactions for which direct survey data are not available based on the loan pricing terms available in the survey and other information. The Bureau publishes on the FFIEC’s Web site the methodology it uses to arrive at these estimates. Paragraph 4(c)(3).

1. Determining lien status for applications and loans originated. Lenders are required to report lien status for loans they originate and applications that do not result in originations. Lien status is determined by reference to the best information readily available to the lender at the time final action is taken and to the lender’s own procedures. Thus, lenders may rely on the title search they routinely perform as part of their underwriting procedures—for example, for home purchase loans. Regulation C does not require lenders to perform title searches solely to comply with HMDA reporting requirements. Lenders may rely on other information that is readily available to them at the time final action is taken and that they reasonably believe is accurate, such as the applicant’s statement on the application or the applicant’s credit report. For example, where the applicant indicates on the application that there is a mortgage on the property or where the applicant’s credit report shows that the applicant has a mortgage—and that mortgage is not going to be paid off as part of the transaction—the lender may assume that the loan it originates is secured by a subordinate lien. If the same application did not result in an origination—for example, because the application is denied or withdrawn—the lender would report the application as an application for a subordinate-lien loan.

II. Lenders may also consider their established procedures when determining lien status for applications that do not result in originations. For example, a consumer applies to a lender to refinance a $100,000 first mortgage; the consumer also has a home equity line of credit for $20,000. If the lender’s practice in such a case is to ensure that it will have first-lien position—through a subordination agreement with the holder of the mortgage on the home equity line—then the lender should report the application as an application for a first-lien loan. Paragraph 4(c)(3).

1. An institution that opts to report home equity lines reports the disposition of all applications, not just originations. Paragraph 4(d).

4(d) Excluded data.

1. Mergers, purchases in bulk, and branch acquisitions. If a covered institution acquires loans in bulk from another institution (for example, from the receiver for a failed institution) but no merger or acquisition of the institution, or acquisition of a branch, is involved, the institution reports the loans as purchased loans. Section 1003.5(a)—Disclosure and Reporting Paragraph 5(a) Reporting to agency.

1. Submission of data. Institutions submit data to the appropriate Federal agencies in an automated, machine-readable form. The format must conform to that of the HMDA/LAR. An institution should contact the appropriate Federal agency for information regarding procedures and technical specifications for automated data submission; in some cases, agencies also make software available for automated data submission. The data are edited before submission, using the edits included in the agency-supplied software or equivalent edits in software available from vendors or developed in-house.

2. Submission in paper form. Institutions that report twenty-five or fewer entries on their HMDA/LAR may collect and report the data in paper form. An institution that submits its register in non-automated form sends two copies that are typed or computer printed and must use the format of the HMDA/LAR (but need not use the form itself). Each page must be numbered along
with the total number of pages (for example, "Page 1 of 3").

3. Procedures for entering data. The required data are entered in the register for each loan origination, each application acted on, and each loan purchased during the calendar year. The institution should decide on the procedure it wants to follow—for example, whether to begin entering the required data, when an application is received, or to wait until final action is taken (such as when a loan goes to closing or an application is denied).

4. Options for collection. An institution may collect data on separate registers at different branches, or on separate registers for different loan types (such as for home purchase or home improvement loans, or for loans on multifamily dwellings). Entries need not be grouped on the register by MSA or Metropolitan Division, or chronologically, or by census tract numbers, or in any other particular order.

5. Change in appropriate Federal agency. If the appropriate Federal agency for a covered institution changes (as a consequence of a merger or a change in the institution’s charter, for example), the institution must report data to the new appropriate Federal agency beginning with the year of the change.

6. Subsidiaries. An institution is a subsidiary of a bank or savings association (for purposes of reporting HMDA data to the same agency as the parent) if the bank or savings association holds or controls an ownership interest that is greater than 50 percent of the institution.

7. Transmittal sheet—additional data submissions. If an additional data submission becomes necessary (for example, because the institution discovers that data were omitted from the initial submission, or because revisions are called for), that submission must be accompanied by a transmittal sheet.

8. Transmittal sheet—revisions or deletions. If a data submission involves revisions or deletions of previously submitted data, it must state the total of all line entries contained in that submission, including both those representing revisions or deletions of previously submitted entries, and those that are being resubmitted unchanged or are being submitted for the first time. Depository institutions must provide a list of the MSAs or Metropolitan Divisions in which they have home or branch offices.

5(b) Public disclosure of statement.

1. Business day. For purposes of §1003.5, a business day is any calendar day other than a Saturday, Sunday, or legal public holiday.

2. Format. An institution may make the disclosure statement available in paper form or, if the person requesting the data agrees, in electronic form.

5(c) Public disclosure of modified loan/application register.

1. Format. An institution may make the modified register available in paper or electronic form. Although institutions are not required to make the modified register available in census tract order, they are strongly encouraged to do so in order to enhance its utility to users.

5(e) Notice of availability.

An institution may use any text that meets the requirements of the regulation. Some of the Federal agencies that receive HMDA data provide HMDA posters that an institution can use to inform the public of the availability of its HMDA data, or the institution may create its own posters. If an institution prints its own, the following language is suggested but is not required:

HOME MORTGAGE DISCLOSURE ACT NOTICE

The HMDA data about our residential mortgage lending are available for review. The data show geographic distribution of loans and applications; ethnicity, race, sex, and income of applicants and borrowers; and information about loan approvals and denials. Inquire at this office regarding the locations where HMDA data may be inspected.

2. Additional language for institutions making the disclosure statement available on request. An institution that posts a notice informing the public of the address to which a request should be sent could include the following sentence, for example, in its general notice: “To receive a copy of these data send a written request to [address].”

Section 1003.6—Enforcement

6(b) Bona fide errors.

1. Bona fide error—information from third parties. An institution that obtains the property-location information for applications and loans from third parties (such as appraisers or vendors of “geocoding” services) is responsible for ensuring that the information reported on its HMDA/LAR is correct.


PART 1004—ALTERNATIVE MORTGAGE TRANSACTION PARITY (REGULATION D)

Sec.

1004.1 Authority, purpose, and scope

1004.2 Definitions

1004.3 Preemption of State law

1004.4 Requirements for alternative mortgage transactions

APPENDIX A TO PART 1004—OFFICIAL COMMENTARY ON REGULATION D

§ 1004.1 Authority, purpose, and scope.

(a) Authority. This regulation, known as Regulation D, is issued by the Bureau of Consumer Financial Protection to implement the Alternative Mortgage Transaction Parity Act, 12 U.S.C. 3801 et seq., as amended by title X, Section 1083 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376). Section 1004.4 is issued pursuant to the Alternative Mortgage Transaction Parity Act (as amended) and the Truth in Lending Act, 15 U.S.C. 1601 et seq.

(b) Purpose. Consistent with the Alternative Mortgage Transaction Parity Act, the Truth in Lending Act, and the Dodd-Frank Wall Street Reform and Consumer Protection Act, the purpose of this regulation is to balance access to responsible credit and enhanced parity between State and federal housing creditors regarding the making, purchase, and enforcement of alternative mortgage transactions with consumer protection and the interests of the States in regulating mortgage transactions generally.

(c) Scope. This regulation applies to an alternative mortgage transaction if the creditor received an application for that transaction on or after July 22, 2011. This regulation does not apply to a transaction if the creditor received the application for that transaction before July 22, 2011.

§ 1004.2 Definitions.

For purposes of this part:

Alternative mortgage transaction means a loan, credit sale, or account:

(1) That is secured by an interest in a residential structure that contains one to four units, whether or not that structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence;

(2) That is made primarily for personal, family, or household purposes; and

(3) In which the interest rate or finance charge may be adjusted or renegotiated.

Creditor shall have the same meaning as in 12 CFR 226.2.

Housing creditor means:

(1) A depository institution, as defined in section 501(a)(2) of the Depository Institutions Deregulation and Monetary Control Act of 1980;

(2) A lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act;

(3) Any person who regularly makes loans, credit sales, or advances on an account secured by an interest in a residential structure that contains one to four units, whether or not the structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence; and

(4) Any transferee of a party listed in paragraph (c)(1), (2), or (3) of this section.

State means any State of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, the Northern Mariana Islands, American Samoa, Guam, and any other territory or possession of the United States.

State law means a State constitution, statute, or regulation or any provision thereof.

§ 1004.3 Preemption of State law.

Pursuant to 12 U.S.C. 3803, a State-chartered or -licensed housing creditor may make, purchase, and enforce alternative mortgage transactions in accordance with §1004.4(a) through (c) of this part (as applicable), notwithstanding any provision of State law that restricts the ability of the housing creditor to adjust or renegotiate an interest rate or finance charge with respect to the transaction or to change the amount of interest or finance charges included in a regular periodic payment as a result of such an adjustment or renegotiation.

§ 1004.4 Requirements for alternative mortgage transactions.

(a) Mortgages with adjustable rates or finance charges and home equity lines of credit. A creditor that makes an alternative mortgage transaction with an adjustable rate or finance charge may
only increase the interest rate or finance charge as follows:

(1) If the transaction is subject to 12 CFR 226.5b, the creditor must comply with 12 CFR 226.5b(f)(1).

(2) For all other transactions, the creditor must use either:

(i) An index to which changes in the interest rate are tied that is readily available to and verifiable by the borrower and beyond the control of the creditor; or

(ii) A formula or schedule identifying the amount that the interest rate or finance charge may increase and the times at which, or circumstances under which, a change may be made.

(b) Renegotiable rates for renewable balloon-payment mortgages. A creditor that makes an alternative mortgage transaction with payments based on an amortization period and a large final payment due after a shorter term may negotiate an increase or decrease in the interest rate when the transaction is renewed only if the creditor makes a written commitment to renew the transaction at specified intervals throughout the amortization period. However, the creditor is not required to renew the transaction if:

(1) Any action or inaction by the consumer materially and adversely affects the creditor’s security for the transaction or any right of the creditor in such security;

(2) There is a material failure by the consumer to meet the repayment terms of the transaction;

(3) There is fraud or a willful or knowing material misrepresentation by the consumer in connection with the transaction; or

(4) Federal law dealing with credit extended by a depository institution to its executive officers specifically requires that as a condition of the extension the credit shall become due and payable on demand, provided that the creditor includes such a provision in the initial agreement.

(c) Requirements for high-cost and higher-priced mortgage loans. (1) If an alternative mortgage transaction is subject to 12 CFR 226.32, the creditor must comply with 12 CFR 226.32 and 12 CFR 226.34.

(2) If an alternative mortgage transaction is subject to 12 CFR 226.35, the creditor must comply with 12 CFR 226.35.

(d) Other applicable law. Notwithstanding paragraphs (a) through (c) of this section, a housing creditor that is not making an alternative mortgage transaction pursuant to §1004.3 of this part may make that transaction consistent with applicable State or Federal law other than this section.

(e) Reductions in interest rate or finance charge. Nothing in this section prohibits a creditor from decreasing the interest rate or finance charge on an alternative mortgage transaction.

APPENDIX A TO PART 1004—OFFICIAL COMMENTARY ON REGULATION D

§1004.1 Authority, Purpose, and Scope

1(c) Scope.

1. Application received before July 22, 2011. This part does not apply to a transaction if the creditor received the application for that transaction before July 22, 2011, even if the transaction was consummated or completed on or after July 22, 2011. Whether 12 U.S.C. 3803(c) preempts State law with respect to such a transaction depends on whether: (1) The transaction was an alternative mortgage transaction as defined by the version of 12 U.S.C. 3802(1) in effect at the time of application; and (2) the State housing creditor complied with applicable federal regulations issued by the Office of the Comptroller of the Currency, the National Credit Union Administration, the Office of Thrift Supervision, or the Federal Home Loan Bank Board in effect at the time of application.

2. Subsequent modifications and other actions. If applicable regulations under 12 U.S.C. 3803(c) (including this Part) preempted State law with respect to an alternative mortgage transaction at the time the application was received, the following actions with respect to that transaction are entitled to the same degree of preemption under such regulations:

i. The subsequent consummation, completion, purchase, or enforcement of the transaction; and

ii. The subsequent modification, renewal, or extension of the transaction. However, if such a transaction is satisfied and replaced by another transaction, the second transaction must independently meet the requirements for preemption in effect at the time the application for the second transaction was received.

§1004.2 Definitions

2(a) Alternative Mortgage Transaction

1. Alternative mortgage transaction. For purposes of this Part, an alternative mortgage
transaction that meets the definition in §1004.2(a) includes any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest in a dwelling or in residential real property that includes a dwelling. The dwelling need not be the primary dwelling of the consumer. Home equity lines of credit and subordinate lien mortgages are alternative mortgage transactions for purposes of this part to the extent they meet the definition in §1004.2(a).

2. Examples of alternative mortgage transactions. Examples of alternative mortgage transactions include:
   i. Transactions in which the interest rate changes in accordance with fluctuations in an index.
   ii. Transactions in which the interest rate or finance charge may be increased or decreased after a specified period of time or under specified circumstances.
   iii. Balloon transactions in which payments are based on an amortization schedule and a large final payment is due after a shorter term, where the creditor makes a commitment to renew the transaction at specified intervals throughout the amortization period, but the interest rate may be renegotiated at renewal. For example, a fixed-rate mortgage loan with a 30-year amortization period but a balloon payment due five years after consummation is an alternative mortgage transaction under §1004.2(a) if the creditor commits to renew the mortgage at five-year intervals for the entire 30-year amortization period.
   iv. Transactions in which the creditor and the consumer agree to share some or all of the appreciation in the value of the property (shared equity/shared appreciation).

However, this part preempts State law only to the extent provided in §1004.3 and only to the extent that the requirements of §1004.3 through (c) (as applicable) are met.

3. Examples of transactions that are not alternative mortgage transactions. The following are examples of transactions that are not alternative mortgage transactions:
   i. Transactions with a fixed interest rate where one or more of the regular periodic payments may be applied solely to accrued interest and not to loan principal (an interest-only feature).
   ii. Balloon transactions with a fixed interest rate where payments are based on an amortization schedule and a large final payment is due after a shorter term, where the creditor does not make a commitment to renew the transaction at specified intervals throughout the amortization period.
   iii. Transactions with a fixed interest rate where one or more of the regular periodic payments may result in an increase in the principal balance (a negative amortization feature).
to adjust payments as a result of the adjustment or renegotiation of an interest rate on an alternative mortgage transaction. Other restrictions on changes to payments are not preempted, including restrictions on transactions in which one or more of the regular periodic payments may result in an increase in the principal balance (a negative amortization feature) or may be applied solely to accrued interest and not to loan principal (an interest-only feature).

iii. Restrictions on the creditor and the consumer sharing some or all of the appreciation in the value of the property (shared equity/shared appreciation).

iv. Underwriting requirements that address the adjustment or renegotiation of interest rates or finance charges. For example, if a provision of State law requires housing creditors to underwrite based on the maximum contractual rate, that provision is preempted by §1004.3 with respect to alternative mortgage transactions, regardless of whether the provision applies solely to alternative mortgage transactions or to both alternative mortgage transactions and other mortgage or consumer credit transactions.

3. Examples of State laws that are not preempted. The following are examples of State laws that are not preempted by §1004.3 regardless of whether the provision applies solely to alternative mortgage transactions or to both alternative mortgage transactions and other mortgage or consumer credit transactions:

i. Restrictions on prepayment penalties or late charges (including an increase in an interest rate or finance charge as a result of a late payment).

ii. Restrictions on transactions in which one or more of the regular periodic payments may result in an increase in the principal balance (a negative amortization feature) or may be applied solely to accrued interest and not to loan principal (an interest-only feature).

iii. Requirements that disclosures be provided.

§1004.4 Requirements for Alternative Mortgage Transactions

4(a) Mortgages With Adjustable or Renegotiable Rates or Finance Charges and Home Equity Lines of Credit

1. Index values. A creditor may use any measure of index values that meets the requirements in §1004.4(a)(2)(i). For example, the index may be either single values as of a specific date or an average of values calculated over a specified period.

2. Index beyond creditor’s control. A creditor may increase an adjustable interest rate pursuant to §1004.4(a)(2)(i) only if the increase is based on an index that is beyond the creditor’s control. For purposes of §1004.4(a)(2)(i), an index is not beyond the creditor’s control if the index is the creditor’s own prime rate or cost of funds. A creditor is permitted, however, to use a published prime rate, such as the prime rate published in the Wall Street Journal, even if the creditor’s own prime rate is one of several rates used to establish the published rate.

3. Publicly available. For purposes of §1004.4(a)(2)(i), the index must be available to the public. A publicly available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify the annual percentage rate applied to the alternative mortgage transaction.

4(c) Requirements for High-Cost and Higher-Priced Mortgage Loans

1. Prepayment penalties. If applicable, creditors must comply with 12 CFR 226.32, including 12 CFR 226.32(d)(6) and (d)(7) which provide limitations on prepayment penalties. Similarly, if applicable, creditors must comply with 12 CFR 226.35, including 12 CFR 226.35(b)(2), which also provides limitations on prepayment penalties. However, under §1004.3, State laws regarding prepayment penalties are not preempted. See comment 1004.3-3. Accordingly, creditors must also comply with any State laws regarding prepayment penalties unless an independent basis for preemption exists, such as because the State law is inconsistent with the requirements of Regulation Z, 12 CFR part 226. See 12 CFR 226.28.

4(d) Other Applicable Law

1. Other applicable law. Section 1004.4(d) permits state housing creditors that do not seek preemption under §1004.3 and federal housing creditors to make alternative mortgage transactions consistent with applicable State or federal law other than §1004.4(a) through (c). However, §1004.4(d) does not exempt those housing creditors from complying with the provisions of federal law that are incorporated by reference in §1004.4 and are otherwise applicable to the creditor. Specifically, nothing in §1004.4(d) exempts a housing creditor from complying with 12 CFR 226.5b, 226.32, 226.34, or 226.35.
Subpart A—General

§ 1005.1 Authority and purpose.

(a) Authority. The regulation in this part, known as Regulation E, is issued by the Bureau of Consumer Financial Protection (Bureau) pursuant to the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.). The information-collection requirements have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and have been assigned OMB No. 3170–0014.

(b) Purpose. This part carries out the purposes of the Electronic Fund Transfer Act, which establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer and remittance transfer services and of financial institutions or other persons that offer these services. The primary objective of the act and this part is the protection of individual consumers engaging in electronic fund transfers and remittance transfers.


§ 1005.2 Definitions.

Except as otherwise provided in subpart B, for purposes of this part, the following definitions apply:

(a)(1) “Access device” means a card, code, or other means of access to a consumer’s account, or any combination thereof, that may be used by the consumer to initiate electronic fund transfers.

(b)(1) “Account” means a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.

(2) “Account” means a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.

(2) An access device becomes an “accepted access device” when the consumer:

(i) Requests and receives, or signs, or uses (or authorizes another to use) the access device to transfer money between accounts or to obtain money, property, or services;

(ii) Requests validation of an access device issued on an unsolicited basis; or

(iii) Receives an access device in renewal of, or in substitution for, an accepted access device from either the financial institution that initially issued the device or a successor.

APPENDIX A TO PART 1005—MODEL DISCLOSURE CLAUSES AND FORMS

APPENDIX B TO PART 1005 [RESERVED]

APPENDIX C TO PART 1005—ISSUANCE OF OFFICIAL INTERPRETATIONS

SUPPLEMENT I TO PART 1005—OFFICIAL INTERPRETATIONS


Subpart B is also issued under 12 U.S.C. 5561.

SOURCE: 76 FR 81023, Dec. 27, 2011, unless otherwise noted.
party payroll processor, a depository institution or any other person. For rules governing payroll card accounts, see §1005.18.

(3) The term does not include an account held by a financial institution under a bona fide trust agreement.

(c) “Act” means the Electronic Fund Transfer Act (Title IX of the Consumer Credit Protection Act, 15 U.S.C. 1693 et seq.).

(d) “Business day” means any day on which the offices of the consumer’s financial institution are open to the public for carrying on substantially all business functions.

(e) “Consumer” means a natural person.

(f) “Credit” means the right granted by a financial institution to a consumer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(g) “Electronic fund transfer” is defined in §1005.3.

(h) “Electronic terminal” means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. The term includes, but is not limited to, point-of-sale terminals, automated teller machines (ATMs), and cash dispensing machines.

(i) “Financial institution” means a bank, savings association, credit union, or any other person that directly or indirectly holds an account belonging to a consumer, or that issues an access device and agrees with a consumer to provide electronic fund transfer services, other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376.

(j) “Person” means a natural person or an organization, including a corporation, government agency, estate, trust, partnership, proprietorship, cooperative, or association.

(k) “Preauthorized electronic fund transfer” means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

(l) “State” means any state, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or any political subdivision of the thereof in this paragraph (l).

(m) “Unauthorized electronic fund transfer” means an electronic fund transfer from a consumer’s account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. The term does not include an electronic fund transfer initiated:

(1) By a person who was furnished the access device to the consumer’s account by the consumer, unless the consumer has notified the financial institution that transfers by that person are no longer authorized;

(2) With fraudulent intent by the consumer or any person acting in concert with the consumer; or

(3) By the financial institution or its employee.

§1005.3 Coverage.

(a) General. This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer’s account. Generally, this part applies to financial institutions. For purposes of §§1005.3(b)(2) and (3), 1005.10(b), (d), and (e), 1005.13, and 1005.20, this part applies to any person, other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376. The requirements of subpart B apply to remittance transfer providers.

(b) Electronic fund transfer—(1) Definition. The term “electronic fund transfer” means any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer’s account. The term includes, but is not limited to:

(i) Point-of-sale transfers;

(ii) Automated teller machine transfers;
(iii) Direct deposits or withdrawals of funds;
(iv) Transfers initiated by telephone; and
(v) Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.

(2) Electronic fund transfer using information from a check. (i) This part applies where a check, draft, or similar paper instrument is used as a source of information to initiate a one-time electronic fund transfer from a consumer’s account. The consumer must authorize the transfer.

   (i) The person initiating an electronic fund transfer using the consumer’s check as a source of information for the transfer must provide a notice that the transaction will or may be processed as an electronic fund transfer, and obtain a consumer’s authorization for each transfer. A consumer authorizes a one-time electronic fund transfer (in providing a check to a merchant or other payee for the MICR encoding, that is, the routing number of the financial institution, the consumer’s account number and the serial number) when the consumer receives notice and goes forward with the underlying transaction. For point-of-sale transfers, the notice must be posted in a prominent and conspicuous location, and a copy thereof, or a substantially similar notice, must be provided to the consumer at the time of the transaction.

   (ii) A person may provide notices that are substantially similar to those set forth in appendix A–6 to comply with the requirements of this paragraph (b)(2).

(3) Collection of returned item fees via electronic fund transfer. (i) General. The person initiating an electronic fund transfer to collect a fee for the return of an electronic fund transfer or a check that is unpaid, including due to insufficient or uncollected funds in the consumer’s account, must obtain the consumer’s authorization for each transfer. A consumer authorizes a one-time electronic fund transfer from his or her account to pay the fee for the returned item or transfer if the person collecting the fee provides notice to the consumer stating that the person may electronically collect the fee, and the consumer goes forward with the underlying transaction. The notice must state that the fee will be collected by means of an electronic fund transfer from the consumer’s account if the payment is returned unpaid and must disclose the dollar amount of the fee. If the fee may vary due to the amount of the transaction or due to other factors, then, except as otherwise provided in paragraph (b)(3)(ii) of this section, the person collecting the fee may disclose, in place of the dollar amount of the fee, an explanation of how the fee will be determined.

   (ii) Point-of-sale transactions. If a fee for an electronic fund transfer or check returned unpaid may be collected electronically in connection with a point-of-sale transaction, the person initiating an electronic fund transfer to collect the fee must post the notice described in paragraph (b)(3)(i) of this section in a prominent and conspicuous location. The person also must either provide the consumer with a copy of the posted notice (or a substantially similar notice) at the time of the transaction, or mail the copy (or a substantially similar notice) to the consumer’s address as soon as reasonably practicable after the person initiates the electronic fund transfer to collect the fee. If the amount of the fee may vary due to the amount of the transaction or due to other factors, the posted notice may explain how the fee will be determined, but the notice provided to the consumer at the time of the transaction, or mailed to the consumer.

(c) Exclusions from coverage. The term “electronic fund transfer” does not include:

   (1) Checks. Any transfer of funds originated by check, draft, or similar paper instrument; or any payment made by check, draft, or similar paper instrument at an electronic terminal.

   (2) Check guarantee or authorization. Any transfer of funds that guarantees payment or authorizes acceptance of a check, draft, or similar paper instrument but that does not directly result in a debit or credit to a consumer’s account.

   (3) Wire or other similar transfers. Any transfer of funds through Fedwire or
through a similar wire transfer system that is used primarily for transfers between financial institutions or between businesses.

(4) Securities and commodities transfers. Any transfer of funds the primary purpose of which is the purchase or sale of a security or commodity, if the security or commodity is:

   (i) Regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission;
   (ii) Purchased or sold through a broker-dealer regulated by the Securities and Exchange Commission or through a futures commission merchant regulated by the Commodity Futures Trading Commission; or
   (iii) Held in book-entry form by a Federal Reserve Bank or Federal agency.

(5) Automatic transfers by account-holding institution. Any transfer of funds under an agreement between a consumer and a financial institution which provides that the institution will initiate individual transfers without a specific request from the consumer:

   (i) Between a consumer’s accounts within the financial institution;
   (ii) From a consumer’s account to an account of a member of the consumer’s family held in the same financial institution; or
   (iii) Between a consumer’s account and an account of the financial institution, except that these transfers remain subject to §1005.10(e) regarding compulsory use and sections 916 and 917 of the Act regarding civil and criminal liability.

(6) Telephone-initiated transfers. Any transfer of funds that:

   (i) Is initiated by a telephone communication between a consumer and a financial institution making the transfer; and
   (ii) Does not take place under a telephone bill-payment or other written plan in which periodic or recurring transfers are contemplated.

(7) Small institutions. Any preauthorized transfer to or from an account if the assets of the account-holding financial institution were $100 million or less on the preceding December 31. If assets of the account-holding institution subsequently exceed $100 million, the institution’s exemption for preauthorized transfers terminates one year from the end of the calendar year in which the assets exceed $100 million. Preauthorized transfers exempt under this paragraph (c)(7) remain subject to §1005.10(e) regarding compulsory use and sections 916 and 917 of the Act regarding civil and criminal liability.


§ 1005.4 General disclosure requirements; jointly offered services.

(a)(1) Form of disclosures. Disclosures required under this part shall be clear and readily understandable, in writing, and in a form the consumer may keep, except as otherwise provided in this part. The disclosures required by this part may be provided to the consumer in electronic form, subject to compliance with the consumer-consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.). A financial institution may use commonly accepted or readily understandable abbreviations in complying with the disclosure requirements of this part.

(2) Foreign language disclosures. Disclosures required under this part may be made in a language other than English, provided that the disclosures are made available in English upon the consumer’s request.

(b) Additional information; disclosures required by other laws. A financial institution may include additional information and may combine disclosures required by other laws (such as the Truth in Lending Act (15 U.S.C. 1601 et seq.) or the Truth in Savings Act (12 U.S.C. 4301 et seq.) with the disclosures required by this part.

(c) Multiple accounts and account holders. (1) Multiple accounts. A financial institution may combine the required disclosures into a single statement for a consumer who holds more than one account at the institution.

(2) Multiple account holders. For joint accounts held by two or more consumers, a financial institution need provide only one set of the required disclosures and may provide them to any of the account holders.
§ 1005.5 Issuance of access devices.

(a) Solicited issuance. Except as provided in paragraph (b) of this section, a financial institution may issue an access device to a consumer only:

(1) In response to an oral or written request for the device; or

(2) As a renewal of, or in substitution for, an accepted access device whether issued by the institution or a successor.

(b) Unsolicited issuance. A financial institution may distribute an access device to a consumer on an unsolicited basis if the access device is:

(1) Not validated, meaning that the institution has not yet performed all the procedures that would enable a consumer to initiate an electronic fund transfer using the access device;

(2) Accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired;

(3) Accompanied by the disclosures required by §1005.7, of the consumer’s rights and liabilities that will apply if the access device is validated; and

(4) Validated only in response to the consumer’s oral or written request for validation, after the institution has verified the consumer’s identity by a reasonable means.

§ 1005.6 Liability of consumer for unauthorized transfers.

(a) Conditions for liability. A consumer may be held liable, within the limitations described in paragraph (b) of this section, for an unauthorized electronic fund transfer involving the consumer’s account only if the financial institution has provided the disclosures required by §1005.7(b)(1), (2), and (3). If the unauthorized transfer involved an access device, it must be an accepted access device and the financial institution must have provided a means to identify the consumer to whom it was issued.

(b) Limitations on amount of liability. A consumer’s liability for an unauthorized electronic fund transfer or a series of related unauthorized transfers shall be determined as follows:

(1) Timely notice given. If the consumer notifies the financial institution within two business days after learning of the loss or theft of the access device, the consumer’s liability shall not exceed the lesser of $50 or the amount of unauthorized transfers that occur before notice to the financial institution.

(2) Timely notice not given. If the consumer fails to notify the financial institution within two business days after learning of the loss or theft of the access device, the consumer’s liability shall not exceed the lesser of $500 or the sum of:

(i) $50 or the amount of unauthorized transfers that occur within the two business days, whichever is less; and

(ii) The amount of unauthorized transfers that occur after the close of two business days and before notice to the institution, provided the institution establishes that these transfers would not have occurred had the consumer notified the institution within that two-day period.

(3) Periodic statement; timely notice not given. A consumer must report an unauthorized electronic fund transfer that appears on a periodic statement within 60 days of the financial institution’s transmittal of the statement to avoid liability for subsequent transfers. If the consumer fails to do so, the consumer’s liability shall not exceed the amount of the unauthorized transfers that occur after the close of the 60 days and before notice to the institution, and that the institution establishes would not have occurred had the consumer notified the institution within the 60-day period. When an access device is involved in the unauthorized transfer, the consumer may be liable for other amounts set forth in paragraphs (b)(1) or (b)(2) of this section, as applicable.

(4) Extension of time limits. If the consumer’s delay in notifying the financial institution of the loss or theft of the access device extends beyond a two-business-day period, the consumer’s liability shall not exceed the amount of unauthorized transfers that occur after the close of the 60 days and before notice to the institution, and that the institution establishes would not have occurred had the consumer notified the institution within the 60-day period.
§ 1005.8 Change in terms notice; error resolution notice.

(a) Change in terms notice—(1) Prior notice required. A financial institution was due to extenuating circumstances, the institution shall extend the times specified above to a reasonable period.

(5) Notice to financial institution. (i) Notice to a financial institution is given when a consumer takes steps reasonably necessary to provide the institution with the pertinent information, whether or not a particular employee or agent of the institution actually receives the information.

(ii) The consumer may notify the institution in person, by telephone, or in writing.

(iii) Written notice is considered given at the time the consumer mails the notice or delivers it for transmission to the institution by any other usual means. Notice may be considered constructively given when the institution becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer to or from the consumer’s account has been or may be made.

(6) Liability under state law or agreement. If state law or an agreement between the consumer and the financial institution imposes less liability than is provided by this section, the consumer’s liability shall not exceed the amount imposed under the state law or agreement.

§ 1005.7 Initial disclosures.

(a) Timing of disclosures. A financial institution shall make the disclosures required by this section at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer’s account.

(b) Content of disclosures. A financial institution shall provide the following disclosures, as applicable:

(1) Liability of consumer. A summary of the consumer’s liability, under §1005.6 or under state or other applicable law or agreement, for unauthorized electronic fund transfers.

(2) Telephone number and address. The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized electronic fund transfer has been or may be made.

(3) Business days. The financial institution’s business days.

(4) Types of transfers; limitations. The type of electronic fund transfers that the consumer may make and any limitations on the frequency and dollar amount of transfers. Details of the limitations need not be disclosed if confidentiality is essential to maintain the security of the electronic fund transfer system.

(5) Fees. Any fees imposed by the financial institution for electronic fund transfers or for the right to make transfers.

(b) Documentation. A summary of the consumer’s right to receipts and periodic statements, as provided in §1005.9 of this part, and notices regarding preauthorized transfers as provided in §1005.10(a) and (d).

(7) Stop payment. A summary of the consumer’s right to stop payment of a preauthorized electronic fund transfer and the procedure for placing a stop-payment order, as provided in §1005.10(c).

(8) Liability of institution. A summary of the financial institution’s liability to the consumer under section 910 of the Act for failure to make or to stop certain transfers.

(9) Confidentiality. The circumstances under which, in the ordinary course of business, the financial institution may provide information concerning the consumer’s account to third parties.

(10) Error resolution. A notice that is substantially similar to Model Form A–3 as set out in appendix A of this part concerning error resolution.

(11) ATM fees. A notice that a fee may be imposed by an automated teller machine operator as defined in §1005.16(a)(1), when the consumer initiates an electronic fund transfer or makes a balance inquiry, and by any network used to complete the transaction.

(c) Addition of electronic fund transfer services. If an electronic fund transfer service is added to a consumer’s account and is subject to terms and conditions different from those described in the initial disclosures, disclosures for the new service are required.

§ 1005.8 Change in terms notice; error resolution notice.

(a) Change in terms notice—(1) Prior notice required. A financial institution
shall mail or deliver a written notice to the consumer, at least 21 days before the effective date, of any change in a term or condition required to be disclosed under §1005.7(b) of this part if the change would result in:

(i) Increased fees for the consumer;
(ii) Increased liability for the consumer;
(iii) Fewer types of available electronic fund transfers; or
(iv) Stricter limitations on the frequency or dollar amount of transfers.

(2) Prior notice exception. A financial institution need not give prior notice if an immediate change in terms or conditions is necessary to maintain or restore the security of an account or an electronic fund transfer system. If the institution makes such a change permanent and disclosure would not jeopardize the security of the account or system, the institution shall notify the consumer in writing on or with the next regularly scheduled periodic statement or within 30 days of making the change permanent.

(b) Error resolution notice. For accounts to or from which electronic fund transfers can be made, a financial institution shall mail or deliver to the consumer, at least once each calendar year, an error resolution notice substantially similar to the model form set forth in appendix A of this part (Model Form A–3). Alternatively, an institution may include an abbreviated notice substantially similar to the model form error resolution notice set forth in appendix A of this part (Model Form A–3), on or with each periodic statement required by §1005.9(b).

§1005.9 Receipts at electronic terminals; periodic statements.

(a) Receipts at electronic terminals—General. Except as provided in paragraph (e) of this section, a financial institution shall mail or deliver to the consumer, at least once each calendar year, an error resolution notice substantially similar to the model form error resolution notice set forth in appendix A of this part (Model Form A–3), on or with each periodic statement required by §1005.9(b).

(2) Date. The date the consumer initiates the transfer.
(3) Type. The type of transfer and the type of the consumer’s account(s) to or from which funds are transferred. The type of account may be omitted if the access device used is able to access only one account at that terminal.
(4) Identification. A number or code that identifies the consumer’s account or accounts, or the access device used to initiate the transfer. The number or code need not exceed four digits or letters to comply with the requirements of this paragraph (a)(4).
(5) Terminal location. The location of the terminal where the transfer is initiated, or an identification such as a card or terminal number. Except in limited circumstances where all terminals are located in the same city or state, if the location is disclosed, it shall include the city and state or foreign country and one of the following:

(i) The street address;
(ii) A generally accepted name for the specific location; or
(iii) The name of the owner or operator of the terminal if other than the account-holding institution.
(6) Third party transfer. The name of any third party to or from whom funds are transferred.

(b) Periodic statements. For an account to or from which electronic fund transfers can be made, a financial institution shall send a periodic statement for each monthly cycle in which an electronic fund transfer has occurred; and shall send a periodic statement at least quarterly if no transfer has occurred. The statement shall set forth the following information, as applicable:

(1) Transaction information. For each electronic fund transfer occurring during the cycle:

(i) The amount of the transfer;
(ii) The date the transfer was credited or debited to the consumer’s account;
(iii) The type of transfer and type of account to or from which funds were transferred;
(iv) For a transfer initiated by the consumer at an electronic terminal (except for a deposit of cash or a check, draft, or similar paper instrument), the terminal location described in paragraph (a)(5) of this section; and
(v) The name of any third party to or from whom funds were transferred.

(2) **Account number.** The number of the account.

(3) **Fees.** The amount of any fees assessed against the account during the statement period for electronic fund transfers, the right to make transfers, or account maintenance.

(4) **Account balances.** The balance in the account at the beginning and at the close of the statement period.

(5) **Address and telephone number for inquiries.** The address and telephone number to be used for inquiries or notice of errors, preceded by “Direct inquiries to” or similar language. The address and telephone number provided on an error resolution notice under §1005.8(b) given on or with the statement satisfies this requirement.

(6) **Telephone number for preauthorized transfers.** A telephone number the consumer may call to ascertain whether preauthorized transfers to the consumer’s account have occurred, if the financial institution uses the telephone-notice option under §1005.10(a)(1)(iii).

(c) **Exceptions to the periodic statement requirement for certain accounts—**

(i) **Passbook accounts.** For passbook accounts, the financial institution need not provide a periodic statement if the institution updates the passbook upon presentation or enters on a separate document the amount and date of each electronic fund transfer since the passbook was last presented.

(ii) **Other accounts.** For accounts other than passbook accounts, the financial institution must send a periodic statement at least quarterly.

(2) **Intra-institutional transfers.** For an electronic fund transfer initiated by the consumer between two accounts of the consumer in the same institution, documenting the transfer on a periodic statement for one of the two accounts satisfies the periodic statement requirement.

(3) **Relationship between paragraphs (c)(1) and (2) of this section.** An account that is accessed by preauthorized transfers to the account described in paragraph (c)(1) of this section and by intra-institutional transfers described in paragraph (c)(2) of this section, but by no other type of electronic fund transfers, qualifies for the exceptions provided by paragraph (c)(1) of this section.

(d) **Documentation for foreign-initiated transfers.** The failure by a financial institution to provide a terminal receipt for an electronic fund transfer or to document the transfer on a periodic statement does not violate this part if:

(1) The transfer is not initiated within a state; and

(2) The financial institution treats an inquiry for clarification or documentation as a notice of error in accordance with §1005.11.

(e) **Exception for receipts in small-value transfers.** A financial institution is not subject to the requirement to make available a receipt under paragraph (a) of this section if the amount of the transfer is $15 or less.

§ 1005.10 **Preauthorized transfers.**

(a) **Preauthorized transfers to consumer’s account—**

(i) **Notice by financial institution.** When a person initiates preauthorized electronic fund transfers to a consumer’s account at least once every 60 days, the account-holding financial institution shall provide notice to the consumer by:

(1) **Positive notice.** Providing oral or written notice of the transfer within two business days after the transfer occurs; or

(2) **Negative notice.** Providing oral or written notice, within two business days after the date on which the transfer was scheduled to occur, that the transfer did not occur; or

(3) **Readily-available telephone line.** Providing a readily available telephone line that the consumer may call to determine whether the transfer occurred and disclosing the telephone number on the initial disclosure of account terms and on each periodic statement.

(ii) **Notice by payor.** A financial institution need not provide notice of a transfer if the payor gives the consumer positive notice that the transfer has been initiated.

(iii) **Credit.** A financial institution that receives a preauthorized transfer of the type described in paragraph
§ 1005.11 Procedures for resolving errors.

(a) Definition of error—(1) Types of transfers or inquiries covered. The term “error” means:
   (i) An unauthorized electronic fund transfer;
   (ii) An incorrect electronic fund transfer to or from the consumer’s account;
   (iii) The omission of an electronic fund transfer from a periodic statement;
   (iv) A computational or bookkeeping error made by the financial institution relating to an electronic fund transfer;
   (v) The consumer’s receipt of an incorrect amount of money from an electronic terminal;
   (vi) An electronic fund transfer not identified in accordance with §1005.9 or §1005.10(a); or
   (vii) The consumer’s request for documentation required by §1005.9 or §1005.10(a) or for additional information or clarification concerning an electronic fund transfer, including a request the consumer makes to determine whether an error exists under paragraphs (a)(1)(i) through (vi) of this section.

(2) Types of inquiries not covered. The term “error” does not include:
   (i) A routine inquiry about the consumer’s account balance;
   (ii) A request for information for tax or other recordkeeping purposes; or
   (iii) A request for duplicate copies of documentation.

(b) Notice of error from consumer—(1) Timing; contents. A financial institution shall comply with the requirements of this section with respect to any oral or
written notice of error from the consumer that:
  (i) Is received by the institution no later than 60 days after the institution sends the periodic statement or provides the passbook documentation, required by §1005.9, on which the alleged error is first reflected;
  (ii) Enables the institution to identify the consumer’s name and account number; and
  (iii) Indicates why the consumer believes an error exists and includes to the extent possible the type, date, and amount of the error, except for requests described in paragraph (a)(1)(vii) of this section.

(2) Written confirmation. A financial institution may require the consumer to give written confirmation of an error within 10 business days of an oral notice. An institution that requires written confirmation shall inform the consumer of the requirement and provide the address where confirmation must be sent when the consumer gives the oral notification.

(3) Request for documentation or clarifications. When a notice of error is based on documentation or clarification that the consumer requested under paragraph (a)(1)(vii) of this section, the consumer’s notice of error is timely if received by the financial institution no later than 60 days after the institution sends the information requested.

(c) Time limits and extent of investigation—(1) Ten-day period. A financial institution shall investigate promptly and, except as otherwise provided in this paragraph (c), shall determine whether an error occurred within 10 business days of receiving a notice of error. The institution shall report the results to the consumer within three business days after completing its investigation. The institution shall correct the error within one business day after determining that an error occurred.

(2) Forty-five day period. If the financial institution is unable to complete its investigation within 10 business days, the institution may take up to 45 days from receipt of a notice of error to investigate and determine whether an error occurred, provided the institution does the following:
  (i) Provisionally credits the consumer’s account in the amount of the alleged error (including interest where applicable) within 10 business days of receiving the error notice. If the financial institution has a reasonable basis for believing that an unauthorized electronic fund transfer has occurred and the institution has satisfied the requirements of §1005.8(a), the institution may withhold a maximum of $50 from the amount credited. An institution need not provisionally credit the consumer’s account if:
    (A) The institution requires but does not receive written confirmation within 10 business days of an oral notice of error; or
    (B) The alleged error involves an account that is subject to Regulation T of the Board of Governors of the Federal Reserve System (Securities Credit by Brokers and Dealers, 12 CFR part 220);
  (ii) Informs the consumer, within two business days after the provisional crediting, of the amount and date of the provisional crediting and gives the consumer full use of the funds during the investigation;
  (iii) Corrects the error, if any, within one business day after determining that an error occurred; and
  (iv) Reports the results to the consumer within three business days after completing its investigation (including, if applicable, notice that a provisional credit has been made final).

(3) Extension of time periods. The time periods in paragraphs (c)(1) and (c)(2) of this section are extended as follows:
  (i) The applicable time is 20 business days in place of 10 business days under paragraphs (c)(1) and (2) of this section if the notice of error involves an electronic fund transfer to or from the account within 30 days after the first deposit to the account was made.
  (ii) The applicable time is 90 days in place of 45 days under paragraph (c)(2) of this section, for completing an investigation, if a notice of error involves an electronic fund transfer that:
    (A) Was not initiated within a state;
    (B) Resulted from a point-of-sale debit card transaction; or
    (C) Occurred within 30 days after the first deposit to the account was made.
§ 1005.12 Relation to other laws.

(a) Relation to Truth in Lending. (1) The Electronic Fund Transfer Act and this part govern:

(i) The addition to an accepted credit card, as defined in Regulation Z (12 CFR 1026.12, comment 12-2), of the capability to initiate electronic fund transfers;

(ii) The issuance of an access device that permits credit extensions (under a preexisting agreement between a consumer and a financial institution) only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in §1005.17(a) of this part;

(iii) The addition of an overdraft service, as defined in §1005.17(a), to an accepted access device; and

(iv) A consumer's liability for an unauthorized electronic fund transfer and the investigation of errors involving an extension of credit that occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in §1005.17(a).

(2) The Truth in Lending Act and Regulation Z (12 CFR part 1026), which prohibit the unsolicited issuance of credit cards, govern:

(i) The addition of a credit feature to an accepted access device; and

(ii) Except as provided in paragraph (a)(1)(ii) of this section, the issuance of a credit card that is also an access device.

(b) Preemption of inconsistent state laws—(1) Inconsistent requirements. The Bureau shall determine, upon its own motion or upon the request of a state, financial institution, or other interested party, whether the Act and this part preempt state law relating to electronic fund transfers, or dormancy, inactivity, or service fees, or expiration dates in the case of gift certificates, store gift cards, or general-use prepaid cards.

(2) Standards for determination. State law is inconsistent with the requirements of the Act and this part if state law:
§ 1005.14 Electronic fund transfer service provider not holding consumer’s account.

(a) Provider of electronic fund transfer service. A person that provides an electronic fund transfer service to a consumer but that does not hold the consumer’s account is subject to all requirements of this part if the person:

(1) Issues a debit card (or other access device) that the consumer can use to access the consumer’s account held by a financial institution; and

(2) Has no agreement with the account-holding institution regarding such access.

(b) Compliance by service provider. In addition to the requirements generally applicable under this part, the service provider shall comply with the following special rules:

(1) Disclosures and documentation. The service provider shall give the disclosures and documentation required by §§1005.7, 1005.8, and 1005.9 of this part that are within the purview of its relationship with the consumer. The service provider need not furnish the periodic statement required by §1005.9(b) if the following conditions are met:

(i) The debit card (or other access device) issued to the consumer bears the service provider’s name and an address or telephone number for making inquiries or giving notice of error;

(ii) The consumer receives a notice concerning use of the debit card that is substantially similar to the notice contained in appendix A of this part;

(iii) The consumer receives, on or with the receipts required by §1005.9(a), the address and telephone number to be used for an inquiry, to give notice of an error, to request a periodic statement, or to order a credit report.

§ 1005.13 Administrative enforcement; record retention.

(a) Enforcement by Federal agencies. Compliance with this part is enforced in accordance with section 918 of the Act.

(b) Record retention. (1) Any person subject to the Act and this part shall retain evidence of compliance with the requirements imposed by the Act and this part for a period of not less than two years from the date disclosures are required to be made or action is required to be taken.

(2) Any person subject to the Act and this part having actual notice that it is the subject of an investigation or an enforcement proceeding by its enforcement agency, or having been served with notice of an action filed under sections 910, 916, or 917(a) of the Act, shall retain the records that pertain to the investigation, action, or proceeding until final disposition of the matter unless an earlier time is allowed by court or agency order.
error, or to report the loss or theft of the debit card;
(iv) The service provider transmits to the account-holding institution the information specified in §1005.9(b)(1), in the format prescribed by the automated clearinghouse (ACH) system used to clear the fund transfers;
(v) The service provider extends the time period for notice of loss or theft of a debit card, set forth in §1005.6(b)(1) and (2), from two business days to four business days after the consumer learns of the loss or theft; and extends the time periods for reporting unauthorized transfers or errors, set forth in §§1005.6(b)(3) and 1005.11(b)(1)(i), from 60 days to 90 days following the transmittal of a periodic statement by the account-holding institution.

(2) Error resolution. (i) The service provider shall extend by a reasonable time the period in which notice of an error must be received, specified in §1005.11(b)(1)(i), if a delay resulted from an initial attempt by the consumer to notify the account-holding institution.
(ii) The service provider shall disclose to the consumer the date on which it initiates a transfer to effect a provisional credit in accordance with §1005.11(c)(2)(ii).
(iii) If the service provider determines that an error occurred, it shall transfer funds to or from the consumer’s account, in the appropriate amount and within the applicable time period, in accordance with §1005.11(c)(2)(ii). If funds were provisionally credited and the service provider determines no error occurred, it may reverse the credit. The service provider shall notify the account-holding institution of the period during which the account-holding institution must honor debits to the account in accordance with §1005.11(d)(2)(ii). If an overdraft results, the service provider shall promptly reimburse the account-holding institution in the amount of the overdraft.

§1005.15 Electronic fund transfer of government benefits.

(a) Government agency subject to regulation. (1) A government agency is deemed to be a financial institution for purposes of the Act and this part if directly or indirectly it issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account, other than needs-tested benefits in a program established under state or local law or administered by a state or local agency. The agency shall comply with all applicable requirements of the Act and this part, except as provided in this section.

(2) For purposes of this section, the term “account” means an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals, but does not include an account for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.

(b) Issuance of access devices. For purposes of this section, a consumer is deemed to request an access device when the consumer applies for government benefits that the agency disburses or will disburse by means of an electronic fund transfer. The agency shall verify the identity of the consumer receiving the device by reasonable means before the device is activated.
(c) Alternative to periodic statement. A government agency need not furnish the periodic statement required by §1005.9(b) if the agency makes available to the consumer:

(1) The consumer's account balance, through a readily available telephone line and at a terminal (such as by providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer); and

(2) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days preceding the date of a request by the consumer.

(d) Modified requirements. A government agency that does not furnish periodic statements, in accordance with paragraph (c) of this section, shall comply with the following special rules:

(1) Initial disclosures. The agency shall modify the disclosures under §1005.7(b) by disclosing:

(i) Account balance. The means by which the consumer may obtain information concerning the account balance, including a telephone number. The agency provides a notice substantially similar to the notice contained in paragraph A–5 in appendix A of this part.

(ii) Written account history. A summary of the consumer's right to receive a written account history upon request, in place of the periodic statement required by §1005.7(b)(6), and the telephone number to call to request an account history. This disclosure may be made by providing a notice substantially similar to the notice contained in paragraph A–5 in appendix A of this part.

(iii) Error resolution. A notice concerning error resolution that is substantially similar to the notice contained in paragraph A–5 in appendix A of this part, in place of the notice required by §1005.7(b)(10).

(2) Annual error resolution notice. The agency shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in paragraph A–5 in appendix A, in place of the notice required by §1005.8(b).

(3) Limitations on liability. For purposes of §1005.6(b)(3), regarding a 60-day period for reporting any unauthorized transfer that appears on a periodic statement, the 60-day period shall begin with transmittal of a written account history or other account information provided to the consumer under paragraph (c) of this section.

(4) Error resolution. The agency shall comply with the requirements of §1005.11 of this part in response to an oral or written notice of an error from the consumer that is received no later than 60 days after the consumer obtains the written account history or other account information, under paragraph (c) of this section, in which the error is first reflected.

§1005.16 Disclosures at automated teller machines.

(a) Definition. “Automated teller machine operator” means any person that operates an automated teller machine at which a consumer initiates an electronic fund transfer or a balance inquiry and that does not hold the account to or from which the transfer is made, or about which an inquiry is made.

(b) General. An automated teller machine operator that imposes a fee on a consumer for initiating an electronic fund transfer or a balance inquiry must provide a notice that a fee will be imposed for providing electronic fund transfer services or a balance inquiry that discloses the amount of the fee.

(c) Notice requirement. An automated teller machine operator must provide the notice required by paragraph (b) of this section either by showing it on the screen of the automated teller machine or by providing it on paper, before the consumer is committed to paying a fee.

(d) Imposition of fee. An automated teller machine operator may impose a fee on a consumer for initiating an electronic fund transfer or a balance inquiry only if:

(1) The consumer is provided the notice required under paragraph (c) of this section, and
(2) The consumer elects to continue the transaction or inquiry after receiving such notice.

§ 1005.17 Requirements for overdraft services.

(a) Definition. For purposes of this section, the term “overdraft service” means a service under which a financial institution assesses a fee or charge on a consumer’s account held by the institution for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account. The term “overdraft service” does not include any payment of overdrafts pursuant to:

(1) A line of credit subject to Regulation Z (12 CFR part 1026), including transfers from a credit card account, home equity line of credit, or overdraft line of credit;

(2) A service that transfers funds from another account held individually or jointly by a consumer, such as a savings account; or

(3) A line of credit or other transaction exempt from Regulation Z (12 CFR part 1026) pursuant to 12 CFR 1026.3(d).

(b) Opt-in requirement—(1) General. Except as provided under paragraph (c) of this section, a financial institution holding a consumer’s account shall not assess a fee or charge on a consumer’s account for paying an ATM or one-time debit card transaction pursuant to the institution’s overdraft service, unless:

(i) Provides the consumer with a notice in writing, or if the consumer agrees, electronically, which includes a statement informing the consumer of the right to revoke such consent.

(ii) Provides a reasonable opportunity for the consumer to affirmatively consent, or opt in, to the service for ATM and one-time debit card transactions;

(iii) Obtains the consumer’s affirmative consent, or opt in, to the institution’s payment of ATM or one-time debit card transactions; and

(iv) Provides the consumer with confirmation of the consumer’s consent in writing, or if the consumer agrees, electronically, which includes a statement informing the consumer of the right to revoke such consent.

(2) Conditioning payment of other overdrafts on consumer’s affirmative consent. A financial institution shall not:

(i) Condition the payment of any overdrafts for checks, ACH transactions, and other types of transactions on the consumer affirmatively consenting to the institution’s payment of ATM and one-time debit card transactions pursuant to the institution’s overdraft service; or

(ii) Decline to pay checks, ACH transactions, and other types of transactions that overdraw the consumer’s account because the consumer has not affirmatively consented to the institution’s overdraft service for ATM and one-time debit card transactions.

(3) Same account terms, conditions, and features. A financial institution shall provide to consumers who do not affirmatively consent to the institution’s overdraft service for ATM and one-time debit card transactions the same account terms, conditions, and features that it provides to consumers who affirmatively consent, except for the overdraft service for ATM and one-time debit card transactions.

(c) Timing—(1) Existing account holders. For accounts opened prior to July 1, 2010, the financial institution must not assess any fees or charges on a consumer’s account on or after August 15, 2010, for paying an ATM or one-time debit card transaction pursuant to the overdraft service, unless the institution has complied with §1005.17(b)(1) and obtained the consumer’s affirmative consent.

(2) New account holders. For accounts opened on or after July 1, 2010, the financial institution must comply with §1005.17(b)(1) and obtain the consumer’s affirmative consent before the institution assesses any fee or charge on the consumer’s account for paying an ATM or one-time debit card transaction pursuant to the overdraft service.

(d) Content and format. The notice required by paragraph (b)(1)(i) of this section shall be substantially similar to Model Form A-9 set forth in appendix A of this part, include all applicable items in this paragraph, and may not
contain any information not specified in or otherwise permitted by this paragraph.

1. **Overdraft service.** A brief description of the financial institution's overdraft service and the types of transactions for which a fee or charge for paying an overdraft may be imposed, including ATM and one-time debit card transactions.

2. **Fees imposed.** The dollar amount of any fees or charges assessed by the financial institution for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service, including any daily or other overdraft fees. If the amount of the fee is determined on the basis of the number of times the consumer has overdraft the account, the amount of the overdraft, or other factors, the institution must disclose the maximum fee that may be imposed.

3. **Limits on fees charged.** The maximum number of overdraft fees or charges that may be assessed per day, or, if applicable, that there is no limit.

4. **Disclosure of opt-in right.** An explanation of the consumer's right to affirmatively consent to the financial institution's payment of overdrafts for ATM and one-time debit card transactions pursuant to the institution's overdraft service, including the methods by which the consumer may consent to the service; and

5. **Alternative plans for covering overdrafts.** If the institution offers a line of credit subject to Regulation Z (12 CFR part 1026) or a service that transfers funds from another account of the consumer held at the institution to cover overdrafts, the institution must state that fact. An institution may, but is not required to, list additional alternatives for the payment of overdrafts.

6. **Permitted modifications and additional content.** If applicable, the institution may modify the content required by §1005.17(d) to indicate that the consumer has the right to opt into, or opt out of, the payment of overdrafts under the institution's overdraft service for other types of transactions, such as checks, ACH transactions, or automatic bill payments; to provide a means for the consumer to exercise this choice; and to disclose the associated returned item fee and that additional merchant fees may apply. The institution may also disclose the consumer's right to revoke consent. For notices provided to consumers who have opened accounts prior to July 1, 2010, the financial institution may describe the institution's overdraft service with respect to ATM and one-time debit card transactions with a statement such as "After August 15, 2010, we will not authorize and pay overdrafts for the following types of transactions unless you ask us to (see below)."

7. **Joint relationships.** If two or more consumers jointly hold an account, the financial institution shall treat the affirmative consent of any of the joint consumers as affirmative consent for that account. Similarly, the financial institution shall treat a revocation of affirmative consent by any of the joint consumers as revocation of consent for that account.

8. **Continuing right to opt in or to revoke the opt-in.** A consumer may affirmatively consent to the financial institution's overdraft service at any time in the manner described in the notice required by paragraph (b)(1)(i) of this section. A consumer may also revoke consent at any time in the manner made available to the consumer for providing consent. A financial institution must implement a consumer's revocation of consent as soon as reasonably practicable.

9. **Duration and revocation of opt-in.** A consumer's affirmative consent to the institution's overdraft service is effective until revoked by the consumer, or unless the financial institution terminates the service.

§1005.18 Requirements for financial institutions offering payroll card accounts.

(a) **Coverage.** A financial institution shall comply with all applicable requirements of the Act and this part with respect to payroll card accounts except as provided in this section.

(b) **Alternative to periodic statements.** (1) A financial institution need not furnish periodic statements required by §1005.9(b) if the institution makes available to the consumer:

   (i) The consumer's account balance, through a readily available telephone line;
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(ii) An electronic history of the consumer’s account transactions, such as through a Web site, that covers at least 60 days preceding the date the consumer electronically accesses the account; and

(iii) A written history of the consumer’s account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days preceding the date the financial institution receives the consumer’s request.

(2) The history of account transactions provided under paragraphs (b)(1)(ii) and (iii) of this section must include the information set forth in §1005.9(b).

(c) Modified requirements. A financial institution that provides information under paragraph (b) of this section, shall comply with the following:

(1) Initial disclosures. The financial institution shall modify the disclosures under §1005.7(b) by disclosing:

(i) Account information. A telephone number that the consumer may call to obtain the account balance, the means by which the consumer can obtain an electronic account history, such as the address of a Web site, and a summary of the consumer’s right to receive a written account history upon request (in place of the summary of the right to receive a periodic statement required by §1005.7(b)(6)), including a telephone number to call to request a history. The disclosure required by this paragraph (c)(1)(i) may be made by providing a notice substantially similar to the notice contained in paragraph A–7(a) in appendix A of this part.

(ii) Error resolution. A notice concerning error resolution that is substantially similar to the notice contained in paragraph A–7(b) in appendix A of this part, in place of the notice required by §1005.7(b)(10).

(2) Annual error resolution notice. The financial institution shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in paragraph A–7(b) in appendix A of this part, in place of the notice required by §1005.8(b). Alternatively, a financial institution may include on or with each electronic and written history provided in accordance with §1005.18(b)(1), a notice substantially similar to the abbreviated notice for periodic statements contained in paragraph A–3(b) in appendix A of this part, modified as necessary to reflect the error resolution provisions set forth in this section.

(3) Limitations on liability. (i) For purposes of §1005.6(b)(3), the 60-day period for reporting any unauthorized transfer shall begin on the earlier of:

(A) The date the consumer electronically accesses the consumer’s account under paragraph (b)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the transfer; or

(B) The date the financial institution sends a written history of the consumer’s account transactions requested by the consumer under paragraph (b)(1)(iii) of this section in which the unauthorized transfer is first reflected.

(ii) A financial institution may comply with paragraph (c)(3)(i) of this section by limiting the consumer’s liability for an unauthorized transfer as provided under §1005.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer’s account.

(4) Error resolution. (i) The financial institution shall comply with the requirements of §1005.11 in response to an oral or written notice of an error from the consumer that is received by the earlier of:

(A) Sixty days after the date the consumer electronically accesses the consumer’s account under paragraph (b)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the alleged error; or

(B) Sixty days after the date the financial institution sends a written history of the consumer’s account transactions requested by the consumer under paragraph (b)(1)(iii) of this section in which the alleged error is first reflected.

(ii) In lieu of following the procedures in paragraph (c)(4)(i) of this section, a financial institution complies with the requirements for resolving errors in §1005.11 if it investigates any oral or written notice of an error from the consumer that is received by the institution within 120 days after the
transfer allegedly in error was credited or debited to the consumer’s account.

§ 1005.20 Requirements for gift cards and gift certificates.

(a) Definitions. For purposes of this section, except as excluded under paragraph (b), the following definitions apply:

(1) “Gift certificate” means a card, code, or other device that is:
   (i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount that may not be increased or reloaded in exchange for payment; and
   (ii) Redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services.

(2) “Store gift card” means a card, code, or other device that is:
   (i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and
   (ii) Redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services.

(3) “General-use prepaid card” means a card, code, or other device that is:
   (i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and
   (ii) Redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines.

(4) “Loyalty, award, or promotional gift card” means a card, code, or other device that:
   (i) Is issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in connection with a loyalty, award, or promotional program;
   (ii) Is redeemable upon presentation at one or more merchants for goods or services, or usable at automated teller machines; and
   (iii) Sets forth the following disclosures, as applicable:
      (A) A statement indicating that the card, code, or other device is issued for loyalty, award, or promotional purposes, which must be included on the front of the card, code, or other device;
      (B) The expiration date for the underlying funds, which must be included on the front of the card, code, or other device;
      (C) The amount of any fees that may be imposed in connection with the card, code, or other device, and the conditions under which they may be imposed, which must be provided on or with the card, code, or other device; and
      (D) A toll-free telephone number and, if one is maintained, a Web site, that a consumer may use to obtain fee information, which must be included on the card, code, or other device.

(b) Exclusions. The terms “gift certificate,” “store gift card,” and “general-use prepaid card,” as defined in paragraph (a) of this section, do not include any card, code, or other device that is:

(1) Useable solely for telephone services;
(2) Reloadable and not marketed or labeled as a gift card or gift certificate. For purposes of this paragraph (b)(2), the term “reloadable” includes a temporary non-reloadable card issued solely in connection with a reloadable card, code, or other device;
(3) A loyalty, award, or promotional gift card;
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(4) Not marketed to the general public;

(5) Issued in paper form only; or

(6) Redeemable solely for admission to events or venues at a particular location or group of affiliated locations, or to obtain goods or services in conjunction with admission to such events or venues, either at the event or venue or at specific locations affiliated with and in geographic proximity to the event or venue.

(c) Form of disclosures

(1) Clear and conspicuous. Disclosures made under this section must be clear and conspicuous. The disclosures may contain commonly accepted or readily understandable abbreviations or symbols.

(2) Format. Disclosures made under this section generally must be provided to the consumer in written or electronic form. Except for the disclosures in paragraphs (c)(3) and (h)(2) of this section, written and electronic disclosures made under this section must be in a retainable form. Only disclosures provided under paragraphs (c)(3) and (h)(2) may be given orally.

(3) Disclosures prior to purchase. Before a gift certificate, store gift card, or general-use prepaid card is purchased, a person that issues or sells such certificate or card must disclose to the consumer the information required by paragraphs (d)(2), (e)(3), and (f)(1) of this section. The fees and terms and conditions of expiration that are required to be disclosed prior to purchase may not be changed after purchase.

(4) Disclosures on the certificate or card. Disclosures required by paragraphs (a)(4)(iii), (d)(2), (e)(3), and (f)(2) of this section must be made on the certificate or card, or in the case of a loyalty, award, or promotional gift card, on the card, code, or other device. A disclosure made in an accompanying terms and conditions document, on packaging surrounding a certificate or card, or on a sticker or other label affixed to the certificate or card does not constitute a disclosure on the certificate or card. For an electronic certificate or card, disclosures must be provided electronically on the certificate or card provided to the consumer. An issuer that provides a code or confirmation to a consumer orally must provide to the consumer a written or electronic copy of the code or confirmation promptly, and the applicable disclosures must be provided on the written copy of the code or confirmation.

(d) Prohibition on imposition of fees or charges

(1) There has been no activity with respect to the certificate or card, in the one-year period ending on the date on which the fee is imposed;

(2) The following are stated, as applicable, clearly and conspicuously on the gift certificate, store gift card, or general-use prepaid card:

(i) The amount of any dormancy, inactivity, or service fee that may be charged;

(ii) How often such fee may be assessed; and

(iii) That such fee may be assessed for inactivity; and

(3) Not more than one dormancy, inactivity, or service fee is imposed in any given calendar month.

(e) Prohibition on sale of gift certificates or cards with expiration dates

(1) The person has established policies and procedures to provide consumers with a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date;

(2) The expiration date for the underlying funds is at least the later of:

(i) Five years after the date the gift certificate was initially issued, or the date on which funds were last loaded to a store gift card or general-use prepaid card; or

(ii) The certificate or card expiration date, if any;

(3) The following disclosures are provided on the certificate or card, as applicable:

(i) The expiration date for the underlying funds or, if the underlying funds do not expire, that fact;

(ii) A toll-free telephone number and, if one is maintained, a Web site that a
consumer may use to obtain a replacement certificate or card after the certificate or card expires if the underlying funds may be available; and

(iii) Except where a non-reloadable certificate or card bears an expiration date that is at least seven years from the date of manufacture, a statement, disclosed with equal prominence and in close proximity to the certificate or card expiration date, that:

(A) The certificate or card expires, but the underlying funds either do not expire or expire later than the certificate or card, and;

(B) The consumer may contact the issuer for a replacement card; and

(4) No fee or charge is imposed on the cardholder for replacing the gift certificate, store gift card, or general-use prepaid card or for providing the certificate or card holder with the remaining balance in some other manner prior to the funds expiration date, unless such certificate or card has been lost or stolen.

(f) Additional disclosure requirements for gift certificates or cards. The following disclosures must be provided in connection with a gift certificate, store gift card, or general-use prepaid card, as applicable:

(1) Fee disclosures. For each type of fee that may be imposed in connection with the certificate or card (other than a dormancy, inactivity, or service fee subject to the disclosure requirements under paragraph (d)(2) of this section), the following information must be provided on or with the certificate or card:

(i) The type of fee;

(ii) The amount of the fee (or an explanation of how the fee will be determined); and

(iii) The conditions under which the fee may be imposed.

(2) Telephone number for fee information. A toll-free telephone number and, if one is maintained, a Web site, that a consumer may use to obtain information about fees described in paragraphs (d)(2) and (f)(1) of this section must be disclosed on the certificate or card.

(g) Compliance dates—(1) Effective date for gift certificates, store gift cards, and general-use prepaid cards. Except as provided in paragraph (h) of this section, the requirements of this section apply to any gift certificate, store gift card, or general-use prepaid card sold to a consumer on or after August 22, 2010, or provided to a consumer as a replacement for such certificate or card.

(2) Effective date for loyalty, award, or promotional gift cards. The requirements in paragraph (a)(4)(iii) of this section apply to any card, code, or other device provided to a consumer in connection with a loyalty, award, or promotional program if the period of eligibility for such program began on or after August 22, 2010.

(h) Temporary exemption—(1) Delayed mandatory compliance date. For any gift certificate, store gift card, or general-use prepaid card produced prior to April 1, 2010, the mandatory compliance date of the requirements of paragraphs (c)(3), (d)(2), (e)(1), (e)(3), and (f) of this section is January 31, 2011, provided that an issuer of such certificate or card:

(i) Complies with all other provisions of this section;

(ii) Does not impose an expiration date with respect to the funds underlying such certificate or card;

(iii) At the consumer’s request, replaces such certificate or card if it has funds remaining at no cost to the consumer; and

(iv) Satisfies the requirements of paragraph (h)(2) of this section.

(2) Additional disclosures. Issuers relying on the delayed effective date in §1005.20(h)(1) must disclose through in-store signage, messages during customer service calls, Web sites, and general advertising, that:

(i) The underlying funds of such certificate or card do not expire;

(ii) Consumers holding such certificate or card have a right to a free replacement certificate or card, which must be accompanied by the packaging and materials typically associated with such certificate or card; and

(iii) Any dormancy, inactivity, or service fee for such certificate or card that might otherwise be charged will not be charged if such fees do not comply with section 916 of the Act.

(3) Expiration of additional disclosure requirements. The disclosures in paragraph (h)(2) of this section:

(i) Are not required to be provided on or after January 31, 2011, with respect
to in-store signage and general advertising.
(ii) Are not required to be provided on or after January 31, 2013, with respect to messages during customer service calls and Web sites.

Subpart B—Requirements for Remittance Transfers

SOURCE: 77 FR 6285, Feb. 7, 2012, unless otherwise noted.

§1005.30 Remittance transfer definitions.

Except as otherwise provided, for purposes of this subpart, the following definitions apply:
(a) “Agent” means an agent, authorized delegate, or person affiliated with a remittance transfer provider, as defined under State or other applicable law, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider.
(b) “Business day” means any day on which the offices of a remittance transfer provider are open to the public for carrying on substantially all business functions.
(c) “Designated recipient” means any person specified by the sender as the authorized recipient of a remittance transfer to be received at a location in a foreign country.
(d) “Preauthorized remittance transfer” means a remittance transfer authorized in advance to recur at substantially regular intervals.
(e) Remittance transfer—(1) General definition. A “remittance transfer” means the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. The term applies regardless of whether the sender holds an account with the remittance transfer provider, and regardless of whether the transaction is also an electronic fund transfer, as defined in §1005.3(b).
(2) Exclusions from coverage. The term “remittance transfer” does not include:
(i) Small value transactions. Transfer amounts, as described in §1005.31(b)(1)(i), of $15 or less.
(ii) Securities and commodities transfers. Any transfer that is excluded from the definition of electronic fund transfer under §1005.3(c)(4).
(f) Remittance transfer provider—(1) General definition. “Remittance transfer provider” or “provider” means any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person.
(2) Normal course of business—(i) Safe harbor. For purposes of paragraph (f)(1) of this section, a person is deemed not to be providing remittance transfers for a consumer in the normal course of its business if the person:
(A) Provided 100 or fewer remittance transfers in the previous calendar year; and
(B) Provides 100 or fewer remittance transfers in the current calendar year.
(ii) Transition period. If a person that provided 100 or fewer remittance transfers in the previous calendar year provides more than 100 remittance transfers in the current calendar year, and if that person is then providing remittance transfers for a consumer in the normal course of its business pursuant to paragraph (f)(1) of this section, the person has a reasonable period of time, not to exceed six months, to begin complying with this subpart. Compliance with this subpart will not be required for any remittance transfers for which payment is made during that reasonable period of time.
(g) “Sender” means a consumer in a State who primarily for personal, family, or household purposes requests a remittance transfer provider to send a remittance transfer to a designated recipient.
(h) Third-party fees. (1) Covered third-party fees. The term “covered third-party fees” means any fees imposed on the remittance transfer by a person other than the remittance transfer provider except for fees described in paragraph (h)(2) of this section.
(2) Non-covered third-party fees. The term “non-covered third-party fees” means any fees imposed by the designated recipient’s institution for receiving a remittance transfer into an account except if the institution acts
§ 1005.31 Disclosures.

(a) General form of disclosures—

(1) Clear and conspicuous. Disclosures required by this subpart or permitted by paragraph (b)(1)(viii) of this section or §1005.33(h)(3) must be clear and conspicuous. Disclosures required by this subpart or permitted by paragraph (b)(1)(viii) of this section or §1005.33(h)(3) may contain commonly accepted or readily understandable abbreviations or symbols.

(2) Written and electronic disclosures. Disclosures required by this subpart generally must be provided to the sender in writing. Disclosures required by paragraph (b)(1) of this section may be provided electronically, if the sender electronically requests the remittance transfer provider to send the remittance transfer. Written and electronic disclosures required by this subpart generally must be made in a retainable form. Disclosures provided via mobile application or text message, to the extent permitted by paragraph (a)(5) of this section, need not be retainable.

(3) Disclosures for oral telephone transactions. The information required by paragraph (b)(1) of this section may be disclosed orally if:

(i) The transaction is conducted entirely by telephone;

(ii) The remittance transfer provider complies with the requirements of paragraph (g)(2) of this section;

(iii) The provider discloses orally a statement about the rights of the sender regarding cancellation required by paragraph (b)(2)(iv) of this section pursuant to the timing requirements in paragraph (e)(1) of this section; and

(iv) The provider discloses orally, as each is applicable, the information required by paragraph (b)(2)(vii) of this section and the information required by §1005.36(d)(1)(i)(A), with respect to transfers subject to §1005.36(d)(2)(ii), pursuant to the timing requirements in paragraph (e)(1) of this section.

(b) Disclosure requirements—

(1) Prepayment disclosure. A remittance transfer provider must disclose to a sender, as applicable:

(i) The amount that will be transferred to the designated recipient, in the currency in which the remittance transfer is funded, using the term "Transfer Amount" or a substantially similar term;

(ii) Any fees imposed and any taxes collected on the remittance transfer by the provider, in the currency in which the remittance transfer is funded, using the terms "Transfer Fees" for fees and "Transfer Taxes" for taxes, or substantially similar terms;

(iii) The total amount of the transaction, which is the sum of paragraphs (b)(1)(i) and (ii) of this section, in the currency in which the remittance transfer is funded, using the term "Total" or a substantially similar term;

(iv) The exchange rate used by the provider for the remittance transfer,
rounded consistently for each currency to no fewer than two decimal places and no more than four decimal places, using the term “Exchange Rate” or a substantially similar term;

(v) The amount in paragraph (b)(1)(i) of this section, in the currency in which the funds will be received by the designated recipient, but only if covered third-party fees are imposed under paragraph (b)(1)(vi) of this section, using the term “Transfer Amount” or a substantially similar term. The exchange rate used to calculate this amount is the exchange rate in paragraph (b)(1)(iv) of this section, including an estimated exchange rate to the extent permitted by §1005.32, prior to any rounding of the exchange rate;

(vi) Any covered third-party fees, in the currency in which the funds will be received by the designated recipient, using the term “Other Fees,” or a substantially similar term. The exchange rate used to calculate any covered third-party fees is the exchange rate in paragraph (b)(1)(iv) of this section, including an estimated exchange rate to the extent permitted by §1005.32, prior to any rounding of the exchange rate;

(vii) The amount that will be received by the designated recipient, in the currency in which the funds will be received, using the term “Total to Recipient” or a substantially similar term except that this amount shall not include non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider regardless of whether such fees or taxes are disclosed pursuant to paragraph (b)(1)(viii) of this section. The exchange rate used to calculate this amount is the exchange rate in paragraph (b)(1)(iv) of this section, including an estimated exchange rate to the extent permitted by §1005.32, prior to any rounding of the exchange rate;

(viii) A statement indicating that non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider may apply to the remittance transfer, using the language set forth in Model Forms A–30(a) through (c) of Appendix A to this part, as appropriate, or substantially similar language. In this statement, a provider also may, but is not required, to disclose any applicable non-covered third-party fees or taxes collected by a person other than the provider. Any such figure must be disclosed in the currency in which the funds will be received, using the language set forth in Model Forms A–30(b) through (d) of Appendix A to this part, as appropriate, or substantially similar language. The exchange rate used to calculate any disclosed non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider is the exchange rate in paragraph (b)(1)(iv) of this section, including an estimated exchange rate to the extent permitted by §1005.32, prior to any rounding of the exchange rate;

(2) Receipt. A remittance transfer provider must disclose to a sender, as applicable:

(i) The disclosures described in paragraphs (b)(1)(i) through (viii) of this section;

(ii) The date in the foreign country on which funds will be available to the designated recipient, using the term “Date Available” or a substantially similar term. A provider may provide a statement that funds may be available to the designated recipient earlier than the date disclosed, using the term “may be available sooner” or a substantially similar term;

(iii) The name and, if provided by the sender, the telephone number and/or address of the designated recipient, using the term “Recipient” or a substantially similar term;

(iv) A statement about the rights of the sender regarding the resolution of errors and cancellation, using language set forth in Model Form A–37 of Appendix A to this part or substantially similar language. For any remittance transfer scheduled by the sender at least three business days before the date of the transfer, the statement about the rights of the sender regarding cancellation must instead reflect the requirements of §1005.36(c);
(v) The name, telephone number(s), and Web site of the remittance transfer provider;

(vi) A statement that the sender can contact the State agency that licenses or charters the remittance transfer provider with respect to the remittance transfer and the Consumer Financial Protection Bureau for questions or complaints about the remittance transfer provider, using language set forth in Model Form A–37 of Appendix A to this part or substantially similar language. The disclosure must provide the name, telephone number(s), and Web site of the State agency that licenses or charters the remittance transfer provider with respect to the remittance transfer and the name, toll-free telephone number(s), and Web site of the Consumer Financial Protection Bureau; and

(vii) For any remittance transfer scheduled by the sender at least three business days before the date of the transfer, or the first transfer in a series of preauthorized remittance transfers, the date the remittance transfer provider will make or made the remittance transfer, using the term “Transfer Date,” or a substantially similar term.

(3) Combined disclosure—(i) In general. As an alternative to providing the disclosures described in paragraph (b)(1) and (2) of this section, a remittance transfer provider may provide the disclosures described in paragraph (b)(2) of this section, as applicable, in a single disclosure pursuant to the timing requirements in paragraph (e)(1) of this section. Except as provided in paragraph (b)(3)(ii) of this section, if the remittance transfer provider provides the combined disclosure and the sender completes the transfer, the remittance transfer provider must provide the sender with proof of payment when payment is made for the remittance transfer. The proof of payment must be clear and conspicuous, provided in writing or electronically, and provided in a retainable form.

(ii) Transfers scheduled before the date of transfer. If the disclosure described in paragraph (b)(3)(i) of this section is provided in accordance with §1005.36(a)(1)(i) and payment is not processed by the remittance transfer provider at the time the remittance transfer is scheduled, a remittance transfer provider may provide confirmation that the transaction has been scheduled in lieu of the proof of payment otherwise required by paragraph (b)(3)(i) of this section. The confirmation of scheduling must be clear and conspicuous, provided in writing or electronically, and provided in a retainable form.

(4) Long form error resolution and cancellation notice. Upon the sender’s request, a remittance transfer provider must promptly provide to the sender a notice describing the sender’s error resolution and cancellation rights, using language set forth in Model Form A–36 of Appendix A to this part or substantially similar language. For any remittance transfer scheduled by the sender at least three business days before the date of the transfer, the description of the rights of the sender regarding cancellation must instead reflect the requirements of §1005.36(c).

(c) Specific format requirements—(1) Grouping. The information required by paragraphs (b)(1)(i), (ii), and (iii) of this section generally must be grouped together. The information required by paragraphs (b)(1)(v), (vi), (vii), and (viii) of this section generally must be grouped together. Disclosures provided via mobile application or text message, to the extent permitted by paragraph (a)(5) of this section, generally need not comply with the grouping requirements of this paragraph, however information required or permitted by paragraph (b)(1)(viii) of this section must be grouped with information required by paragraph (b)(1)(vii) of this section.

(2) Proximity. The information required by paragraph (b)(1)(iv) of this section generally must be disclosed in close proximity to the other information required by paragraph (b)(1) of this section. The information required by paragraph (b)(2)(iv) of this section generally must be disclosed in close proximity to the other information required by paragraph (b)(2) of this section. The information required or permitted by paragraph (b)(1)(viii) must be in close proximity to the information required by paragraph (b)(1)(vii) of this section. Disclosures provided via mobile application or text message, to
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the extent permitted by paragraph (a)(5) of this section, generally need not comply with the proximity requirements of this paragraph, however information required or permitted by paragraph (b)(1)(viii) of this section must follow the information required by paragraph (b)(1)(vii) of this section.

(3) Prominence and size. Written disclosures required by this subpart or permitted by paragraph (b)(1)(viii) of this section must be provided on the front of the page on which the disclosure is printed. Disclosures required by this subpart or permitted by paragraph (b)(1)(viii) of this section that are provided in writing or electronically must be in a minimum eight-point font, except for disclosures provided via mobile application or text message, to the extent permitted by paragraph (a)(5) of this section. Disclosures required by paragraph (b) of this section or permitted by paragraph (b)(1)(viii) of this section that are provided in writing or electronically must be in equal prominence to each other.

(4) Segregation. Except for disclosures provided via mobile application or text message, to the extent permitted by paragraph (a)(5) of this section, disclosures required by this subpart that are provided in writing or electronically must be segregated from everything else and must contain only information that is directly related to the disclosures required under this subpart.

(d) Estimates. Estimated disclosures may be provided to the extent permitted by §1005.32. Estimated disclosures must be described using the term “Estimated” or a substantially similar term in close proximity to the estimated term or terms.

(e) Timing. (1) Except as provided in §1005.36(a), a pre-payment disclosure required by paragraph (b)(1) of this section or a combined disclosure required by paragraph (b)(3) of this section must be provided to the sender when the sender requests the remittance transfer, but prior to payment for the transfer.

(2) Except as provided in §1005.36(a), a receipt required by paragraph (b)(2) of this section generally must be provided to the sender when payment is made for the remittance transfer. If a transaction is conducted entirely by telephone and involves the transfer of funds from the sender’s account held by the provider, the receipt required by paragraph (b)(2) of this section may be provided on or with the next regularly scheduled periodic statement for that account or within 30 days after payment is made for the remittance transfer if a periodic statement is not provided. The statement about the rights of the sender regarding cancellation required by paragraph (b)(2)(iv) of this section may, but need not, be disclosed pursuant to the timing requirements of this paragraph if a provider discloses this information pursuant to paragraphs (a)(3)(iii) or (a)(5)(iii) of this section.

(f) Accurate when payment is made. Except as provided in §1005.36(b), disclosures required by this section or permitted by paragraph (b)(1)(viii) of this section must be accurate when a sender makes payment for the remittance transfer, except to the extent estimates are permitted by §1005.32.

(g) Foreign language disclosures—(1) General. Except as provided in paragraph (g)(2) of this section, disclosures required by this subpart or permitted by paragraph (b)(1)(viii) of this section or §1005.33(h)(3) must be made in English and, if applicable, either in:

(i) Each of the foreign languages principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services, either orally, in writing, or electronically, at the office in which a sender conducts a transaction or asserts an error; or
(ii) The foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction (or for written or electronic disclosures made pursuant to §1005.33, in the foreign language primarily used by the sender with the remittance transfer provider to assert the error), provided that such foreign language is principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services.
either orally, in writing, or electronically, at the office in which a sender conducts a transaction or asserts an error, respectively.

(2) Oral, mobile application, or text message disclosures. Disclosures provided orally for transactions conducted orally and entirely by telephone under paragraph (a)(3) of this section or orally or via mobile application or text message for transactions conducted via mobile application or text message under paragraph (a)(5) of this section shall be made in the language primarily used by the sender with the remittance transfer provider to conduct the transaction. Disclosures provided orally under paragraph (a)(4) of this section for error resolution purposes shall be made in the language primarily used by the sender with the remittance transfer provider to assert the error.

§ 1005.32 Estimates.

(a) Temporary exception for insured institutions—(1) General. For disclosures described in §§1005.31(b)(1) through (3) and 1005.36(a)(1) and (a)(2), estimates may be provided for transfers to certain countries in accordance with paragraph (c) of this section for the amounts required to be disclosed under §§1005.31(b)(1)(iv) through (b)(1)(vii), if a remittance transfer provider cannot determine the exact amounts when the disclosure is required because:

(A) The laws of the recipient country do not permit such a determination, or

(B) The method by which transactions are made in the recipient country does not permit such determination.

(ii) Safe harbor. A remittance transfer provider may rely on the list of countries published by the Bureau to determine whether estimates may be provided under paragraph (b)(1) of this section, unless the provider has information that a country's laws or the method by which transactions are conducted in that country permits a determination of the exact disclosure amount.

(2) Permanent exception for transfers scheduled before the date of transfer. (i) Except as provided in paragraph (b)(2)(ii) of this section, for disclosures described in §§1005.36(a)(1)(i) and (a)(2)(i), estimates may be provided in accordance with paragraph (d) of this section for the amounts to be disclosed under §§1005.31(b)(1)(iv) through (b)(1)(vii) if:

(i) A remittance transfer provider cannot determine the exact amounts for reasons beyond its control;

(ii) A remittance transfer provider is an insured institution; and

(iii) The remittance transfer is sent from the sender's account with the institution.

(2) Sunset date. Paragraph (a)(1) of this section expires on July 21, 2015.

(3) Insured institution. For purposes of this section, the term “insured institution” means insured depository institutions (which includes uninsured U.S. branches and agencies of foreign depository institutions) as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), and insured credit unions as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(b) Permanent exceptions—(1) Permanent exception for transfers to certain countries.

(i) General. For disclosures described in §§1005.31(b)(1) through (b)(3) and 1005.36(a)(1) and (a)(2), estimates may be provided for transfers to certain countries in accordance with paragraph (c) of this section for the amounts required to be disclosed under §§1005.31(b)(1)(iv) through (b)(1)(vii), if a remittance transfer provider cannot determine the exact amounts when the disclosure is required because:

(A) The laws of the recipient country do not permit such a determination, or

(B) The method by which transactions are made in the recipient country does not permit such determination.

(ii) Covered third-party fees described in §1005.31(b)(1)(vi) may be estimated under paragraph (b)(2)(i) of this section only if the exchange rate is also estimated under paragraph (b)(2)(i) of this section and the estimated exchange rate affects the amount of such fees.
(iii) Fees and taxes described in §1005.31(b)(1)(ii) may be estimated under paragraph (b)(2)(i) of this section only if the amount that will be transferred in the currency in which it is funded is also estimated under paragraph (b)(2)(i) of this section, and the estimated amount affects the amount of such fees and taxes.

(3) Permanent exception for optional disclosure of non-covered third-party fees and taxes collected by a person other than the provider. For disclosures described in §§1005.31(b)(1) through (3) and 1005.36(a)(1) and (2), estimates may be provided for applicable non-covered third-party fees and taxes collected on the remittance transfer by a person other than the provider, which are permitted to be disclosed under §1005.31(b)(1)(viii), provided such estimates are based on reasonable sources of information.

(c) Bases for estimates generally. Estimates provided pursuant to the exceptions in paragraph (a) or (b)(1) of this section must be based on the below-listed approach or approaches, except as otherwise permitted by this paragraph. If a remittance transfer provider bases an estimate on an approach that is not listed in this paragraph, the provider is deemed to be in compliance with this paragraph so long as the designated recipient receives the same, or greater, amount of funds than the remittance transfer provider disclosed under §1005.31(b)(1)(vii).

(1) Exchange rate. In disclosing the exchange rate as required under §1005.31(b)(1)(iv), an estimate must be based on one of the following:

(i) For remittances sent via international ACH that qualify for the exception in paragraph (b)(1)(ii) of this section, the most recent exchange rate set by the recipient country’s central bank or other governmental authority and reported by a Federal Reserve Bank;

(ii) The most recent publicly available wholesale exchange rate and, if applicable, any spread that the remittance transfer provider or its correspondent typically applies to such a wholesale rate for remittance transfers for that currency; or

(iii) The most recent exchange rate offered or used by the person making funds available directly to the designated recipient or by the person setting the exchange rate.

(2) Transfer amount in the currency in which the funds will be received by the designated recipient. In disclosing the transfer amount in the currency in which the funds will be received by the designated recipient, as required under §1005.31(b)(1)(v), an estimate must be based on the estimated exchange rate provided in accordance with paragraph (c)(1) of this section, prior to any rounding of the estimated exchange rate.

(3) Covered third-party fees. (i) Imposed as percentage of amount transferred. In disclosing covered third-party fees, as described under §1005.31(b)(1)(vi), that are a percentage of the amount transferred to the designated recipient, an estimated exchange rate must be based on the estimated exchange rate provided in accordance with paragraph (c)(1) of this section, prior to any rounding of the estimated exchange rate.

(ii) Imposed by the intermediary or final institution. In disclosing covered third-party fees pursuant to §1005.31(b)(1)(vi), an estimate must be based on one of the following:

(A) The remittance transfer provider’s most recent remittance transfer to the designated recipient’s institution; or

(B) A representative transmittal route identified by the remittance transfer provider.

(4) Amount of currency that will be received by the designated recipient. In disclosing the amount of currency that will be received by the designated recipient, as required under §1005.31(b)(1)(vii), an estimate must be based on the information provided in accordance with paragraphs (c)(1) through (3) of this section, as applicable.

(d) Bases for estimates for transfers scheduled before the date of transfer. Estimates provided pursuant to paragraph (b)(2) of this section must be based on the exchange rate or, where applicable, the estimated exchange rate based on an estimation methodology permitted under paragraph (c) of this section that the provider would...
§ 1005.33 Procedures for resolving errors.

(a) Definition of error. (1) Types of transfers or inquiries covered. For purposes of this section, the term error means:

(i) An incorrect amount paid by a sender in connection with a remittance transfer unless the disclosure stated an estimate of the amount paid by a sender in accordance with §1005.32(b)(2) and the difference results from application of the actual exchange rate, fees, and taxes, rather than any estimated amount;

(ii) A computational or bookkeeping error made by the remittance transfer provider relating to a remittance transfer;

(iii) The failure to make available to a designated recipient the amount of currency disclosed pursuant to §1005.31(b)(1)(vii) and stated in the disclosure provided to the sender under §1005.31(b)(2) or (3) for the remittance transfer, unless:

(A) The disclosure stated an estimate of the amount to be received in accordance with §1005.32(a), (b)(1) or (b)(2) and the difference results from application of the actual exchange rate, fees, and taxes, rather than any estimated amounts; or

(B) The failure resulted from extraordinary circumstances outside the remittance transfer provider’s control that could not have been reasonably anticipated; or

(C) The difference results from the application of non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider and the provider provided the disclosure required by §1005.31(b)(1)(vii).

(iv) The failure to make funds available to a designated recipient by the date of availability stated in the disclosure provided to the sender under §1005.31(b)(2) or (3) for the remittance transfer, unless the failure to make the funds available resulted from:

(A) Extraordinary circumstances outside the remittance transfer provider’s control that could not have been reasonably anticipated;

(B) Delays related to the remittance transfer provider’s fraud screening procedures or in accordance with the Bank Secrecy Act, 31 U.S.C. 5311 et seq., Office of Foreign Assets Control requirements, or similar laws or requirements;

(C) The remittance transfer being made with fraudulent intent by the sender or any person acting in concert with the sender; or

(D) The sender having provided the remittance transfer provider an incorrect account number or recipient institution identifier for the designated recipient’s account or institution, provided that the remittance transfer provider meets the conditions set forth in paragraph (h) of this section;

(v) The sender’s request for documentation required by §1005.31 or for additional information or clarification concerning a remittance transfer, including a request a sender makes to determine whether an error exists under paragraphs (a)(1)(i) through (iv) of this section.

(2) Types of transfers or inquiries not covered. The term error does not include:

(i) An inquiry about the status of a remittance transfer, except where the funds from the transfer were not made available to a designated recipient by the disclosed date of availability as described in paragraph (a)(1)(i) of this section;

(ii) A request for information for tax or other recordkeeping purposes;

(iii) A change requested by the designated recipient; or
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(iv) A change in the amount or type of currency received by the designated recipient from the amount or type of currency stated in the disclosure provided to the sender under §1005.31(b)(2) or (3) if the remittance transfer provider relied on information provided by the sender as permitted under §1005.31 in making such disclosure.

(b) Notice of error from sender. (1) Timing; contents. A remittance transfer provider shall comply with the requirements of this section with respect to any oral or written notice of error from a sender that:

(i) Is received by the remittance transfer provider no later than 180 days after the disclosed date of availability of the remittance transfer;

(ii) Enables the provider to identify:

(A) The sender’s name and telephone number or address;

(B) The recipient’s name, and if known, the telephone number or address of the recipient; and

(C) The remittance transfer to which the notice of error applies; and

(iii) Indicates why the sender believes an error exists and includes to the extent possible the type, date, and amount of the error, except for requests for documentation, additional information, or clarification described in paragraph (a)(1)(v) of this section.

(2) Request for documentation or clarification. When a notice of error is based on documentation, additional information, or clarification that the sender previously requested under paragraph (a)(1)(v) of this section, the sender’s notice of error is timely if received by the remittance transfer provider the later of 180 days after the disclosed date of availability of the remittance transfer or 60 days after the provider sent the documentation, information, or clarification that had been requested.

(c) Time limits and extent of investigation. (1) Time limits for investigation and report to consumer of error. A remittance transfer provider shall investigate promptly and determine whether an error occurred within 90 days of receiving a notice of error. The remittance transfer provider shall report the results to the sender, including notice of any remedies available for correcting any error that the provider determines has occurred, within three business days after completing its investigation. (2) Remedies. Except as provided in paragraph (c)(2)(iii) of this section, if, following an assertion of an error by a sender, the remittance transfer provider determines an error occurred, the provider shall, within one business day of, or as soon as reasonably practicable after, receiving the sender’s instructions regarding the appropriate remedy, correct the error as designated by the sender by:

(i) In the case of any error under paragraphs (a)(1)(i) through (iii) of this section, as applicable, either:

(A) Refunding to the sender the amount of funds provided by the sender in connection with a remittance transfer which was not properly transmitted, or the amount appropriate to resolve the error; or

(B) Making available to the designated recipient, without additional cost to the sender or to the designated recipient, the amount appropriate to resolve the error;

(ii) Except as provided in paragraph (c)(2)(iii) of this section, in the case of an error under paragraph (a)(1)(iv) of this section

(A) As applicable, either:

(I) In the case of any error under §1005.31(b)(2) or (3) if the remittance transfer provider relied on information provided by the sender as permitted under §1005.31 in making such disclosure.

(ii) Except as provided in paragraph (c)(2)(iii) of this section, in the case of an error under paragraph (a)(1)(iv) of this section

(A) As applicable, either:

(I) Refunding to the sender the amount of funds provided by the sender in connection with a remittance transfer which was not properly transmitted, or the amount appropriate to resolve the error; or

(2) Making available to the designated recipient the amount appropriate to resolve the error. Such amount must be made available to the designated recipient without additional cost to the sender or to the designated recipient;

(B) Refunding to the sender any fees imposed and, to the extent not prohibited by law, taxes collected on the remittance transfer;

(iii) In the case of an error under paragraph (a)(1)(iv) of this section that occurred because the sender provided incorrect or insufficient information in connection with the remittance transfer, the remittance transfer provider shall provide the remedies required by paragraphs (c)(2)(ii)(A) and (B) within three business days of providing the report required by paragraph (c)(1) or
(d)(1) of this section except that the provider may agree to the sender’s request, upon receiving the results of the error investigation, that the funds be applied towards a new remittance transfer, rather than be refunded, if the provider has not yet processed a refund. The provider may deduct from the amount refunded or applied towards a new transfer any fees actually imposed on or, to the extent not prohibited by law, taxes actually collected on the remittance transfer as part of the first unsuccessful remittance transfer attempt.

(iv) In the case of a request under paragraph (a)(1)(v) of this section, providing the requested documentation, information, or clarification.

(d) Procedures if remittance transfer provider determines no error or different error occurred. In addition to following the procedures specified in paragraph (c) of this section, the remittance transfer provider shall follow the procedures set forth in this paragraph (d) if it determines that no error occurred or that an error occurred in a manner or amount different from that described by the sender.

(1) Explanation of results of investigation. The remittance transfer provider’s report of the results of the investigation shall include a written explanation of the provider’s findings and shall note the sender’s right to request the documents on which the provider relied in making its determination. The explanation shall also address the specific complaint of the sender.

(2) Copies of documentation. Upon the sender’s request, the remittance transfer provider shall promptly provide copies of the documents on which the provider relied in making its error determination.

(e) Reassertion of error. A remittance transfer provider that has fully complied with the error resolution requirements of this section has no further responsibilities under this section should the sender later reassert the same error, except in the case of an error asserted by the sender following receipt of information provided under paragraph (a)(1)(v) of this section.

(1) Relation to other laws—(1) Relation to Regulation E §1005.11 for incorrect EFTs from a sender’s account. If an alleged error involves an incorrect electronic fund transfer from a sender’s account in connection with a remittance transfer, and the sender provides a notice of error to the account-holding institution, the account-holding institution shall comply with the requirements of §1005.11 governing error resolution rather than the requirements of this section, provided that the account-holding institution is not also the remittance transfer provider. If the remittance transfer provider is also the financial institution that holds the consumer’s account, then the error-resolution provisions of this section apply when the sender provides such notice of error.

(2) Relation to Truth in Lending Act and Regulation Z. If an alleged error involves an incorrect extension of credit in connection with a remittance transfer, an incorrect amount received by the designated recipient under paragraph (a)(1)(iii) of this section that is an extension of credit for property or services not delivered as agreed, or the failure to make funds available by the disclosed date of availability under paragraph (a)(1)(iv) of this section that is an extension of credit for property or services not delivered as agreed, and the sender provides a notice of error to the creditor extending the credit, the provisions of Regulation Z, 12 CFR 1026.13, governing error resolution apply to the creditor, rather than the requirements of this section, even if the creditor is the remittance transfer provider. However, if the creditor is the remittance transfer provider, paragraph (b) of this section will apply instead of 12 CFR 1026.13(b). If the sender instead provides a notice of error to the remittance transfer provider that is not also the creditor, then the error-resolution provisions of this section apply to the remittance transfer provider.

(3) Unauthorized remittance transfers. If an alleged error involves an unauthorized electronic fund transfer for payment in connection with a remittance transfer, §§1005.6 and 1005.11 apply with respect to the account-holding institution. If an alleged error involves an unauthorized use of a credit account for payment in connection
with a remittance transfer, the provisions of Regulation Z, 12 CFR 1026.12(b), if applicable, and §1026.13, apply with respect to the creditor.

(g) Error resolution standards and recordkeeping requirements—(1) Compliance program. A remittance transfer provider shall develop and maintain written policies and procedures that are designed to ensure compliance with the error resolution requirements applicable to remittance transfers under this section.

(2) Retention of error-related documentation. The remittance transfer provider’s policies and procedures required under paragraph (g)(1) of this section shall include policies and procedures regarding the retention of documentation related to error investigations. Such policies and procedures must ensure, at a minimum, the retention of any notices of error submitted by a sender, documentation provided by the sender to the provider with respect to the alleged error, and the findings of the remittance transfer provider regarding the investigation of the alleged error. Remittance transfer providers are subject to the record retention requirements under §1005.13.

(b) Incorrect account number or recipient institution identifier provided by the sender. The exception in paragraph (a)(1)(iv)(D) of this section applies if:

(1) The remittance transfer provider can demonstrate that the sender provided an incorrect account number or recipient institution identifier to the provider in connection with the remittance transfer;

(2) For any instance in which the sender provided the incorrect recipient institution identifier, prior to or when sending the transfer, the provider used reasonably available means to verify that the recipient institution identifier provided by the sender corresponded to the recipient institution name provided by the sender;

(3) The provider provided notice to the sender before the sender made payment for the remittance transfer that, in the event the sender provided an incorrect account number or recipient institution identifier, the sender could lose the transfer amount. For purposes of providing this disclosure, §1005.31(a)(2) applies to this notice unless the notice is given at the same time as other disclosures required by this subpart for which information is permitted to be disclosed orally or via mobile application or text message, in which case this disclosure may be given in the same medium as those other disclosures;

(4) The incorrect account number or recipient institution identifier resulted in the deposit of the remittance transfer into a customer’s account that is not the designated recipient’s account; and

(5) The provider promptly used reasonable efforts to recover the amount that was to be received by the designated recipient.

§1005.34 Procedures for cancellation and refund of remittance transfers.

(a) Sender right of cancellation and refund. Except as provided in §1005.36(c), a remittance transfer provider shall comply with the requirements of this section with respect to any oral or written request to cancel a remittance transfer if:

(1) The request to cancel enables the provider to identify the sender’s name and address or telephone number and the particular transfer to be cancelled; and

(2) The transferred funds have not been picked up by the designated recipient or deposited into an account of the designated recipient.

(b) Time limits and refund requirements. A remittance transfer provider shall refund, at no additional cost to the sender, the total amount of funds provided by the sender in connection with a remittance transfer, including any fees and, to the extent not prohibited by law, taxes imposed in connection with the remittance transfer, within three business days of receiving a sender’s request to cancel the remittance transfer.
$1005.35 Acts of agents.

A remittance transfer provider is liable for any violation of this subpart by an agent when such agent acts for the provider.

$1005.36 Transfers scheduled before the date of transfer.

(a) Timing. (1) For a one-time transfer scheduled five or more business days before the date of transfer or for the first in a series of preauthorized remittance transfers, the remittance transfer provider must:

(i) Provide either the pre-payment disclosure described in §1005.31(b)(1) and the receipt described in §1005.31(b)(2) or the combined disclosure described in §1005.31(b)(3), in accordance with the timing requirements set forth in §1005.31(e); and

(ii) If any of the disclosures provided pursuant to paragraph (a)(1)(i) of this section contain estimates as permitted by §1005.32(b)(2), mail or deliver to the sender an additional receipt meeting the requirements described in §1005.31(b)(2) no later than one business day after the date of the transfer. If the remittance transfer involves the transfer of funds from the sender’s account held by the provider, the receipt required by this paragraph may be provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided.

(2) For each subsequent preauthorized remittance transfer:

(i) If any of the information on the most recent receipt provided pursuant to paragraph (a)(1)(i) of this section contain estimates as permitted by §1005.32(b)(2), mail or deliver to the sender an additional receipt meeting the requirements described in §1005.31(b)(2) no later than one business day after the date of the transfer. If the transfer involves the transfer of funds from the sender’s account held by the provider, the receipt required by this paragraph may be provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided.

(b) Accuracy. (1) For a one-time transfer scheduled five or more business days in advance or for the first in a series of preauthorized remittance transfers, disclosures provided pursuant to paragraph (a)(1)(i) of this section must be accurate as of when the transfer is made, except to the extent estimates are permitted by §1005.32.

(2) For each subsequent preauthorized remittance transfer, the most recent receipt provided pursuant to paragraph (a)(1)(i) or (a)(2)(i) of this section must be accurate as of when such transfer is made, except:

(i) The temporal elements required by §1005.31(b)(2)(ii) and (b)(2)(vii) must be accurate only if the transfer is the first transfer to occur after the disclosure was provided; and

(ii) To the extent estimates are permitted by §1005.32.

(3) Disclosures provided pursuant to paragraph (a)(1)(ii) or (a)(2)(ii) of this section must be accurate as of when the remittance transfer to which it pertains is made, except to the extent estimates are permitted by §1005.32(a) or (b)(1).

(c) Cancellation. For any remittance transfer scheduled by the sender at least three business days before the date of the transfer, a remittance transfer provider shall comply with
any oral or written request to cancel the remittance transfer from the sender if the request to cancel:

(1) Enables the provider to identify the sender’s name and address or telephone number and the particular transfer to be cancelled; and

(2) Is received by the provider at least three business days before the scheduled date of the remittance transfer.

(d) Additional requirements for subsequent preauthorized remittance transfers—(1) Disclosure requirement. (i) For any subsequent transfer in a series of preauthorized remittance transfers, the remittance transfer provider must disclose to the sender:

(A) The date the provider will make the subsequent transfer, using the term “Future Transfer Date,” or a substantially similar term;

(B) A statement about the rights of the sender regarding cancellation as described in §1005.31(b)(2)(iv); and

(C) The name, telephone number(s), and Web site of the remittance transfer provider.

(ii) If the future date or dates of transfer are described as occurring in regular periodic intervals, e.g., the 15th of every month, rather than as a specific calendar date or dates, the remittance transfer provider must disclose any future date or dates of transfer that do not conform to the described interval.

(2) Notice requirements. (i) Except as described in paragraph (d)(2)(i) of this section, the disclosures required by paragraph (d)(1) of this section must be received by the sender no more than 12 months, and no less than five business days prior to the date of any subsequent transfer to which it pertains. The disclosures required by paragraph (d)(1) of this section may be provided in a separate disclosure or may be provided on one or more disclosures required by this subpart related to the same series of preauthorized transfers, so long as the consumer receives the required information for each subsequent preauthorized remittance transfer in accordance with the timing requirements of this paragraph (d)(2)(i).

(ii) For any subsequent preauthorized remittance transfer for which the date of transfer is four or fewer business days after the date payment is made for that transfer, the information required by paragraph (d)(1) of this section must be provided on or with the receipt described in §1005.31(b)(2), or disclosed as permitted by §1005.31(a)(3) or (a)(5), for the initial transfer in that series in accordance with paragraph (a)(1)(i) of this section.

(3) Specific format requirement. The information required by paragraph (d)(1)(i)(A) of this section generally must be disclosed in close proximity to the other information required by paragraph (d)(1)(i)(B) of this section.

(4) Accuracy. Any disclosure required by paragraph (d)(1) of this section must be accurate as of the date the preauthorized remittance transfer to which it pertains is made.


APPENDIX A TO PART 1005—MODEL DISCLOSURE CLAUSES AND FORMS

A–1—Model Clauses for Unsolicited Issuance (§1005.5(b)(2))
A–2—Model Clauses for Initial Disclosures (§1005.7(b))
A–3—Model Forms for Error Resolution Notice (§§1005.7(b)(10) and 1005.8(b))
A–4—Model Form for Service-Providing Institutions (§1005.14(b)(p)(i))
A–5—Model Forms for Government Agencies (§1005.15(d)(1) and (2))
A–6—Model Clauses for Authorizing One-Time Electronic Fund Transfers Using Information From a Check (§1005.3(b)(2))
A–7—Model Clauses for Financial Institutions Offering Payroll Card Accounts (§1005.18(c))
A–8—Model Clause for Electronic Collection of Returned Item Fees (§1005.3(b)(3))
A–9—Model Consent Form for Overdraft Services (§1005.17)
A–10 through A–29 [Reserved]
A–30(a)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency including a disclaimer where non-covered third-party fees and foreign taxes may apply (§1005.31(b)(1))
A–30(b)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency including a disclaimer with estimate for non-covered third-party fees (§1005.31(b)(1) and §1005.32(b)(3))
A–30(c)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency including a disclaimer with estimate for foreign taxes (§1005.31(b)(1) and §1005.32(b)(3))
(i) Pay for purchases.
(ii) Make deposits to your [checking] [or] [savings] account.
(iii) Transfer funds between your [checking] [or] [savings] accounts whenever you request.
(iv) Pay for purchases at places that have agreed to accept the [card] [code].
(v) Pay bills directly [by telephone] from your [checking] [or] [savings] account in the amounts and on the days you request.

For purposes of these disclosures, our business days are (Monday through Friday) (Monday through Saturday) (any day including Saturdays and Sundays). Holidays are (not) included.

(d) **Transfer types and limitations** ($1005.7(b)(4)).

(1) **Account access.** You may use your [card] [code] to:
   (i) Withdraw cash from your [checking] [or] [savings] account.
   (ii) Make deposits to your [checking] [or] [savings] account.
   (iii) Transfer funds between your [checking] [or] [savings] accounts whenever you request.
   (iv) Pay for purchases at places that have agreed to accept the [card] [code].
   (v) Pay bills directly [by telephone] from your [checking] [or] [savings] account in the amounts and on the days you request.

Some of these services may not be available at all terminals.

(2) **Electronic check conversion.** You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to:
   (i) Pay for purchases.
   (ii) Pay bills.
   (iii) Limitations on frequency of transfers. (i)
You may make only [insert number, e.g., 5] cash withdrawals from our terminals each [insert time period, e.g., week].
   (ii) You can use your telephone bill-payment service to pay [insert number] bills each [insert time period] [telephone call].

$50 if someone used your [card] [code] without your permission.)

If you do NOT tell us within 2 business days after you learn of the loss or theft of your [card] [code], and we can prove we could have stopped someone from using your [card] [code] without your permission if you had told us, you could lose as much as $500.

Also, if your statement shows transfers that you did not make, including those made by card, code or other means, tell us at once.

If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time period.

(b) **Contact in event of unauthorized transfer** ($1005.7(b)(2)).

If you believe your [card] [code] has been lost or stolen, call: [Telephone number] or write: [Name of person or office to be notified] [Address].

You should also call the number or write to the address listed above if you believe a transfer has been made using the information from your check without your permission.

(c) **Business days** ($1005.7(b)(3)).

A–30(d)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency, including a disclaimer with estimates for non-covered third-party fees and foreign taxes ($1005.31(b)(1) and §1005.32(b)(3))

A–31—Model Form for Receipts for Remittance Transfers Exchanged into Local Currency ($1005.31(b)(2))

A–32—Model Form for Combined Disclosures for Remittance Transfers Exchanged into Local Currency ($1005.31(b)(3))

A–34—Model Form for Error Resolution and Cancellation Disclosures (Long) ($1005.31(b)(4))

A–35—Model Form for Combined Disclosures for Dollar-to-Dollar Remittance Transfers ($1005.31(b)(3))

A–36—Model Form for Error Resolution and Cancellation Disclosures (Long) ($1005.31(b)(4))

A–37—Model Form for Error Resolution and Cancellation Disclosures (Short) ($1005.31(b)(2)(iv) and (b)(2)(vi))

A–39—Model Form for Receipts for Remittance Transfers Exchanged into Local Currency—Spanish ($1005.31(b)(2))

A–40—Model Form for Combined Disclosures for Remittance Transfers Exchanged into Local Currency—Spanish ($1005.31(b)(3))

A–41—Model Form for Error Resolution and Cancellation Disclosures (Long)—Spanish ($1005.31(b)(4))

A–1—Model Clauses for Unsolicited Issuance ($1005.5(b)(2))

(a) **Accounts using cards.** You cannot use the enclosed card to transfer money into or out of your account until we have validated it. If you do not want to use the card, please destroy it at once by cutting it in half.

[Financial institution may add validation instructions here.]

(b) **Accounts using codes.** You cannot use the enclosed code to transfer money into or out of your account until we have validated it. If you do not want to use the code, please destroy this notice at once.

[Financial institution may add validation instructions here.]

A–2—Model Clauses for Initial Disclosures ($1005.7(b))

(a) **Consumer Liability** ($1005.7(b)(1)).

(Tell us AT ONCE if you believe your [card] [code] has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission using information from your check. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days after you learn of the loss or theft of your [card] [code], you can lose no more than $50 if someone used your [card] [code] without your permission.)

You may make only [insert number, e.g., 5] cash withdrawals from our terminals each [insert time period, e.g., week].

(ii) You can use your telephone bill-payment service to pay [insert number] bills each [insert time period] [telephone call].

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(iii) You can use our point-of-sale transfer service for [insert number] transactions each [insert time period].

(iv) For security reasons, there are limits on the number of transfers you can make using our [terminals] [telephone bill-payment service] [point-of-sale transfer service].

Limitations on dollar amounts of transfers

(1) If you withdraw up to [insert dollar amount] from our terminals each [insert time period] time you use the [card] [code].

(2) If you withdraw up to [insert dollar amount] worth of goods or services each [insert time period] time you use the [card] [code] in our point-of-sale transfer service.

(e) Fees (§ 1005.7(b)(5)) (1) Per transfer charge. We will charge you [insert dollar amount] for each transfer you make using our [automated teller machines] [telephone bill-payment service] [point-of-sale transfer service].

(2) Fixed charge. We will charge you [insert dollar amount] each [insert time period] for our [automated teller machine service] [telephone bill-payment service] [point-of-sale transfer service].

(3) Average or minimum balance charge. We will only charge you for using our [automated teller machines] [telephone bill-payment service] [point-of-sale transfer service] if the [average] [minimum] balance in your [checking account] [savings account] [account] falls below [insert dollar amount]. If it does, we will charge you [insert dollar amount] each [transfer] [insert time period].

(4) Documentation (§ 1005.7(b)(6)) (1) Terminal transfers. You can get a receipt at the time you make any transfer to or from your account using one of our [automated teller machines] [or] [point-of-sale terminals].

(2) Preauthorized credits. If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, (we will let you know if the deposit is [not] made.) [the person or company making the deposit will tell you every time they send us the money] (you can call us at [insert telephone number] to find out whether or not the deposit has been made).

(3) Periodic statements. You will get a [monthly] [quarterly] account statement (unless there are no transfers in a particular month. In any case you will get the statement at least quarterly).

(4) Passbook account where the only possible electronic fund transfers are preauthorized cred-

its. If you bring your passbook to us, we will record any electronic deposits that were made to your account since the last time you brought it in your passbook.

Liability for failure to stop payment of preauthorized transfer. If you order us to stop one of these payments 3 business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

(1) Financial institution’s liability (§ 1005.7(b)(8)). If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

(1) If, through no fault of ours, you do not have enough money in your account to make the transfer.

(2) If the transfer would go over the credit limit on your overdraft line.

(3) If the automated teller machine where you are making the transfer does not have enough cash.

(4) If the [terminal] [system] was not working properly and you knew about the break-down when you started the transfer.

(5) If circumstances beyond our control (such as fire or flood) prevent the transfer, despite reasonable precautions that we have taken.

(6) There may be other exceptions stated in our agreement with you.

(1) ATM fees (§ 1005.7(b)(11)). When you use an ATM not owned by us, you may be charged a fee by the ATM operator [or any network used] (and you may be charged a fee for a balance inquiry even if you do not complete a fund transfer).
In Case of Errors or Questions About Your Electronic Transfers Telephone us at [insert telephone number] Write us at [insert address] [or email us at [insert email address]] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

1. Tell us your name and account number (if any).
2. Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
3. Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

(b) Error resolution notice on periodic statements (§ 1005.8(b)).

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [insert telephone number] or Write us at [insert address] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).
(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

All questions about transactions made with your [name of card] card must be directed to us [name of service providers], and not to the bank or other financial institution where you have your account. We are responsible for the [name of service] service and for resolving any errors in transactions made with your [name of card] card.

We will not send you a periodic statement listing transactions that you make using your [name of card] card. The transactions will appear only on the statement issued by your bank or other financial institution. Save the receipts you are given when you use your [name of card] card, and check them against the account statement you receive from your bank or other financial institution. If you have any questions about one of these transactions, call or write us at [telephone number and address] or [the telephone number and address indicated below].

If your [name of card] card is lost or stolen, notify us at once by calling or writing to us at [telephone number and address].

All questions about transactions made with your [name of card] card must be directed to us [name of service providers], and not to the bank or other financial institution where you have your account. We are responsible for the [name of service] service and for resolving any errors in transactions made with your [name of card] card.
A–6—MODEL CLAUSES FOR AUTHORIZING ONE-TIME ELECTRONIC FUND TRANSFERS USING INFORMATION FROM A CHECK ($1005.3(b)(2))

(a) Notice About Electronic Check Conversion. When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

(b) Alternative Notice About Electronic Check Conversion (Optional).

When you provide a check as payment, you authorize us to use information from your check to make a one-time electronic fund transfer from your account. In certain circumstances, such as for technical or processing reasons, we may process your payment as a check transaction.

A–7—MODEL CLAUSES FOR FINANCIAL INSTITUTIONS OFFERING PAYROLL CARD ACCOUNTS ($1005.18(c))

(a) Disclosure by financial institutions of information about obtaining account information for payroll card accounts. §1005.18(c)(1).

You may obtain information about the amount of money you have remaining in your payroll card account by calling [telephone number]. This information, along with a 60-day history of account transactions, is also available online at [internet address]. You also have the right to obtain a 60-day written history of account transactions by calling [telephone number], or by writing us at [address].

(b) Disclosure of error-resolution procedures for financial institutions that provide alternative means of obtaining payroll card account information ($1005.18(c)(1)(ii) and (c)(2)).

In Case of Errors or Questions About Your Payroll Card Account Telephone us at [telephone number] or Write us at [address] [or email us at [email address]] as soon as you can, if you think an error has occurred in your payroll card account. We must hear from you no later than 60 days after you learn of the error. You will need to tell us:

• Your name and [payroll card account] number.
• Why you believe there is an error, and the dollar amount involved.
• Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, points-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

If you need more information about our error resolution procedures, call us at [telephone number][the telephone number shown above].

A–6—MODEL CLAUSES FOR AUTHORIZING ONE-TIME ELECTRONIC FUND TRANSFERS USING INFORMATION FROM A CHECK ($1005.3(b)(2))

(a) Notice About Electronic Check Conversion. When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

(b) Alternative Notice About Electronic Check Conversion (Optional).
take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

If you need more information about our error-resolution procedures, call us at [telephone number] [the telephone number shown above] [or visit [internet address]].

A-8—Model Clause for Electronic Collection of Returned Item Fees (§ 1005.3(b)(3))

If your payment is returned unpaid, you authorize [us/name of person collecting the fee electronically] to make a one-time electronic fund transfer from your account to collect a fee of $_____. (If your payment is returned unpaid, you authorize [us/name of person collecting the fee electronically] to make a one-time electronic fund transfer from your account to collect a fee. The fee will be determined [by]/[as follows]:)
A-9 Model Consent Form for Overdraft Services § 1005.17

What You Need to Know about Overdrafts and Overdraft Fees

An overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway. We can cover your overdrafts in two different ways:

1. We have standard overdraft practices that come with your account.
2. We also offer overdraft protection plans, such as a link to a savings account, which may be less expensive than our standard overdraft practices. To learn more, ask us about these plans.

This notice explains our standard overdraft practices.

 What are the standard overdraft practices that come with my account?

We do authorize and pay overdrafts for the following types of transactions:

- Checks and other transactions made using your checking account number
- Automatic bill payments

We do not authorize and pay overdrafts for the following types of transactions unless you ask us to (see below)

- ATM transactions
- Everyday debit card transactions

We pay overdrafts at our discretion, which means we do not guarantee that we will always authorize and pay any type of transaction.

If we do not authorize and pay an overdraft, your transaction will be declined.

 What fees will I be charged if [Institution Name] pays my overdraft?

Under our standard overdraft practices:

- We will charge you a fee of up to $30 each time we pay an overdraft.
- Also, if your account is overdrawn for 5 or more consecutive business days, we will charge an additional $5 per day.
- There is no limit on the total fees we can charge you for over-drawing your account.

 What if I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions?

If you also want us to authorize and pay overdrafts on ATM and everyday debit card transactions, call [telephone number], visit [website], or complete the form below and [present it at a branch][mail it to:

| I do not want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions. |
| I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions. |

Printed Name: ______________
Date: ______________
[Account Number]: ______________
A-30(a)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency (§1005.31(b)(1))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today’s Date: March 3, 2014

**NOT A RECEIPT**

Transfer Amount: $100.00  
Transfer Fees: +$7.00  
Transfer Taxes: +$3.00  
Total: $110.00  

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount: 1,227.00 MXN
Other Fees: -30.00 MXN
Total to Recipient: 1,197.00 MXN

Recipient may receive less due to fees charged by the recipient’s bank and foreign taxes.

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A-30(b)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency (§1005.31(b)(1))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today’s Date: March 3, 2014

**NOT A RECEIPT**

Transfer Amount: $100.00  
Transfer Fees: +$7.00  
Transfer Taxes: +$3.00  
Total: $110.00  

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount: 1,227.00 MXN
Other Fees: -30.00 MXN
Total to Recipient: 1,197.00 MXN

Recipient may receive less due to fees charged by the recipient’s bank (Est. 40 MXN).
A-30(c)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency ($1005.31(b)(1))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today’s Date: March 3, 2014

NOT A RECEIPT

Transfer Amount: $100.00
Transfer Fees: +$7.00
Transfer Taxes: +$3.00
Total: $110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount: 1,227.00 MXN
Other Fees: -30.00 MXN
Total to Recipient: 1,197.00 MXN

Recipient may receive less due to foreign taxes (Est. 10 MXN).

A-30(d)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency ($1005.31(b)(1))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today’s Date: March 3, 2014

NOT A RECEIPT

Transfer Amount: $100.00
Transfer Fees: +$7.00
Transfer Taxes: +$3.00
Total: $110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount: 1,227.00 MXN
Other Fees: -30.00 MXN
Total to Recipient: 1,197.00 MXN

Recipient may receive less due to fees charged by the recipient’s bank (Est. 30 MXN) and foreign taxes (Est. 10 MXN).
A–31—Model Form for Receipts for Remittance Transfers Exchanged into Local Currency (§1005.31(b)(2))

ABC Company
1000 WY Avenue
Anytown, Anystate 12345

Today’s Date: March 3, 2014

RECEIPT

SENDER:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
222-555-1212

RECIPIENT:
Carlos Gomes
123 Calle XXX
Mexico City
Mexico

PICK-UP LOCATION:
ABC Company
65 Avenida TTY
Mexico City
Mexico

Confirmation Code: ABC 123 DEF 456

Date Available: March 4, 2014

Transfer Amount: $100.00
Transfer Fees: +$7.00
Transfer Taxes: +$3.00
Total: $110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount: 1,227.00 MXN
Other Fees: 88.00 MXN
Total to Recipient: 1,315.00 MXN

Recipient may receive less due to fees charged by the recipient’s bank and foreign taxes.

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at 800-123-4567 or www.abccompany.com. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.state regulatoryagency.gov

Consumer Financial Protection Bureau
800-411-2323
855-729-2372 (TTY/TDD)
www.consumerfinance.gov
ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today’s Date: March 3, 2014

SENDER:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
222-355-1212

RECIPIENT:
Carlos Gomez
123 Calle XXX
Mexico City
Mexico

PICK-UP LOCATION:
ABC Company
65 Avenida YYY
Mexico City
Mexico

Confirmation Code: ABC 123 DEF 456

Date Available: March 4, 2014

Transfer Amount: $100.00
Transfer Fees: +$7.00
Transfer Taxes: +$3.00
Total: $110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount: 1,227.00 MXN
Other Fees: -30.00 MXN
Total to Recipient: 1,197.00 MXN

Recipient may receive less due to fees charged by the recipient’s bank and foreign taxes.

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at 800-123-4567 or www.abccompany.com. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.
For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov

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**A-33—Model Form for Pre-Payment Disclosures for Dollar-to-Dollar Remittance Transfers**

(§1005.31(b)(1))

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**ABC Company**

1000 XYZ Avenue

Anytown, Anystate 12345

Today's Date: March 3, 2014

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**NOT A RECEIPT**

<table>
<thead>
<tr>
<th>Description</th>
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<td>Transfer Taxes</td>
<td>+$3.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$110.00</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
<tr>
<td>Other Fees</td>
<td>-$4.00</td>
</tr>
<tr>
<td><strong>Total to Recipient</strong></td>
<td><strong>$96.00</strong></td>
</tr>
</tbody>
</table>

Recipient may receive less due to fees charged by the recipient’s bank and foreign taxes.
A-34—Model Form for Receipts for Dollar-to-Dollar Remittance Transfers (§1005.31(b)(2))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today’s Date: March 3, 2014

RECEIPT

SENDER:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
301-555-1212

RECIPIENT:
Carlos Gomez
106 Calle XXX
Mexico City
Mexico

PICK-UP LOCATION:
ABC Company
65 Avenida TTY
Mexico City
Mexico

Confirmation Code: ABC 123 DEF 456

Date Available: March 4, 2014

Transfer Amount: $100.00
Transfer Fees: +$7.00
Transfer Taxes: +$3.00
Total: $110.00

Transfer Amount: $100.00
Other Fees: -$4.00
Total to Recipient: $96.00

Recipient may receive less due to fees charged by the recipient’s bank and foreign taxes.

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at 800-123-4567 or www.abccompany.com. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.state regulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov
A-35—Model Form for Combined Disclosures for Dollar-to-Dollar Remittance Transfers
($1005.31(b)(3))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today’s Date: March 3, 2014

sender:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
301-555-1212

Recipient:
Carlos Gomez
106 Calle XXX
Mexico City
Mexico

Pick-up Location:
ABC Company
65 Avenida YYY
Mexico City
Mexico

Confirmation Code: ABC 123 DEF 456

Date Available: March 4, 2014

Transfer Amount: $100.00
Transfer Fees: +$7.00
Transfer Taxes: +$3.00
Total: $110.00

Transfer Amount: $100.00
Other Fees: -$4.00
Total to Recipient: $96.00

Recipient may receive less due to fees charged by the recipient’s bank and foreign taxes.

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at 800-123-4567 or www.abcompany.com. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov
A–36—Model Form for Error Resolution and Cancellation Disclosures (Long) (§ 1005.31(b)(4))

What to do if you think there has been an error or problem:

If you think there has been an error or problem with your remittance transfer:

- Call us at [insert telephone number]; or
- Write us at [insert address]; or
- [E-mail us at [insert electronic mail address]].

You must contact us within 180 days of the date we promised to you that funds would be made available to the recipient. When you do, please tell us:

1. Your name and address (or telephone number);
2. The error or problem with the transfer, and why you believe it is an error or problem;
3. The name of the person receiving the funds, and if you know it, his or her telephone number or address; [and]
4. The dollar amount of the transfer; [and]
5. The confirmation code or number of the transaction.

We will determine whether an error occurred within 90 days after you contact us and we will correct any error promptly. We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of any documents we used in our investigation.

What to do if you want to cancel a remittance transfer:

You have the right to cancel a remittance transfer and obtain a refund of all funds paid to us, including any fees. In order to cancel, you must contact us at the [phone number or e-mail address] above within 30 minutes of payment for the transfer.

When you contact us, you must provide us with information to help us identify the transfer you wish to cancel, including the amount and location where the funds were sent. We will refund your money within three business days of your request to cancel a transfer as long as the funds have not already been picked up or deposited into a recipient’s account.

A–37—Model Form for Error Resolution and Cancellation Disclosures (Short) (§ 1005.31(b)(2)(iv) and (b)(2)(vi))

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at [insert telephone number] or [insert website]. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about [insert name of remittance transfer provider], contact:
ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Fecha: 3 de marzo de 2014

ESTE NO ES UN RECIBO

Cantidad de Envío: $100.00
Cargos por Envío: $7.00
Impuestos de Envío: $3.00
Total: $110.00

Tasa de Cambio: US$1.00 = 12.27 MXN

Cantidad de Envío: 1,227.00 MXN
Otros Cargos por Envío: -30.00 MXN
Total al Destinatario: 1,197.00 MXN

El beneficiario podría recibir menos dinero debido a las comisiones cobradas por el banco del beneficiario e impuestos extranjeros.
ABC Company
1000 XYZ Avenue
Anytown, Anyystate 12345

Fecha: 3 de marzo de 2014

REMITENTE:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 64321
222-555-1212

DESTINATARIO:
Carlos Gomez
123 Calle XXX
Ciudad de México, D.F.
Mexico

PUNTO DE PAGO:
ABC Company
65 Avenida YYYY
Ciudad de México, D.F.
Mexico

Código de Confirmación: ABC 123 DEF 456

Fecha Disponible: 4 de marzo de 2014

Cantidad de Envío: $100.00
Cargos por Envío: +97.00
Impuestos de Envío: +83.00
Total: $180.00

Tasa de Cambio: US$1.00 = 12.27 MXN

Cantidad de Envío: 1,227.00 MXN
Otros Cargos por Envío: -30.00 MXN
Total al Destinatario: 1,197.00 MXN

El beneficiario podría recibir menos dinero debido a las comisiones cobradas por el banco del beneficiario e impuestos extranjeros.

Usted tiene el derecho de discutir errores en su transacción. Si cree que hay un error, contáctenos dentro de 180 días al 800-123-4567 o www.abccompany.com. También puede contactarnos para obtener una explicación escrita de sus derechos.

Puede cancelar el envío y recibir un reembolso total dentro de 30 minutos de haber realizado el pago, a no ser que los fondos hayan sido recogidos o depositados.
Para preguntas o presentar una queja sobre ABC Company, contacte a:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov
A-40—Model Form for Combined Disclosures for Remittance Transfers Exchanged into Local Currency—Spanish (§1005.31(b)(3))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Fechas: 3 de marzo de 2014

REMITENTE:
Pat Jones
100 Anywhere Street
Anytown, Anystate 54321
222-999-1234

DESTINATARIO:
Carlos Gomez
123 Calle XXX
Ciudad de Mexico, D.F.
Mexico

PUNTO DE PAGO:
ABC Company
65 Avenida YYY
Ciudad de Mexico, D.F.
Mexico

Código de Confirmación: ABC 123 DEF 456

Fecha Disponible: 4 de marzo de 2014

Cantidad de Envío: $100.00
Cargos por Envío: $9.00
Impuestos de Envío: $23.00
Total: $132.00

Tipo de Cambio: US$1.00 = 12.27 MXN

Cantidad de Envío: 1,227.00 MXN
Cargos por Envío: 30.00 MXN
Total al Destinatario: 1,257.00 MXN

El beneficiario podría recibir menos dinero debido a las comisiones cobradas por el banco del beneficiario e impuestos extranjeros.

Usted tiene el derecho de discutir errores en su transacción. Si cree que hay un error, contáctenos dentro de 180 días al 800-123-4567 o www.abcompany.com. También puede contactarnos para obtener una explicación escrita de sus derechos.

Puede cancelar el envío y recibir un reembolso total dentro de 30 minutos de haber realizado el pago, a no ser que los fondos hayan sido recogidos o depositados.

Para preguntas o presentar una queja sobre ABC Company, contacte a:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov

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Lo que usted debe hacer si cree que hay un error o problema:

Si cree que hay un error o problema con su envío de dinero:

- Llámenos a [inserte número de teléfono]; o
- Escribanos a [inserte dirección]; o
- [Envíen un correo electrónico a [inserte dirección de correo electrónico]].

Debe contactarnos dentro de 180 días a partir de la fecha en que se le prometió que los fondos estarían disponibles al destinatario. Cuando se comunique con nosotros, por favor provea la siguiente información:

1. Su nombre y dirección [o número de teléfono];
2. El error o problema con su envío de dinero, y por qué cree que hay un error o problema;
3. El nombre del destinatario, y si lo sabe, su número de teléfono o dirección; [y]
4. El monto del envío en dólares; [y]
5. El código de confirmación o el número de la transacción.

Nosotros determinaremos si ocurrió un error dentro de 90 días después de que usted nos contacte y lo corregiremos rápidamente. Le diremos los resultados dentro de tres días hábiles después de terminar nuestra investigación. Si decidimos que no hubo un error, le enviaremos a usted una explicación escrita. Usted puede pedir copias de los documentos que usamos en nuestra investigación.

Lo que usted debe hacer si quiere cancelar un envío de dinero:

Tiene el derecho de cancelar un envío de dinero y obtener un reembolso de todo el dinero, incluyendo tarifas o gastos que usted nos pagó. Para cancelar debe contactarnos al [número de teléfono o dirección de correo electrónico] que se encuentra arriba dentro de 30 minutos de haber realizado el pago para el envío de dinero.

Cuando nos contacte, debe proveernos información que nos ayudará a identificar el envío de dinero que quiere cancelar, incluyendo la cantidad del envío y el lugar adonde fue enviado. Le reembolsaremos su dinero dentro de tres días hábiles de su petición de cancelar, a no ser que los fondos hayan sido recogidos o depositados en la cuenta del destinatario.

will be incorporated in an official commentary to this part, which will be amended periodically.

Requests for Issuance of Official Interpretations

A request for an official interpretation shall be in writing and addressed to the Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006. The request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

Scope of Interpretations

No interpretations will be issued approving financial institutions' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

Supplement I to Part 1005—Official Interpretations

Section 1005.2 Definitions

2(a) Access Device

1. Examples. The term “access device” includes debit cards, personal identification numbers (PINs), telephone transfer and telephone bill payment codes, and other means that may be used by a consumer to initiate an electronic fund transfer (EFT) to or from a consumer account. The term does not include magnetic tape or other devices used internally by a financial institution to initiate electronic transfers.

2. Checks used to capture information. The term “access device” does not include a check or draft used to capture the Magnetic Ink Character Recognition (MICR) encoding to initiate a one-time automated clearinghouse (ACH) debit. For example, if a consumer authorizes a one-time ACH debit from the consumer’s account using a blank, partially completed, or fully completed and signed check for the merchant to capture the routing, account, and serial numbers to initiate the debit, the check is not an access device. (Although the check is not an access device under Regulation E, the transaction is nonetheless covered by the regulation. See comment 3(b)(1)-1.v.)

2(b) Account

1. Consumer asset account. The term “consumer asset account” includes:
   1. Club accounts, such as vacation clubs. In many cases, however, these accounts are exempt from the regulation under §1005.3(c)(5) because all electronic transfers to or from the account have been preauthorized by the consumer and involve another account of the consumer at the same institution.
   2. A retail repurchase agreement (repo), which is a loan made to a financial institution by a consumer that is collateralized by government or government-insured securities.

   2. Certain employment-related cards not covered. The term “payroll card account” does not include a card used solely to disburse incentive-based payments (other than commissions which can represent the primary means through which a consumer is paid), such as bonuses, which are unlikely to be a consumer’s primary source of salary or other compensation. The term also does not include a card used solely to make disbursements unrelated to compensation, such as petty cash reimbursements or travel per diem payments. Similarly, a payroll card account does not include a card that is used in isolated instances to which an employer typically does not make recurring payments, such as when providing final payments or in emergency situations when other payment methods are unavailable. However, all transactions involving the transfer of funds to or from a payroll card account are covered by the regulation, even if a particular transaction involves payment of a bonus, other incentive-based payment, or reimbursement, or the transaction does not represent a transfer of wages, salary, or other employee compensation.

2. Examples of accounts not covered by Regulation E (12 CFR part 1005) include:
   i. Profit-sharing and pension accounts established under a trust agreement, which are exempt under §1005.2(b)(2).
   ii. Escrow accounts, such as those established to ensure payment of items such as real estate taxes, insurance premiums, or completion of repairs or improvements.
   iii. Accounts for accumulating funds to purchase U.S. savings bonds.

Paragraph 2(b)(2)

1. Bona fide trust agreements. The term “bona fide trust agreement” is not defined by the Act or regulation; therefore, financial institutions must look to state or other applicable law for interpretation.

2. Custodial agreements. An account held under a custodial agreement that qualifies as a trust under the Internal Revenue Code, such as an individual retirement account, is considered to be held under a trust agreement for purposes of Regulation E.

2(d) Business Day

1. Duration. A business day includes the entire 24-hour period ending at midnight, and a notice required by the regulation is effective even if given outside normal business hours. The regulation does not require, however, that a financial institution make telephone lines available on a 24-hour basis.

2. Substantially all business functions. Substantially all business functions include both the public and the back-office operations of
the institution. For example, if the offices of an institution are open on Saturdays for handling some consumer transactions (such as deposits, withdrawals, and other teller transactions), but not for performing internal functions (such as investigating account errors), then Saturday is not a business day for that institution. In this case, Saturday does not count toward the business-day standard set by the regulation for reporting lost or stolen access devices, resolving errors, etc.

3. Short hours. A financial institution may determine, at its election, whether an abbreviated day is a business day. For example, if an institution engages in substantially all business functions until noon on Saturdays instead of its usual 3 p.m. closing, it may consider Saturday a business day.

4. Telephone line. If a financial institution makes a telephone line available on Sundays for reporting the loss or theft of an access device, but performs no other business functions, Sunday is not a business day under the substantially all business functions standard.

2(h) Electronic Terminal

1. Point-of-sale (POS) payments initiated by telephone. Because the term "electronic terminal" excludes a telephone operated by a consumer, a financial institution need not provide a terminal receipt when:
   i. A consumer uses a debit card at a public telephone to pay for the call.
   ii. A consumer initiates a transfer by a means analogous in function to a telephone, such as by home banking equipment or a facsimile machine.

2. POS terminals. A POS terminal that captures data electronically, for debiting or crediting to a consumer’s asset account, is an electronic terminal for purposes of Regulation E even if no access device is used to initiate the transaction. See §1005.9 for receipt requirements.

3. Teller-operated terminals. A terminal or other computer equipment operated by an employee of a financial institution is not an electronic terminal for purposes of the regulation. However, transfers initiated at such terminals by means of a consumer’s access device (using the consumer’s PIN, for example) are EFTs and are subject to other requirements of the regulation. If an access device is used only for identification purposes or for determining the account balance, the transfers are not EFTs for purposes of the regulation.

2(k) Preauthorized Electronic Fund Transfer

1. Advance authorization. A preauthorized electronic fund transfer under Regulation E is one authorized by the consumer in advance of a transfer that will take place on a recurring basis, at substantially regular intervals, and will require no further action by the consumer to initiate the transfer. In a bill-payment system, for example, if the consumer authorizes a financial institution to make monthly payments to a payee by means of EFTs, and the payments take place without further action by the consumer, the payments are preauthorized EFTs. In contrast, if the consumer must take action each month to initiate a payment (such as by entering instructions on a touch-tone telephone or home computer), the payments are not preauthorized EFTs.

2(m) Unauthorized Electronic Fund Transfer

1. Transfer by institution’s employee. A consumer has no liability for erroneous or fraudulent transfers initiated by an employee of a financial institution.

2. Authority. If a consumer furnishes an access device and grants authority to make transfers to a person (such as a family member or co-worker) who exceeds the authority given, the consumer is fully liable for the transfers unless the consumer has notified the financial institution that transfers by that person are no longer authorized.

3. Access device obtained through robbery or fraud. An unauthorized EFT includes a transfer initiated by a person who obtained the access device from the consumer through fraud or robbery.

4. Forced initiation. An EFT at an ATM is an unauthorized transfer if the consumer has been induced by force to initiate the transfer.

5. Reversal of direct deposits. The reversal of a direct deposit made in error is not an unauthorized EFT when it involves:
   i. A credit made to the wrong consumer’s account;
   ii. A duplicate credit made to a consumer’s account; or
   iii. A credit in the wrong amount (for example, when the amount credited to the consumer’s account differs from the amount in the transmittal instructions).

SECTION 1005.3 COVERAGE

3(a) General

1. Accounts covered. The requirements of the regulation apply only to an account for which an agreement for EFT services to or from the account has been entered into between:
   i. The consumer and the financial institution (including an account for which an access device has been issued to the consumer, for example);
   ii. The consumer and a third party (for preauthorized debits or credits, for example), when the account-holding institution has received notice of the agreement and the fund transfers have begun.

2. Automated clearing house (ACH) membership. The fact that membership in an ACH
requires a financial institution to accept EFTs to accounts at the institution does not make every account of that institution subject to the regulation.

3. Foreign applicability. Regulation E applies to all persons (including branches and other offices of foreign banks located in the United States) that offer EFT services to residents of any state, including resident aliens. It covers any account located in the United States through which EFTs are offered to a resident of a state. This is the case whether or not a particular transfer takes place in the United States and whether or not the financial institution is chartered in the United States or a foreign country. The regulation does not apply to a foreign branch of a U.S. bank unless the EFT services are offered in connection with an account in a state as defined in §1005.2(l).

3(b) Electronic Fund Transfer

3(b)(1) Definition

1. Fund transfers covered. The term “electronic fund transfer” includes:
   i. A deposit made at an ATM or other electronic terminal (including a deposit in cash or by check) provided a specific agreement exists between the financial institution and the consumer for EFTs to or from the account to which the deposit is made.
   ii. A transfer sent via ACH. For example, social security benefits under the U.S. Treasury’s direct-deposit program are covered, even if the listing of payees and payment amounts reaches the account-holding institution by means of a computer printout from a correspondent bank.
   iii. A preauthorized transfer credited or debited to an account in accordance with instructions contained on magnetic tape, even if the financial institution holding the account sends or receives a composite check.
   iv. A transfer from the consumer’s account resulting from a debit-card transaction at a merchant location, even if no electronic terminal is involved at the time of the transaction, if the consumer’s asset account is subsequently debited for the amount of the transfer.
   v. A transfer via ACH where a consumer has provided a check to enable the merchant or other payee to capture the routing, account, and serial numbers to initiate the transfer, whether the check is blank, partially completed, or fully completed and signed; whether the check is presented at POS or is mailed to a merchant or other payee or lockbox and later converted to an EFT; or whether the check is retained by the consumer, the merchant or other payee, or the payee’s financial institution.
   vi. A payment made by a bill payer under a bill-payment service available to a consumer via computer or other electronic means, unless the terms of the bill-payment service explicitly state that all payments, or all payments to a particular payee or payees, will be solely by check, draft, or similar paper instrument drawn on the consumer’s account, and the payee or payees that will be paid in this manner are identified to the consumer.

2. Fund transfers not covered. The term “electronic fund transfer” does not include:
   i. A payment that does not debit or credit a consumer asset account, such as a payroll allotment to a creditor to repay a credit extension (which is deducted from salary).
   ii. A payment made in currency by a consumer to another person at an electronic terminal.
   iii. A preauthorized check drawn by the financial institution on the consumer’s account (such as an interest or other recurring payment to the consumer or another party), even if the check is computer-generated.
   iv. Transactions arising from the electronic collection, presentment, or return of checks through the check collection system, such as through transmission of electronic check images.

3(b)(2) Electronic Fund Transfer Using Information From a Check

1. Notice at POS not furnished due to inadvertent error. If the copy of the notice under section 1005.3(b)(2)(ii) for electronic check conversion (ECK) transactions is not provided to the consumer at POS because of a bona fide unintentional error, such as when a terminal printing mechanism jams, no violation results if the payee maintains procedures reasonably adapted to avoid such occurrences.

2. Authorization to process a transaction as an EFT or as a check. In order to process a transaction as an EFT, or alternatively as a check, the payee must obtain the consumer’s authorization to do so. A payee may, at its option, specify the circumstances under which a check may not be converted to an EFT. See model clauses in appendix A-6.

3. Notice for each transfer. Generally, a notice to authorize an electronic check conversion transaction must be provided for each transaction. For example, a consumer must receive a notice that the transaction will be processed as an EFT for each transaction at POS or each time a consumer mails a check in an accounts receivable (ARC) transaction to pay a bill, such as a utility bill, if the payee intends to convert a check received as payment. Similarly, the consumer must receive notice if the payee intends to collect a service fee for insufficient or uncollected funds via an EFT for each transaction whether at POS or if the consumer mails a check to pay a bill. The notice about when funds may be debited from a consumer’s account and the non-return of consumer
checks by the consumer's financial institution must also be provided for each transaction. However, if in an ARC transaction, a payee provides a coupon book to a consumer, for example, for mortgage loan payments, and the payment dates and amounts are set out in the coupon book, the payee may provide a single notice on the coupon book stating all of the required disclosures under paragraph (b)(2) of this section in order to obtain authorization for each conversion of a check and any debits via EFT to the consumer's account to collect any service fees imposed by the payee for insufficient or uncollected funds in the consumer's account. The notice must be placed on a conspicuous location of the coupon book that a consumer can retain—for example, on the first page, or inside the front cover.

4. **Multiple payments/multiple consumers.** If a merchant or other payee will use information from a consumer's check to initiate an EFT from the consumer's account, notice to a consumer listed on the billing account that a check provided as payment during a single billing cycle or after receiving an invoice or statement will be processed as a one-time EFT or as a check transaction constitutes notice for all checks provided in payment for the billing cycle or the invoice for which notice has been provided, whether the check(s) is submitted by the consumer or someone else. The notice applies to all checks provided in payment for the billing cycle or invoice until the provision of notice on or with the next invoice or statement. Thus, if a merchant or other payee receives a check as payment for the consumer listed on the billing account after providing notice that the check will be processed as a one-time EFT, the authorization from that consumer constitutes authorization to convert any other checks provided for that invoice or statement. Other notices required under this paragraph (b)(2) (for example, to collect a service fee for insufficient or uncollected funds via an EFT) provided to the consumer listed on the billing account also constitutes notice to any other consumer who may provide a check for the billing cycle or invoice.

5. **Additional disclosures about ECK transactions at POS.** When a payee initiates an EFT at POS using information from the consumer's check, and returns the check to the consumer at POS, the payee need not provide a notice to the consumer that the check will not be returned by the consumer's financial institution.

### 3(b)(3) Collection of Returned Item Fees via Electronic Fund Transfer

1. **Fees imposed by account-holding institution.** The requirement to obtain a consumer's authorization to collect a fee via EFT for the return of an EFT or check unpaid applies only to the person that intends to initiate an EFT to collect the returned item fee from the consumer's account. The authorization requirement does not apply to any fees assessed by the consumer's account-holding financial institution when it receives an EFT at POS in a payment for amounts owed (or makes an in-person payment at a biller's physical location, such as when a consumer makes a loan payment at a bank branch or places a payment in a drop box), a person seeking to electronically collect a fee for items returned unpaid must obtain the consumer's authorization to collect the fee in this manner. A consumer authorizes a person to electronically collect a returned item fee when the consumer receives notice, typically on an invoice or statement, that the person may collect the fee through an EFT to the consumer's account, and the consumer goes forward with the underlying transaction by providing payment. The notice must also state the dollar amount of the fee. However, an explanation of how that fee will be determined may be provided in place of the dollar amount of the fee if the fee may vary due to the amount of the transaction or due to other factors, such as the number of days the underlying transaction is left outstanding. For example, if a state law permits a maximum fee of $30 or 10% of the underlying transaction, whichever is greater, the person collecting the fee may explain how the fee is determined, rather than state a specific dollar amount for the fee.

2. **Accounts receivable transactions.** In an ARC transaction where a consumer provides a coupon book to a consumer in a payment for amounts owed (or makes an in-person payment at a biller's physical location, such as when a consumer makes a loan payment at a bank branch or places a payment in a drop box), a person seeking to electronically collect a fee for items returned unpaid must obtain the consumer's authorization to collect the fee in this manner. A consumer authorizes a person to electronically collect a returned item fee when the consumer receives notice, typically on an invoice or statement, that the person may collect the fee through an EFT to the consumer's account, and the consumer goes forward with the underlying transaction by providing payment. The notice must also state the dollar amount of the fee. However, an explanation of how that fee will be determined may be provided in place of the dollar amount of the fee if the fee may vary due to the amount of the transaction or due to other factors, such as the number of days the underlying transaction is left outstanding. For example, if a state law permits a maximum fee of $30 or 10% of the underlying transaction, whichever is greater, the person collecting the fee may explain how the fee is determined, rather than state a specific dollar amount for the fee.

3. **Disclosure of dollar amount of fee for POS transactions.** The notice provided to the consumer in connection with a POS transaction under §1005.3(b)(3)(ii) must state the amount of the fee for a returned item if the dollar amount of the fee can be calculated at the time the notice is provided or mailed. For example, if notice is provided to the consumer at the time of the transaction, the applicable state law sets a maximum fee that may be collected for a returned item based on the amount of the underlying transaction, whichever is greater; the person collecting the fee may provide a description of how the fee will be determined on both the posted notice and on the notice provided at the time of the transaction. However, if the person collecting the fee elects to send the consumer notice after the person has initiated an EFT,
§ 1005.3(b)(3) through third parties, such as merchants.

1. Re-presented checks. The electronic representation of a returned check is not covered by Regulation E because the transaction originated by check. Regulation E does apply, however, to any fee debited via an EFT from a consumer’s account by the payee because the check was returned for insufficient uncollected funds. The person debiting the fee electronically must obtain the consumer’s authorization.

2. Check used to capture information for a one-time EFT. See comment 3(b)(1)-v.

3(c)(2) Check Guarantee or Authorization

1. Memo posting. Under a check guarantee or check authorization service, debiting of the consumer’s account occurs when the check or draft is presented for payment. These services are exempt from coverage, even when a temporary hold on the account is memo-posted electronically at the time of authorization.

3(c)(3) Wire or Other Similar Transfers

1. Fedwire and ACH. If a financial institution makes a fund transfer to a consumer’s account after receiving funds through Fedwire or a similar network, the transfer by ACH is covered by the regulation even though the Fedwire or network transfer is exempt.

2. Article 4A. Financial institutions that offer telephone-initiated Fedwire payments are subject to the requirements of UCC section 4A–202, which encourages verification of Fedwire payment orders pursuant to a security procedure established by agreement between the consumer and the receiving bank. These transfers are not subject to Regulation B and the agreement is not considered a telephonic bill-payment or other prearranged plan subject to Regulation E. Regulation J of the Board of Governors of the Federal Reserve System (12 CFR part 210) specifies the rules applicable to funds handled by Federal Reserve Banks. To ensure that the rules for all fund transfers through Fedwire are consistent, the Board of Governors used its preemptive authority under UCC section 4A–107 to determine that subpart B of the Board’s Regulation J, including the provisions of Article 4A, applies to all fund transfers through Fedwire, even if a portion of the fund transfer is governed by the EFTA. The portion of the fund transfer that is governed by the EFTA is not governed by subpart B of the Board’s Regulation J.

3. Similar fund transfer systems. Fund transfer systems that are similar to Fedwire include the Clearing House Interbank Payments System (CHIPS), Society for Worldwide Interbank Financial Telecommunication (SWIFT), Telex, and transfers made on the books of correspondent banks.

3(c)(4) Securities and Commodities Transfers

1. Coverage. The securities exemption applies to securities and commodities that may be sold by a registered broker-dealer or futures commission merchant, even when the security or commodity itself is not regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

2. Example of exempt transfer. The exemption applies to a transfer involving a transfer initiated by a telephone order to a stockbroker to buy or sell securities or to exercise a margin call.

3. Examples of nonexempt transfers. The exemption does not apply to a transfer involving:
   i. A debit card or other access device that accesses a securities or commodities account such as a money market mutual fund and that the consumer uses for purchasing goods or services or for obtaining cash.
   ii. A payment of interest or dividends into the consumer’s account (for example, from a brokerage firm or from a Federal Reserve Bank for government securities).

3(c)(5) Automatic Transfers by Account-Holding Institution

1. Automatic transfers exempted. The exemption applies to:
   i. Electronic debits or credits to consumer accounts for check charges, stop-payment charges, non-sufficient funds (NSF) charges, overdraft charges, provisional credits, error adjustments, and similar items that are initiated automatically on the occurrence of certain events.
   ii. Debits to consumer accounts for group insurance available only through the financial institution and payable only by means of an aggregate payment from the institution to the insurer.
   iii. EFTs between a thrift institution and its paired commercial bank in the state of Rhode Island, which are deemed under state law to be intra-institutional.
   iv. Automatic transfers between a consumer’s accounts within the same financial institution, even if the account holders on the two accounts are not identical.
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2. Automatic transfers not exempted. Transfers between accounts of the consumer at affiliated institutions (such as between a bank and its subsidiary or within a holding company) are not intra-institutional transfers, and thus do not qualify for the exemption.

3(c)(6) Telephone-Initiated Transfers

1. Written plan or agreement. A transfer that the consumer initiates by telephone is covered by Regulation E if the transfer is made under a written plan or agreement between the consumer and the financial institution making the transfer. A written statement available to the public or to account holders that describes a service allowing a consumer to initiate transfers by telephone constitutes a plan; for example, a brochure, or material included with periodic statements. The following, however, do not by themselves constitute a written plan or agreement:
   i. A hold-harmless agreement on a signature card that protects the institution if the consumer requests a transfer.
   ii. A legend on a signature card, periodic statement, or passbook that limits the number of telephone-initiated transfers the consumer can make from a savings account because of reserve requirements under Regulation D of the Board of Governors of the Federal Reserve System (12 CFR part 204).
   iii. An agreement permitting the consumer to approve by telephone the rollover of funds at the maturity of an instrument.

2. Examples of covered transfers. When a written plan or agreement has been entered into, a transfer initiated by a telephone call from a consumer is covered even though:
   i. An employee of the financial institution completes the transfer manually (for example, by means of a debit memo or deposit slip).
   ii. The consumer is required to make a separate request for each transfer.
   iii. The consumer uses the plan infrequently.
   iv. The consumer initiates the transfer via a facsimile machine.
   v. The consumer initiates the transfer using a financial institution’s audio-response or voice-response telephone system.

3(c)(7) Small Institutions

1. Coverage. This exemption is limited to preauthorized transfers; institutions that offer other EFTs must comply with the applicable sections of the regulation as to such services. The preauthorized transfers remain subject to sections 913, 916, and 917 of the Act and §1005.16(e), and are therefore exempt from UCC Article 4A.

SECTION 1005.4 GENERAL DISCLOSURE REQUIREMENTS; JOINTLY OFFERED SERVICES

4(a) Form of Disclosures

1. General. Although no particular rules govern type size, number of pages, or the relative conspicuousness of various terms, the disclosures must be in a clear and readily understandable written form that the consumer may retain. Numbers or codes are considered readily understandable if explained elsewhere on the disclosure form.

2. Foreign language disclosures. Disclosures may be made in languages other than English, provided they are available in English upon request.

SECTION 1005.5 ISSUANCE OF ACCESS DEVICES

1. Coverage. The provisions of this section limit the circumstances under which a financial institution may issue an access device to a consumer. Making an additional account accessible through an existing access device is equivalent to issuing an access device and is subject to the limitations of this section.

5(a) Solicited Issuance

Paragraph 5(a)(1)

1. Joint account. For a joint account, a financial institution may issue an access device to each account holder if the requesting holder specifically authorizes the issuance.

2. Permissible forms of request. The request for an access device may be written or oral (for example, in response to a telephone solicitation by a card issuer).

Paragraph 5(a)(2)

1. One-for-one rule. In issuing a renewal or substitute access device, only one renewal or substitute device may replace a previously issued device. For example, only one new card and PIN may replace a card and PIN previously issued. A financial institution may provide additional devices at the time it issues the renewal or substitute access device, however, provided the institution complies with §1005.5(b). See comment 5(b)–4. If the replacement device or the additional device permits either fewer or additional types of electronic fund transfer services, a change-in-terms notice or new disclosures are required.

2. Renewal or substitution by a successor institution. A successor institution is an entity that replaces the original financial institution (for example, following a corporate merger or acquisition) or that acquires accounts or assumes the operation of an EFT system.

5(b) Unsolicited Issuance

1. Compliance. A financial institution may issue an unsolicited access device (such as the combination of a debit card and PIN) if
the institution’s ATM system has been programmed not to accept the access device until after the consumer requests and the institution validates the device. Merely instructing a consumer not to use an unsolicited debit card and PIN until after the institution verifies the consumer’s identity does not comply with the regulation.

2. PINs. A financial institution may impose no liability on a consumer for unauthorized transfers involving an unsolicited access device until the device becomes an “accepted access device” under the regulation. A card and PIN combination may be treated as an accepted access device once the consumer has used it to make a transfer.

3. Functions of PIN. If an institution issues a PIN at the consumer’s request, the issuance may constitute both a way of validating the debit card and the means to identify the consumer (required as a condition of imposing liability for unauthorized transfers).

4. Verification of identity. To verify the consumer’s identity, a financial institution may use any reasonable means, such as a photograph, fingerprint, personal visit, signature comparison, or personal information about the consumer. However, even if reasonable means were used, if an institution fails to verify correctly the consumer’s identity and an imposter succeeds in having the device validated, the consumer is not liable for any unauthorized transfers from the account.

5. Additional access devices in a renewal or substitution. A financial institution may issue more than one access device in connection with the renewal or substitution of a previously issued accepted access device, provided that any additional access device (beyond the device replacing the accepted access device) is not validated at the time it is issued, and the institution complies with the other requirements of §1005.5(b). The institution may, if it chooses, set up the validation procedure such that both the device replacing the previously issued device and the additional device are not validated at the time they are issued, and validation will apply to both devices. If the institution sets up the validation procedure in this way, the institution should provide a clear and readily understandable disclosure to the consumer that both devices are unvalidated and that validation will apply to both devices.

SECTION 1005.6 LIABILITY OF CONSUMER FOR UNAUTHORIZED TRANSFERS

6(a) Conditions for Liability

1. Means of identification. A financial institution may use various means for identifying the consumer to whom the access device is issued, including but not limited to:

   1. Electronic or mechanical confirmation (such as a PIN).

   ii. Comparison of the consumer’s signature, fingerprint, or photograph.

2. Multiple users. When more than one access device is issued for an account, the financial institution may, but need not, provide a separate means to identify each user of the account.

6(b) Limitations on Amount of Liability

1. Application of liability provisions. There are three possible tiers of consumer liability for unauthorized EFTs depending on the situation. A consumer may be liable for: (1) up to $50; (2) up to $500; or (3) an unlimited amount depending on when the unauthorized EFT occurs. More than one tier may apply to a given situation because each corresponds to a different (sometimes overlapping) time period or set of conditions.

2. Consumer negligence. Negligence by the consumer cannot be used as the basis for imposing greater liability than is permissible under Regulation E. Thus, consumer behavior that may constitute negligence under state law, such as writing the PIN on a debit card or on a piece of paper kept with the card, does not affect the consumer’s liability for unauthorized transfers. (However, refer to comment 2(m)–2 regarding termination of the authority of given by the consumer to another person.)

3. Limits on liability. The extent of the consumer’s liability is determined solely by the consumer’s promptness in reporting the loss or theft of an access device. Similarly, no agreement between the consumer and an institution may impose greater liability on the consumer for an unauthorized transfer than the limits provided in Regulation E.

6(b)(1) Timely Notice Given

1. $50 limit applies. The basic liability limit is $50. For example, the consumer’s card is lost or stolen on Monday and the consumer learns of the loss or theft on Wednesday. If the consumer notifies the financial institution within two business days of learning of the loss or theft (by midnight Friday), the consumer’s liability is limited to $50 or the amount of the unauthorized transfers that occurred before notification, whichever is less.

2. Knowledge of loss or theft of access device. The fact that a consumer has received a periodic statement that reflects unauthorized transfers may be a factor in determining whether the consumer had knowledge of the loss or theft, but cannot be deemed to represent conclusive evidence that the consumer had such knowledge.

3. Two business day rule. The two business day period does not include the day the consumer learns of the loss or theft or any day
that is not a business day. The rule is calculated based on two 24-hour periods, without regard to the financial institution’s business hours or the time of day that the consumer learns of the loss or theft. For example, a consumer learns of the loss or theft at 6 p.m. on Friday. Assuming that Saturday is a business day and Sunday is not, the two business day period begins on Saturday and expires at 11:59 p.m. on Monday, not at the end of the financial institution’s business day on Monday.

6(b)(2) Timely Notice Not Given

1. $500 limit applies. The second tier of liability is $500. For example, the consumer’s card is stolen on Monday and the consumer learns of the theft that same day. The consumer reports the theft on Friday. The $500 limit applies because the consumer failed to notify the financial institution within two business days of learning of the theft (which would have been by midnight Wednesday). How much the consumer is actually liable for, however, depends on when the unauthorized transfers take place. In this example, assume a $100 unauthorized transfer was made on Tuesday and a $600 unauthorized transfer on Thursday. Because the consumer is liable for the amount of the loss that occurs within the first two business days (but no more than $50), plus the amount of the unauthorized transfers that occurs after the first two business days and before the consumer gives notice, the consumer’s total liability is $500 ($50 of the $100 transfer plus $450 of the $600 transfer, in this example). But if $600 was taken on Tuesday and $100 on Thursday, the consumer’s maximum liability would be $510 ($50 of the $600 plus $100).

6(b)(3) Periodic Statement; Timely Notice Not Given

1. Unlimited liability applies. The standard of unlimited liability applies if unauthorized transfers appear on a periodic statement, and may apply in conjunction with the first two tiers of liability. If a periodic statement shows an unauthorized transfer made with a lost or stolen debit card, the consumer must notify the financial institution within 60 calendar days after the periodic statement was sent; otherwise, the consumer faces unlimited liability for all unauthorized transfers made after the 60-day period. The consumer’s liability for unauthorized transfers before the statement is sent, and up to 60 days following, is determined based on the first two tiers of liability: up to $50 if the consumer notifies the financial institution within two business days of learning of the loss or theft of the card and up to $500 if the consumer notifies the institution after two business days of learning of the loss or theft.

2. Transfers not involving access device. The first two tiers of liability do not apply to unauthorized transfers from a consumer’s account made without an access device. If, however, the consumer fails to report such unauthorized transfers within 60 days of the financial institution’s transmittal of the periodic statement, the consumer may be liable for any transfers occurring after the close of the 60 days and before notice is given to the financial institution. For example, a consumer’s account is electronically debited for $200 without the consumer’s authorization and by means other than the consumer’s access device. If the consumer notifies the institution within 60 days of the transmittal of the periodic statement that shows the unauthorized transfer, the consumer has no liability. However, if in addition to the $200, the consumer’s account is debited for a $400 unauthorized transfer on the 61st day and the consumer fails to notify the institution of the unauthorized transfer until the 62nd day, the consumer may be liable for the full $600.

6(b)(4) Extension of Time Limits

1. Extenuating circumstances. Examples of circumstances that require extension of the notification periods under this section include the consumer’s extended travel or hospitalization.

6(b)(5) Notice to Financial Institution

1. Receipt of notice. A financial institution is considered to have received notice for purposes of limiting the consumer’s liability if notice is given in a reasonable manner, even if the consumer notifies the institution but uses an address or telephone number other than the one specified by the institution.

2. Notice by third party. Notice to a financial institution by a person acting on the consumer’s behalf is considered valid under this section. For example, if a consumer is hospitalized and unable to report the loss or theft of an access device, notice is considered given when someone acting on the consumer’s behalf notifies the bank of the loss or theft. A financial institution may require appropriate documentation from the person representing the consumer to establish that the person is acting on the consumer’s behalf.

3. Content of notice. Notice to a financial institution is considered given when a consumer takes reasonable steps to provide the institution with the pertinent account information. Even when the consumer is unable to provide the account number or the card number in reporting a lost or stolen access device or an unauthorized transfer, the notice effectively limits the consumer’s liability if the consumer otherwise identifies sufficiently the account in question. For example, the consumer may identify the account by the name on the account and the type of account in question.
SECTION 1005.7 INITIAL DISCLOSURES

7(a) Timing of Disclosures

1. Early disclosures. Disclosures given by a financial institution earlier than the regulation requires (for example, when the consumer opens a checking account) need not be repeated when the consumer later enters into an agreement with a third party to initiate preauthorized transfers to or from the consumer’s account, unless the terms and conditions differ from those that the institution previously disclosed. This interpretation also applies to any notice provided about one-time EFTs from a consumer’s account initiated using information from the consumer’s check. On the other hand, if an agreement for EFT services to be provided by an account-holding institution is directly between the consumer and the account-holding institution, disclosures must be given in close proximity to the event requiring disclosure, for example, when the consumer contracts for a new service.

2. Lack of advance notice of a transfer. Where a consumer authorizes a third party to debit or credit the consumer’s account, an account-holding institution that has not received advance notice of the transfer or transfers must provide the required disclosures as soon as reasonably possible after the first debit or credit is made, unless the institution has previously given the disclosures.

3. Addition of new accounts. If a consumer opens a new account permitting EFTs at a financial institution, and the consumer already has received Regulation E disclosures for another account at that institution, the institution need only disclose terms and conditions that differ from those previously given.

4. Addition of service in interchange systems. If a financial institution joins an interchange or shared network system (which provides access to terminals operated by other institutions), disclosures are required for additional EFT services not previously available to consumers if the terms and conditions differ from those previously disclosed.

5. Disclosures covering all EFT services offered. An institution may provide disclosures covering all EFT services that it offers, even if some consumers have not arranged to use all services.

7(b) Content of Disclosures

7(b)(1) Liability of Consumer

1. No liability imposed by financial institution. If a financial institution chooses to impose zero liability for unauthorized EFTs, it need not provide the liability disclosures. If the institution later decides to impose liability, however, it must first provide the disclosures.

2. Preauthorized transfers. If the only EFTs from an account are preauthorized transfers, liability could arise if the consumer fails to report unauthorized transfers reflected on a periodic statement. To impose such liability on the consumer, the institution must have disclosed the potential liability and the telephone number and address for reporting unauthorized transfers.

3. Additional information. At the institution’s option, the summary of the consumer’s liability may include advice on promptly reporting unauthorized transfers or the loss or theft of the access device.

7(b)(2) Telephone Number and Address

1. Disclosure of telephone numbers. An institution may use the same or different telephone numbers in the disclosures for the purpose of:

   i. Reporting the loss or theft of an access device or possible unauthorized transfers;

   ii. Inquiring about the receipt of a preauthorized credit;

   iii. Stopping payment of a preauthorized debit;


2. Location of telephone number. The telephone number need not be incorporated into the text of the disclosure; for example, the institution may instead insert a reference to a telephone number that is readily available to the consumer, such as “Call your branch office. The number is shown on your periodic statement.” However, an institution must provide a specific telephone number and address, on or with the disclosure statement, for reporting a lost or stolen access device or a possible unauthorized transfer.

7(b)(4) Types of Transfers: Limitations

1. Security limitations. Information about limitations on the frequency and dollar amount of transfers generally must be disclosed in detail, even if related to security aspects of the system. If the confidentiality of certain details is essential to the security of an account or system, these details may be withheld (but the fact that limitations exist must still be disclosed). For example, an institution limits cash ATM withdrawals to $100 per day. The institution may disclose that daily withdrawal limitations apply and need not disclose that the limitations may not always be in force (such as during periods when its ATMs are off-line).

2. Restrictions on certain deposit accounts. A limitation on account activity that restricts the consumer’s ability to make EFTs must be disclosed even if the restriction also applies to transfers made by non-electronic means. For example, Regulation D of the Board of Governors of the Federal Reserve System (12 CFR part 204) restricts the number of payments to third parties that may be made from a money market deposit account;
an institution that does not execute fund transfers in excess of those limits must disclose the restriction as a limitation on the frequency of EFTs.

3. Preauthorized transfers. Financial institutions are not required to list preauthorized transfers among the types of transfers that a consumer can make.

4. One-time EFTs initiated using information from a check. Financial institutions must disclose the fact that one-time EFTs initiated using information from a consumer’s check are among the types of transfers that a consumer can make. See appendix A–2.

7(b)(5) Fees

1. Disclosure of EFT fees. An institution is required to disclose all fees for EFTs or the right to make them. Others fees (for example, minimum-balance fees, stop-payment fees, or account overdrafts) may, but need not, be disclosed. See Regulation DD, 12 CFR part 229. An institution is not required to disclose fees for inquiries made at an ATM since no transfer of funds is involved.

2. Fees also applicable to non-EFT. A per-item fee for EFTs must be disclosed even if the same fee is imposed on non-electronic transfers. If a per-item fee is imposed only under certain conditions, such as when the transactions in the cycle exceed a certain number, those conditions must be disclosed. Itemization of the various fees may be provided on the disclosure statement or on an accompanying document that is referenced in the statement.

3. Interchange system fees. Fees paid by the account-holding institution to the operator of a shared or interchange ATM system need not be disclosed, unless they are imposed on the consumer by the account-holding institution. Fees for use of an ATM that are debited directly from the consumer’s account by an institution other than the account-holding institution (for example, fees included in the transfer amount) need not be disclosed. See §1005.7(b)(11) for the general notice requirement regarding fees that may be imposed by ATM operators and by a network used to complete the transfer.

7(b)(9) Confidentiality

1. Information provided to third parties. An institution must describe the circumstances under which any information relating to an account to or from which EFTs are permitted will be made available to third parties, not just information concerning those EFTs. The term “third parties” includes affiliates such as other subsidiaries of the same holding company.

7(b)(10) Error Resolution

1. Substantially similar. The error resolution notice must be substantially similar to the model form in appendix A of part 1005. An institution may use different wording so long as the substance of the notice remains the same, may delete inapplicable provisions (for example, the requirement for written confirmation of an oral notification), and may substitute substantive state law requirements affording greater consumer protection than Regulation E.

2. Extended time-period for certain transactions. To take advantage of the longer time periods for resolving errors under §1005.11(c)(3) (for new accounts as defined in Regulation CC of the Board of Governors of the Federal Reserve System (12 CFR part 229), transfers initiated outside the United States, or transfers resulting from POS debit-card transactions), a financial institution must have disclosed these longer time periods. Similarly, an institution that relies on the exception from provisional crediting in §1005.11(c)(2) for accounts subject to Regulation T of the Board of Governors of the Federal Reserve System (12 CFR part 220) must have disclosed accordingly.

7(c) Addition of Electronic Fund Transfer Services

1. Addition of electronic check conversion services. One-time EFTs initiated using information from a consumer’s check are a new type of transfer requiring new disclosures, as applicable. See appendix A–2.

SECTION 1005.8 CHANGE-IN-TERMS NOTICE; ERROR RESOLUTION NOTICE

8(a) Change-in-Terms Notice

1. Form of notice. No specific form or wording is required for a change-in-terms notice. The notice may appear on a periodic statement, or may be given by sending a copy of a revised disclosure statement, provided attention is directed to the change (for example, in a cover letter referencing the changed term).

2. Changes not requiring notice. The following changes do not require disclosure:

i. Closing some of an institution’s ATMs;

ii. Cancellation of an access device.

3. Limitations on transfers. When the initial disclosures omit details about limitations because secrecy is essential to the security of the account or system, a subsequent increase in those limitations need not be disclosed if secrecy is still essential. If, however, an institution had no limits in place when the initial disclosures were given and now wishes to impose limits for the first time, it must disclose at least the fact that limits have been adopted. See also §1005.7(b)(4) and the related commentary.

4. Change in telephone number or address. When a financial institution changes the telephone number or address used for reporting possible unauthorized transfers, a change-in-terms notice is required only if the institution will impose liability on the
consumer for unauthorized transfers under §1005.6. See also §1005.6(a) and the related commentary.

§1005.6. Change between annual and periodic notice. If an institution switches from an annual to a periodic notice, or vice versa, the first notice under the new method must be sent no later than 12 months after the last notice sent under the old method.

2. Exception for new accounts. For new accounts, disclosure of the longer error resolution time periods under §1005.11(c)(3) is not required in the annual error resolution notice or in the notice that may be provided with each periodic statement as an alternative to the annual notice.

SECTION 1005.9 RECEIPTS AT ELECTRONIC TERMINALS; PERIODIC STATEMENTS

9(a) Receipts at Electronic Terminals

1. Receipts furnished only on request. The regulation requires that a receipt be “made available.” A financial institution may program its electronic terminals to provide a receipt only to consumers who elect to receive one.

2. Third party providing receipt. An account-holding institution may make terminal receipts available through third parties such as merchants or other financial institutions.

3. Inclusion of promotional material. A financial institution may include promotional material on receipts if the required information is set forth clearly (for example, by separating it from the promotional material). In addition, a consumer may not be required to surrender the receipt or that portion containing the required disclosures in order to take advantage of a promotion.

4. Transfer not completed. The receipt requirement does not apply to a transfer that is initiated but not completed (for example, if the ATM is out of currency or the consumer decides not to complete the transfer).

5. Receipts not furnished due to inadvertent error. If a receipt is not provided to the consumer because of a bona fide unintentional error, such as when a terminal runs out of paper or the mechanism jams, no violation results if the financial institution maintains procedures reasonably adapted to avoid such occurrences.

6. Multiple transfers. If the consumer makes multiple transfers at the same time, the financial institution may document them on a single or on separate receipts.

9(a)(1) Amount

1. Disclosure of transaction fee. The required display of a fee amount on or at the terminal may be accomplished by displaying the fee on a sign at the terminal or on the terminal screen for a reasonable duration. Displaying the fee on a screen provides adequate notice, as long as a consumer is given the option to cancel the transaction after receiving notice of a fee. See §1005.16 for the notice requirements applicable to ATM operators that impose a fee for providing EFT services.

2. Relationship between §1005.9(a)(1) and §1005.16. The requirements of §§1005.9(a)(1) and 1005.16 are similar but not identical.

i. Section 1005.9(a)(1) requires that if the amount of the transfer as shown on the receipt will include the fee, then the fee must be disclosed either on a sign on or at the terminal, or on the terminal screen. Section 1005.16 requires disclosure both on a sign or at the terminal (in a prominent and conspicuous location) and on the terminal screen. Section 1005.16 permits disclosure on a paper notice as an alternative to the on-screen disclosure.

ii. The disclosure of the fee on the receipt under §1005.9(a)(1) cannot be used to comply with the alternative paper disclosure procedure under §1005.16, if the receipt is provided at the completion of the transaction because, pursuant to the statute, the paper notice must be provided before the consumer is committed to paying the fee.

iii. Section 1005.9(a)(1) applies to any type of electronic terminal as defined in Regulation E (for example, to POS terminals as well as to ATMs), while §1005.16 applies only to ATMs.

9(a)(2) Date

1. Calendar date. The receipt must disclose the calendar date on which the consumer uses the electronic terminal. An accounting or business date may be disclosed in addition if the dates are clearly distinguished.

9(a)(3) Type

1. Identifying transfer and account. Examples identifying the type of transfer and the type of the consumer’s account include “withdrawal from checking,” “transfer from savings to checking,” or “payment from savings.”

2. Exception. Identification of an account is not required when the consumer can access only one asset account at a particular time or terminal, even if the access device can normally be used to access more than one account. For example, the consumer may be able to access only one particular account at terminals not operated by the account-holding institution, or may be able to access only one particular account when the terminal is off-line. The exception is available even if, in addition to accessing one asset account, the consumer also can access a credit line.

3. Access to multiple accounts. If the consumer can use an access device to make transfers to or from different accounts of the same type, the terminal receipt must specify...
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which account was accessed, such as “withdrawal from checking I” or “withdrawal from checking II.” If only one account besides the primary checking account can be debited, the receipt can identify the account as “withdrawal from other account.”

4. Generic descriptions. Generic descriptions may be used for accounts that are similar in function, such as share draft or NOW accounts and checking accounts. In a shared system, for example, when a credit union member initiates transfers to or from a share draft account at a terminal owned or operated by a bank, the receipt may identify a withdrawal from the account as a “withdrawal from other account.”

5. Point-of-sale transactions. There is no prescribed terminology for identifying a transfer at a merchant’s POS terminal. A transfer may be identified, for example, as a purchase, a sale of goods or services, or a payment to a third party. When a consumer obtains cash from a POS terminal in addition to purchasing goods, or obtains cash only, the documentation need not differentiate the transaction from one involving the purchase of goods.

9(a)(5) Terminal Location

1. Options for identifying terminal. The institution may provide either:

   i. The city, state or foreign country, and the information in §1005.9(a)(5) (i), (ii), or (iii), or

   ii. A number or a code identifying the terminal. If the institution chooses the second option, the code or terminal number identifying the terminal where the transfer is initiated may be given as part of a transaction code.

2. Omission of city name. The city may be omitted if the generally accepted name (such as a branch name) contains the city name.

3. Omission of a state. A state may be omitted from the location information on the receipt if:

   i. All the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in that state, or

   ii. All transfers occur at terminals located within 50 miles of the financial institution’s main office.

4. Omission of a city and state. A city and state may be omitted if all the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in the same city.

Paragraph 9(a)(5)(i)

1. Street address. The address should include number and street (or intersection); the number (or intersecting street) may be omitted if the street alone uniquely identifies the terminal location.
activity, but also allows the account to be debited electronically, may provide a periodic statement requirement that reflects only the EFTs and other required disclosures (such as charges, account balances, and address and telephone number for inquiries). See §1005.9(c)(1)(i) for the exception applicable to preauthorized transfers for passbook accounts.

6. Codes and accompanying documents. To meet the documentation requirements for periodic statements, a financial institution may:

i. Include copies of terminal receipts to reflect transfers initiated by the consumer at electronic terminals;

ii. Enclose posting memos, deposit slips, and other documents that, together with the statement, disclose all the required information;

iii. Use codes for names of third parties or terminal locations and explain the information to which the codes relate on an accompanying document.

9(b)(1) Transaction Information

1. Information obtained from others. While financial institutions must maintain reasonable procedures to ensure the integrity of data obtained from another institution, a merchant, or other third parties, verification of each transfer that appears on the periodic statement is not required.

Paragraph 9(b)(1)(i)

1. Incorrect deposit amount. If a financial institution determines that the amount actually deposited at an ATM is different from the amount entered by the consumer, the institution need not immediately notify the consumer of the discrepancy. The periodic statement reflecting the deposit may show either the correct amount of the deposit or the amount entered by the consumer along with the institution’s adjustment.

Paragraph 9(b)(1)(iii)

1. Type of transfer. There is no prescribed terminology for describing a type of transfer. Placement of the amount of the transfer in the debit or the credit column is sufficient if other information on the statement, such as a terminal location or third-party name, enables the consumer to identify the type of transfer.

Paragraph 9(b)(1)(iv)

1. Nonproprietary terminal in network. An institution need not reflect on the periodic statement the street addresses, identification codes, or terminal numbers for transfers initiated in a shared or interchange system at a terminal operated by an institution other than the account-holding institution. The statement must, however, specify the entity that owns or operates the terminal, plus the city and state.

Paragraph 9(b)(1)(v)

1. Recurring payments by government agency. The third-party name for recurring payments from Federal, state, or local governments need not list the particular agency. For example, “U.S. gover’t’” or “N.Y. sal’ will suffice.

2. Consumer as third-party payee. If a consumer makes an electronic fund transfer to another consumer, the financial institution must identify the recipient by name (not just by an account number, for example).

3. Terminal location/third party. A single entry may be used to identify both the terminal location and the name of the third party to or from whom funds are transferred. For example, if a consumer purchases goods from a merchant, the name of the party to whom funds are transferred (the merchant) and the location of the terminal where the transfer is initiated will be satisfied by a disclosure such as “XYZ Store, Anytown, Ohio.”

4. Account-holding institution as third party. Transfers to the account-holding institution (by ATM, for example) must show the institution as the recipient, unless other information on the statement (such as, “loan payment from checking”) clearly indicates that the payment was to the account-holding institution.

5. Consistency in third-party identity. The periodic statement must disclose a third-party name as it appeared on the receipt, whether it was, for example, the “dba” (doing business as) name of the third party or the parent corporation’s name.

6. Third-party identity on deposits at electronic terminal. A financial institution need not identify third parties whose names appear on checks, drafts, or similar paper instruments deposited to the consumer’s account at an electronic terminal.

9(b)(3) Fees

1. Disclosure of fees. The fees disclosed may include fees for EFTs and for other non-electronic services, and both fixed fees and per-item fees; they may be given as a total or may be itemized in part or in full.

2. Fees in interchange system. An account-holding institution must disclose any fees it imposes on the consumer for EFTs, including fees for ATM transactions in an interchange or shared ATM system. Fees for use of an ATM imposed on the consumer by an institution other than the account-holding institution and included in the amount of the transfer by the terminal-operating institution need not be separately disclosed on the periodic statement.

3. Finance charges. The requirement to disclose any fees assessed against the account
9(b)(4) Account Balances

1. Opening and closing balances. The opening and closing balances must reflect both EFTs and other account activity.

9(b)(5) Address and Telephone Number for Inquiries

1. Telephone number. A single telephone number, preceded by the “direct inquiries to” language, will satisfy the requirements of §§ 1005.9(b)(5) and (6).

9(b)(6) Telephone Number for Preauthorized Transfers

1. Telephone number. See comment 9(b)(5)-1.

9(c) Exceptions to the Periodic Statement Requirements for Certain Accounts

1. Transfers between accounts. The regulation provides an exception from the periodic statement requirement for certain intra-institutional transfers between a consumer’s accounts. The financial institution must still comply with the applicable periodic statement requirements for any other EFTs to or from the account. For example, a Regulation E statement must be provided quarterly for an account that also receives payroll deposits electronically, or for any month in which an account is also accessed by a withdrawal at an ATM.

9(c)(1) Preauthorized Transfers to Accounts

1. Accounts that may be accessed only by preauthorized transfers to the account. The exception for “accounts that may be accessed only by preauthorized transfers to the account” includes accounts that can be accessed by means other than EFTs, such as checks. If, however, an account may be accessed by any EFT other than preauthorized credits to the account, such as preauthorized debits or ATM transactions, the account does not qualify for the exception.

2. Reversal of direct deposits. For direct-deposit-only accounts, a financial institution must send a periodic statement at least quarterly. A reversal of a direct deposit to correct an error does not trigger the monthly statement requirement when the error represented a credit to the wrong consumer’s account, a duplicate credit, or a credit in the wrong amount. See also comment 2(m)-5.

9(d) Documentation for Foreign-Initiated Transfers

1. Foreign-initiated transfers. An institution must make a good faith effort to provide all required information for foreign-initiated transfers. For example, even if the institution is not able to provide a specific terminal location, it should identify the country and city in which the transfer was initiated.

Section 1005.10 Preauthorized Transfers

10(a) Preauthorized Transfers to Consumer’s Account

10(a)(1) Notice by Financial Institution

1. Content. No specific language is required for notice regarding receipt of a preauthorized transfer. Identifying the debit is sufficient; however, simply providing the current account balance is not.

2. Notice of credit. A financial institution may use different methods of notice for various types or series of preauthorized transfers, and the institution need not offer consumers a choice of notice methods.

3. Positive notice. A periodic statement sent within two business days of the scheduled transfer, showing the transfer, can serve as notice of receipt.

4. Negative notice. The absence of a deposit entry (on a periodic statement sent within two business days of the scheduled transfer date) will serve as negative notice.

5. Telephone notice. If a financial institution uses the telephone notice option, the institution should be able in most instances to verify during a consumer’s initial call whether a transfer was received. The institution must respond within two business days to any inquiry not answered immediately.

6. Phone number for passbook accounts. The financial institution may use any reasonable means necessary to provide the telephone number to consumers with passbook accounts that can only be accessed by preauthorized credits and that do not receive periodic statements. For example, it may print the telephone number in the passbook, or include the number with the annual error resolution notice.

7. Telephone line availability. To satisfy the readily-available standard, the financial institution must provide enough telephone lines so that consumers get a reasonably prompt response. The institution need only provide telephone service during normal business hours. Within its primary service area, an institution must provide a local or toll-free telephone number. It need not provide a toll-free number or accept collect long-distance calls from outside the area where it normally conducts business.

10(b) Written Authorization for Preauthorized Transfers From Consumer’s Account

1. Preexisting authorizations. The financial institution need not require a new authorization before changing from paper-based to electronic debiting when the existing authorization does not specify that debiting is to occur electronically or specifies that the debiting will occur by paper means. A new authorization also is not required when a
successor institution begins collecting payments.

2. Authorization obtained by third party. The account-holding financial institution does not violate the regulation when a third-party payee fails to obtain the authorization in writing or fails to give a copy to the consumer; rather, it is the third-party payee that is in violation of the regulation.

3. Written authorization for preauthorized transfers. The requirement that preauthorized EFTs be authorized by the consumer “only by a writing” cannot be met by a payee’s signing a written authorization on the consumer’s behalf with only an oral authorization from the consumer.

4. Use of a confirmation form. A financial institution or designated payee may comply with the requirements of this section in various ways. For example, a payee may provide the consumer with two copies of a preauthorization form, and ask the consumer to sign and return one and to retain the second copy.

5. Similarly authenticated. The similarly authenticated standard permits signed, written authorizations to be provided electronically. The writing and signature requirements of this section are satisfied by complying with the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., which defines electronic records and electronic signatures. Examples of electronic signatures include, but are not limited to, digital signatures and security codes. A security code need not originate with the account-holding institution. The authorization process should evidence the consumer’s identity and assent to the authorization. The person that obtains the authorization must provide a copy of the terms of the authorization to the consumer either electronically or in paper form. Only the consumer may authorize the transfer and not, for example, a third-party merchant on behalf of the consumer.

6. Requirements of an authorization. An authorization is valid if it is readily identifiable as such and the terms of the preauthorized transfer are clear and readily understandable.

7. Bona fide error. Consumers sometimes authorize third-party payees, by telephone or online, to submit recurring charges against a credit card account. If the consumer indicates use of a credit card account when in fact a debit card is being used, the payee does not violate the requirement to obtain a written authorization if the failure to obtain written authorization was not intentional and resulted from a bona fide error, and if the payee maintains procedures reasonably adapted to avoid such error. Procedures reasonably adapted to avoid error will depend upon the circumstances. Generally, requesting the consumer to specify whether the card to be used for the authorization is a debit (or check) card or a credit card is a reasonable procedure. Where the consumer has indicated that the card is a credit card (or that the card is not a debit or check card), the payee may rely on the consumer’s statement without seeking further information about the type of card. If the payee believes, at the time of the authorization, that a credit card is involved, and later finds that the card used is a debit card (for example, because the consumer later brings the matter to the payee’s attention), the payee must obtain a written and signed or (where appropriate) a similarly authenticated authorization as soon as reasonably possible, or cease debiting the consumer’s account.

10(c) Consumer’s Right to Stop Payment

1. Stop-payment order. The financial institution must honor an oral stop-payment order made at least three business days before a scheduled debit. If the debit item is resubmitted, the institution must continue to honor the stop-payment order (for example, by suspending all subsequent payments to the payee-originator until the consumer notifies the institution that payments should resume).

2. Revocation of authorization. Once a financial institution has been notified that the consumer’s authorization is no longer valid, it must block all future payments for the particular debit transmitted by the designated payee-originator. But see comment 10(c)-3. The institution may not wait for the payee-originator to terminate the automatic debits. The institution may confirm that the consumer has informed the payee-originator of the revocation (for example, by requiring a copy of the consumer’s revocation as written confirmation to be provided within 14 days of an oral notification). If the institution does not receive the required written confirmation within the 14-day period, it may honor subsequent debits to the account.

3. Alternative procedure for processing a stop-payment request. If an institution does not have the capability to block a preauthorized debit from being posted to the consumer’s account—as in the case of a preauthorized debit made through a debit card network or other system, for example—the institution may instead comply with the stop-payment requirements by using a third party to block the transfer(s), as long as the consumer’s account is not debited for the payment.

10(d) Notice of Transfers Varying in Amount

19(d)(1) Notice

1. Preexisting authorizations. A financial institution holding the consumer’s account does not violate the regulation if the designated payee fails to provide notice of varying amounts.
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10(d)(2) Range

1. Range. A financial institution or designated payee that elects to offer the consumer a specified range of amounts for debiting (in lieu of providing the notice of transfers varying in amount) must provide an acceptable range that could be anticipated by the consumer. For example, if the transfer is for payment of a gas bill, an appropriate range might be based on the highest bill in winter and the lowest bill in summer.

2. Transfers to an account of the consumer held at another institution. A financial institution need not provide a consumer the option of receiving notice with each varying transfer, and may instead provide notice only when a debit to an account of the consumer falls outside a specified range or differs by more than a specified amount from the most recent transfer, if the funds are transferred and credited to an account of the consumer held at another financial institution. The specified range or amount, however, must be one that reasonably could be anticipated by the consumer, and the institution must notify the consumer of the range or amount at the time the consumer provides authorization for the preauthorized transfers. For example, if the transfer is for payment of interest for a fixed-rate certificate of deposit account, an appropriate range might be based on a month containing 28 days and a month containing 31 days.

10(e) Compulsory Use

10(e)(1) Credit

1. Loan payments. Creditors may not require repayment of loans by electronic means on a preauthorized, recurring basis. A creditor may offer a program with a reduced annual percentage rate or other cost-related incentive for an automatic repayment feature, provided the program with the automatic payment feature is not the only loan program offered by the creditor for the type of credit involved. Examples include:

i. Mortgages with graduated payments in which a pledged savings account is automatically debited during an initial period to supplement the monthly payments made by the borrower.

ii. Mortgage plans calling for preauthorized biweekly payments that are debited electronically to the consumer’s account and produce a lower total finance charge.

2. Overdraft. A financial institution may require the automatic repayment of an overdraft credit plan even if the overdraft extension is charged to an open-end account that may be accessed by the consumer in ways other than by overdrafts.2530(e)(2) Employment or Government Benefit

1. Payroll. An employer (including a financial institution) may not require its employ-ees to receive their salary by direct deposit to any particular institution. An employer may require direct deposit of salary by electronic means if employees are allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their salary deposited at a particular institution (designated by the employer) or receiving their salary by another means, such as by check or cash.

SECTION 1005.11 PROCEDURES FOR RESOLVING ERRORS

11(a) Definition of Error

1. Terminal location. With regard to deposits at an ATM, a consumer’s request for the terminal location or other information triggers the error resolution procedures, but the financial institution need only provide the ATM location if it has captured that information.

2. Verifying an account debit or credit. If the consumer contacts the financial institution to ascertain whether a payment (for example, in a home-banking or bill-payment program) or any other type of EFT was debited to the account, or whether a deposit made via ATM, preauthorized transfer, or any other type of EFT was credited to the account, without asserting an error, the error resolution procedures do not apply.

3. Loss or theft of access device. A financial institution is required to comply with the error resolution procedures when a consumer reports the loss or theft of an access device if the consumer also alleges possible unauthorized use as a consequence of the loss or theft.

4. Error asserted after account closed. The financial institution must comply with the error resolution procedures when a consumer properly asserts an error, even if the account has been closed.

5. Request for documentation or information. A request for documentation or other information must be treated as an error unless it is clear that the consumer is requesting a duplicate copy for tax or other record-keeping purposes.

6. Terminal receipts for transfers of $15 or less. The fact that an institution does not make a terminal receipt available for a transfer of $15 or less in accordance with 1005.9(e) is not an error for purposes of 1005.11(a)(1)(vi) or (vii).

11(b) Notice of Error From Consumer

11(b)(1) Timing; Contents

1. Content of error notice. The notice of error is effective even if it does not contain the consumer’s account number, so long as the financial institution is able to identify the account in question. For example, the consumer could provide a Social Security...
number or other unique means of identification.

2. **Investigation pending receipt of information.** While a financial institution may request a written, signed statement from the consumer relating to a notice of error, it may not delay initiating or completing an investigation pending receipt of the statement.

3. **Statement held for consumer.** When a consumer has arranged for periodic statements to be held until picked up, the statement for a particular cycle is deemed to have been transmitted on the date the financial institution first makes the statement available to the consumer.

4. **Failure to provide statement.** When a financial institution fails to provide the consumer with a periodic statement, a request for a copy is governed by this section if the consumer gives notice within 60 days from the date on which the statement should have been transmitted.

5. **Discovery of error by institution.** The error resolution procedures of this section apply when a notice of error is received from the consumer, and not when the financial institution itself discovers and corrects an error.

6. **Notice at particular phone number or address.** A financial institution may require the consumer to give notice only at the telephone number or address disclosed by the institution, provided the institution maintains reasonable procedures to refer the consumer to the specified telephone number or address if the consumer attempts to give notice to the institution in a different manner.

7. **Effect of late notice.** An institution is not required to comply with the requirements of this section for any notice of error from the consumer that is received by the institution later than 60 days from the date on which the periodic statement first reflecting the error is sent. Where the consumer's assertion of error involves an unauthorized EFT, however, the institution must comply with §1005.6 before it may impose any liability on the consumer.

### 11(b)(2) Written Confirmation

1. **Written confirmation of oral notice.** If the consumer sends a written confirmation of error to the wrong address, the financial institution must process the confirmation through normal procedures. But the institution need not provisionally credit the consumer's account if the written confirmation is sent to the specified telephone number or address disclosed by the institution, provided the institution maintains reasonable procedures to refer the consumer to the specified telephone number or address if the consumer attempts to give notice to the institution in a different manner.

2. **Written confirmation of oral notice.** A financial institution must begin its investigation promptly upon receipt of an oral notice. It may not delay until it has received a written confirmation.

3. **Charges for error resolution.** If a billing error occurred, whether as alleged or in a different amount or manner, the financial institution may not impose a charge related to any aspect of the error-resolution process (including charges for documentation or investigation). Since the Act grants the consumer error-resolution rights, the institution should avoid any chilling effect on the good-faith assertion of errors that might result if charges are assessed when no billing error has occurred.

4. **Correction without investigation.** A financial institution may make, without investigation, a final correction to a consumer's account in the amount or manner alleged by the consumer to be in error, but must comply with all other applicable requirements of §1005.11.

5. **Correction notice.** A financial institution may include the notice of correction on a periodic statement that is mailed or delivered within the 10-business-day or 45-calendar-day time limits and that clearly identifies the correction to the consumer's account. The institution must determine whether such a mailing will be prompt enough to satisfy the requirements of this section, taking into account the specific facts involved.

6. **Correction of an error.** If the financial institution determines an error occurred, within either the 10-day or 45-day period, it must correct the error (subject to the liability provisions of §§1005.6(a) and (b) including, where applicable, the crediting of interest and the refunding of any fees imposed by the institution. In a combined credit-EFT transaction, for example, the institution must refund any finance charges incurred as a result of the error. The institution need not refund fees that would have been imposed whether or not the error occurred.

7. **Extent of required investigation.** A financial institution complies with its duty to investigate, correct, and report its determination regarding an error described in §1005.11(a)(1)(vii) by transmitting the requested information, clarification, or documentation within the time limits set forth in §1005.11(c). If the institution has provisionally credited the consumer's account in accordance with §1005.11(c)(2), it may debit the amount upon transmitting the requested information, clarification, or documentation.

**Paragraph 11(c)(2)(i)**

1. **Compliance with all requirements.** Financial institutions exempted from provisionally crediting a consumer's account under §§1005.11(c)(2)(i)(A) and (B) must still comply with all other requirements of §1005.11.
11(c)(3) Extension of Time Periods

1. POS debit card transactions. The extended deadlines for investigating errors resulting from POS debit card transactions apply to all debit card transactions, including those for cash only, at merchants' POS terminals, and also including mail and telephone orders. The deadlines do not apply to transactions at an ATM, however, even though the ATM may be in a merchant location.

11(c)(4) Investigation

1. Third parties. When information or documentation requested by the consumer is in the possession of a third party with whom the financial institution does not have an agreement, the institution satisfies the error resolution requirement by so advising the consumer within the specified time period.

2. Scope of investigation. When an alleged error involves a payment to a third party under the financial institution’s telephone bill-payment plan, a review of the institution’s own records is sufficient, assuming no agreement exists between the institution and the third party concerning the bill-payment service.

3. POS transfers. When a consumer alleges an error involving a transfer to a merchant via a POS terminal, the institution must verify the information previously transmitted when executing the transfer. For example, the financial institution may request a copy of the sales receipt to verify that the amount of the transfer correctly corresponds to the amount of the consumer’s purchase.

4. Agreement. An agreement that a third party will honor an access device is an agreement for purposes of this paragraph. A financial institution does not have an agreement for purposes of §1005.11(c)(4)(ii) solely because it participates in transactions that occur under the Federal recurring payments programs, or that are cleared through an ACH or similar arrangement for the clearing and settlement of fund transfers generally, or because the institution agrees to be bound by the rules of such an arrangement.

5. No EFT agreement. When there is no agreement between the institution and the third party for the type of EFT involved, the financial institution must review any relevant information within the institution’s own records for the particular account to resolve the consumer’s claim. The extent of the investigation required may vary depending on the facts and circumstances. However, a financial institution may not limit its investigation solely to the payment instructions where additional information within its own records pertaining to the particular account in question could help to resolve a consumer’s claim. Information that may be reviewed as part of an investigation might include:

i. The ACH transaction records for the transfer;
ii. The transaction history of the particular account for a reasonable period of time immediately preceding the allegation of error;
iii. Whether the check number of the transaction in question is notably out-of-sequence;
iv. The location of either the transaction or the payee in question relative to the consumer’s place of residence and habitual transaction area;
v. Information relative to the account in question within the control of the institution’s third-party service providers if the financial institution reasonably believes that it may have records or other information that could be dispositive; or
vi. Any other information appropriate to resolve the claim.

11(d) Procedures if Financial Institution Determines No Error or Different Error Occurred

1. Error different from that alleged. When a financial institution determines that an error occurred in a manner or amount different from that described by the consumer, it must comply with the requirements of both §§1005.11(c) and (d), as relevant. The institution may give the notice of correction and the explanation separately or in a combined form.

11(d)(1) Written Explanation

1. Request for documentation. When a consumer requests copies of documents, the financial institution must provide the copies in an understandable form. If an institution relied on magnetic tape, it must convert the applicable data into readable form, for example, by printing it and explaining any codes.

11(d)(2) Debiting Provisional Credit

1. Alternative procedure for debiting of credited funds. The financial institution may comply with the requirements of this section by notifying the consumer that the consumer’s account will be debited five business days from the transmittal of the notification, specifying the calendar date on which the debiting will occur.

2. Fees for overdrafts. The financial institution may not impose fees for items it is required to honor under §1005.11. It may, however, impose any normal transaction or item fee that is unrelated to an overdraft resulting from the debiting. If the account is still overdrawn after five business days, the institution may impose the fees or finance charges to which it is entitled, if any, under an overdraft credit plan.
Withdrawal of error; right to reassert. The financial institution has no further error resolution responsibilities if the consumer voluntarily withdrawing the notice alleging an error. A consumer who has withdrawn an allegation of error has the right to reassert the allegation unless the financial institution had already complied with all of the error resolution requirements before the allegation was withdrawn. The consumer must do so, however, within the original 60-day period.

SECTION 1005.12 RELATION TO OTHER LAWS

12(a) Relation to Truth in Lending

1. Determining applicable regulation. i. For transactions involving access devices that also function as credit cards, whether Regulation E or Regulation Z (12 CFR part 1026) applies depends on the nature of the transaction. For example, if the transaction solely involves an extension of credit, and does not include a debit to a checking account (or other consumer asset account), the liability limitations and error resolution requirements of Regulation E apply. If the transaction debits a checking account only (with no credit extended), the provisions of Regulation E apply. If the transaction debits a checking account but also draws on an overdraft line of credit attached to the account, Regulation E’s liability limitations apply, in addition to §§1026.13(d) and (g) of Regulation Z (which apply because of the extension of credit associated with the overdraft feature on the checking account). If a consumer’s access device is also a credit card and the device is used to make unauthorized withdrawals from a checking account, but also is used to obtain unauthorized cash advances directly from a line of credit that is separate from the checking account, both Regulation E and Regulation Z apply.

ii. The following examples illustrate these principles:

A. A consumer has a card that can be used either as a credit card or a debit card. When used as a debit card, the card draws on the consumer’s checking account. When used as a credit card, the card draws only on a separate line of credit. If the card is stolen and used as a debit card to make purchases or to get cash advances at an ATM from the checking account, the liability limits and error resolution provisions of Regulation Z apply; Regulation E does not apply.

B. In the same situation, if the card is stolen and is used as a debit card to make purchases or to get cash withdrawals at an ATM from the checking account, the liability limits and error resolution provisions of Regulation E apply; Regulation Z does not apply.

C. In the same situation, assume the card is stolen and used both as a debit card and as

a credit card; for example, the thief makes some purchases using the card as a debit card, and other purchases using the card as a credit card. Here, the liability limits and error resolution provisions of Regulation E apply to the unauthorized transactions in which the card was used as a debit card, and the corresponding provisions of Regulation Z apply to the unauthorized transactions in which the card was used as a credit card.

D. Assume a somewhat different type of card, one that draws on the consumer’s checking account and can also draw on an overdraft line of credit attached to the checking account. There is no separate line of credit, only the overdraft line, associated with the card. In this situation, if the card is stolen and used, the liability limits and the error resolution provisions of Regulation E apply. In addition, if the use of the card has resulted in accessing the overdraft line of credit, the error resolution provisions of §§1026.13(d) and (g) of Regulation Z also apply, but not the other error resolution provisions of Regulation Z.

2. Issuance rules. For access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance) or an overdraft service, as defined in §1005.17(a). Regulation Z (12 CFR part 1026) rules apply if there is another type of credit feature; for example, one permitting direct extensions of credit that do not involve the asset account.

3. Overdraft service. The addition of an overdraft service, as that term is defined in §1005.17(a), to an accepted access device does not constitute the addition of a credit feature subject to Regulation Z. Instead, the provisions of Regulation E apply, including the liability limitations (§1005.6) and the requirement to obtain consumer consent to the service before any fees or charges for paying an overdraft may be assessed on the account (§1005.17).

12(b) Preemption of Inconsistent State Laws

1. Specific determinations. The regulation prescribes standards for determining whether state laws that govern EFTs, and state laws regarding gift certificates, store gift cards, or general-use prepaid cards that govern dormancy, inactivity, or service fees, or expiration dates, are preempted by the Act and the regulation. A state law that is inconsistent may be preempted even if the Bureau has not issued a determination. However, nothing in §1005.12(b) provides a financial institution with immunity for violations of state law if the institution chooses not to make state disclosures and the Bureau later determines that the state law is not preempted.
2. **Preemption determination.** The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. The Board of Governors determined that certain provisions in the state law of Michigan are preempted by the Federal law, effective March 30, 1981:

   i. **Definition of unauthorized use.** Section 5(4) is preempted to the extent that it relates to the section of state law governing consumer liability for unauthorized use of an access device.

   ii. **Consumer liability for unauthorized use of an account.** Section 14 is inconsistent with §1005.6 and is less protective of the consumer than the Federal law. The state law places liability on the consumer for the unauthorized use of an account in cases involving the consumer’s negligence. Under the Federal law, a consumer’s liability for unauthorized use is not related to the consumer’s negligence and depends instead on the consumer’s promptness in reporting the loss or theft of the access device.

   iii. **Error resolution.** Section 15 is preempted because it is inconsistent with §1005.11 and is less protective of the consumer than the Federal law. The state law allows financial institutions up to 70 days to resolve errors, whereas the Federal law generally requires errors to be resolved within 45 days.

   iv. **Receipts and periodic statements.** Sections 17 and 18 are preempted because they are inconsistent with §1005.9. The state provisions require a different disclosure of information than does the Federal law. The receipt provision is also preempted because it allows the consumer to be charged for receiving a receipt if a machine cannot furnish one at the time of a transfer.

**SECTION 1005.13 ADMINISTRATIVE ENFORCEMENT; RECORD RETENTION**

**13(b) Record Retention**

1. **Requirements.** A financial institution need not retain records that it has given disclosures and documentation to each consumer; it need only retain evidence demonstrating that its procedures reasonably ensure the consumers’ receipt of required disclosures and documentation.

**SECTION 1005.14 ELECTRONIC FUND TRANSFER SERVICE PROVIDER NOT HOLDING CONSUMER’S ACCOUNT**

14(a) **Electronic Fund Transfer Service Providers Subject to Regulation**

1. **Applicability.** This section applies only when a service provider issues an access device to a consumer for initiating transfers to or from the consumer’s account at a financial institution and the two entities have no agreement regarding this EFT service. If the service provider does not issue an access device to the consumer for accessing an account held by another institution, it does not qualify for the treatment accorded by §1005.14. For example, this section does not apply to an institution that initiates preauthorized payroll deposits to consumer accounts on behalf of an employer. By contrast, §1005.14 can apply to an institution that issues a code for initiating telephone transfers to be carried out through the ACH from a consumer’s account at another institution. This is the case even if the consumer has accounts at both institutions.

2. **ACH agreements.** The ACH rules generally do not constitute an agreement for purposes of this section. However, an ACH agreement under which members specifically agree to honor each other’s debit cards is an “agreement,” and thus this section does not apply.

14(b) **Compliance by Electronic Fund Transfer Service Provider**

1. **Liability.** The service provider is liable for unauthorized EFTs that exceed limits on the consumer’s liability under §1005.6.

14(b)(1) **Disclosures and Documentation**

1. **Periodic statements from electronic fund transfer service provider.** A service provider that meets the conditions set forth in this paragraph does not have to issue periodic statements. A service provider that does not meet the conditions need only include on periodic statements information about transfers initiated with the access device it has issued.

14(b)(2) **Error Resolution**

1. **Error resolution.** When a consumer notifies the service provider of an error, the EFT service provider must investigate and resolve the error in compliance with §1005.11 as modified by §1005.14(b)(2). If an error occurred, any fees or charges imposed as a result of the error, either by the service provider or by the account-holding institution (for example, overdraft or dishonor fees) must be reimbursed to the consumer by the service provider.

14(c) **Compliance by Account-Holding Institution**

14(c)(1) **Documentation**

1. **Periodic statements from account-holding institution.** The periodic statement provided by the account-holding institution need only contain the information required by §1005.9(b)(1).
SECTION 1005.17 REQUIREMENTS FOR OVERDRAFT SERVICES

17(a) Definition

1. Exempt securities- and commodities-related lines of credit. The definition of “overdraft service” does not include the payment of transactions in a securities or commodities account pursuant to which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

17(b) Opt-In Requirement

1. Scope. 1. Account-holding institutions. Section 1005.17(b) applies to ATM and one-time debit card transactions made with a debit card issued by or on behalf of the account-holding institution. Section 1005.17(b) does not apply to ATM and one-time debit card transactions made with a debit card issued by or through a third party unless the debit card is issued on behalf of the account-holding institution.

2. Coding of transactions. A financial institution complies with the rule if it adapts its systems to identify debit card transactions as either one-time or recurring. If it does so, the financial institution may rely on the transaction’s coding by merchants, other institutions, and other third parties as a one-time or a preauthorized or recurring debit card transaction.

3. One-time debit card transactions. The opt-in applies to any one-time debit card transaction, whether the card is used, for example, at a point-of-sale, in an online transaction, or in a telephone transaction.

4. Application of fee prohibition. The prohibition on assessing overdraft fees under §1005.17(b)(1) applies to all institutions. For example, the prohibition applies to an institution that has a policy and practice of declining to authorize and pay any ATM or one-time debit card transactions when the institution has a reasonable belief at the time of the authorization request that the consumer does not have sufficient funds available to cover the transaction. However, the institution is not required to comply with §§1005.17(b)(1)(i)–(iv), including the notice and opt-in requirements, if it does not assess overdraft fees for paying ATM or one-time debit card transactions that overdraft the consumer’s account. Assume an institution does not provide an opt-in notice, but authorizes an ATM or one-time debit card transaction on the reasonable belief that the consumer has sufficient funds in the account to cover the transaction. If, at settlement, the consumer has insufficient funds in the account (for example, due to intervening transactions that post to the consumer’s account), the institution is not permitted to assess an overdraft fee or charge for paying that transaction.

2. No affirmative consent. A financial institution may pay overdrafts for ATM and one-time debit card transactions even if a consumer has not affirmatively consented or opted in to the institution’s overdraft service. If the institution pays such an overdraft without the consumer’s affirmative consent, however, it may not impose a fee or charge for doing so. These provisions do not limit the institution’s ability to debit the consumer’s account for the amount overdrawn if the institution is permitted to do so under applicable law.

3. Overdraft transactions not required to be authorized or paid. Section 1005.17 does not require a financial institution to authorize or pay an overdraft on an ATM or one-time debit card transaction even if the consumer has affirmatively consented to an institution’s overdraft service for such transactions.

4. Reasonable opportunity to provide affirmative consent. A financial institution provides a consumer with a reasonable opportunity to provide affirmative consent when, among other things, it provides reasonable methods by which the consumer may affirmatively consent. A financial institution provides such reasonable methods, if:

i. By mail. The institution provides a form for the consumer to fill out and mail to affirmatively consent to the service.

ii. By telephone. The institution provides a readily-available telephone line that consumers may call to provide affirmative consent.

iii. By electronic means. The institution provides an electronic means for the consumer to affirmatively consent. For example, the institution could provide a form that can be accessed and processed at its Web site, where the consumer may click on a check box to provide consent and confirm that choice by clicking on a button that affirms the consumer’s consent.

iv. In person. The institution provides a form for the consumer to complete and present at a branch or office to affirmatively consent to the service.

5. Implementing opt-in at account-opening. A financial institution may provide notice regarding the institution’s overdraft service prior to or at account-opening. A financial institution may require a consumer, as a necessary step to opening an account, to choose whether or not to opt into the payment of ATM or one-time debit card transactions pursuant to the institution’s overdraft service. For example, the institution could require the consumer, at account opening, to sign a signature line or check a box on a form (consistent with comment 17(b)-6) indicating whether or not the consumer affirmatively consents at account opening. If the consumer does not check any box or provide a signature, the institution must assume that the consumer does not opt in. Or,
the institution could require the consumer to choose between an account that does not permit the payment of ATM or one-time debit card transactions pursuant to the institution’s overdraft service and an account that permits the payment of such overdrafts, provided that the accounts comply with §1005.17(b)(2) and §1005.17(b)(3).

§ 1005.17(b)(2) and § 1005.17(b)(3). provided that the accounts comply with §1005.17(b)(2) and §1005.17(b)(3).

6. **Affirmative consent required.** A consumer’s affirmative consent, or opt-in, to a financial institution’s overdraft service must be obtained separately from other consents or acknowledgements obtained by the institution, including a consent to receive disclosures electronically. An institution may obtain a consumer’s affirmative consent by providing a blank signature line or check box that the consumer could sign or select to affirmatively consent, provided that the signature line or check box is used solely for purposes of evidencing the consumer’s choice whether or not to opt into the overdraft service and not for other purposes. An institution does not obtain a consumer’s affirmative consent by including preprinted language about the overdraft service in an account disclosure provided with a signature card or contract that the consumer must sign to open the account and that acknowledges the consumer’s acceptance of the account terms. Nor does an institution obtain a consumer’s affirmative consent by providing a signature card that contains a pre-selected check box indicating that the consumer is requesting the service.

7. **Confirmation.** A financial institution may comply with the requirement in §1005.17(b)(1)(iv) to provide confirmation of the consumer’s affirmative consent by mailing or delivering to the consumer a copy of the consumer’s completed opt-in notice. An institution complies with the confirmation requirement if it has adopted reasonable procedures designed to ensure that overdraft fees are assessed only in connection with transactions paid after the confirmation has been mailed or delivered to the consumer.

8. **Outstanding Negative Balance.** If a fee or charge is based on the amount of the outstanding negative balance, an institution is prohibited from assessing any such fee if the negative balance is solely attributable to an ATM or one-time debit card transaction. However, the rule does not prohibit an institution from assessing such a fee if the negative balance is attributable in whole or in part to a check, ACH, or other type of transaction not subject to the prohibition on assessing overdraft fees in §1005.17(b)(1).

9. **Daily or Sustained Overdraft, Negative Balance, or Similar Fee or Charge.** A financial institution may provide a consumer with an overdraft service for ATM or one-time debit card transactions, the fee prohibition in §1005.17(b)(1) applies to all overdraft fees or charges for paying those transactions, including but not limited to daily or sustained overdraft, negative balance, or similar fees or charges. Thus, where a consumer’s negative balance is solely attributable to an ATM or one-time debit card transaction, the rule prohibits the assessment of such fees unless the consumer has opted in. However, the rule does not prohibit an institution from assessing daily or sustained overdraft, negative balance, or similar fees or charges if a negative balance is attributable in whole or in part to a check, ACH, or other type of transaction not subject to the fee prohibition. When the negative balance is attributable in part to an ATM or one-time debit card transaction, and in part to a check, ACH, or other type of transaction not subject to the fee prohibition, the date on which such a fee may be assessed is based on the date on which the check, ACH, or other type of transaction is paid into overdraft.

11. **Examples.** The following examples illustrate how an institution complies with the fee prohibition. For each example, assume the following: (a) The consumer has not opted into the payment of ATM or one-time debit card overdrafts; (b) these transactions are paid into overdraft because the amount of the transaction at settlement exceeded the amount authorized or the amount was not submitted for authorization; (c) under the account agreement, the institution may charge a per-item fee of $20 for each overdraft, and a one-time sustained overdraft fee of $20 on the fifth consecutive day the consumer’s account remains overdrawn; (d) the institution posts ATM and debit card transactions before other transactions; and (e) the institution allocates deposits to account debits in the same order in which it posts debits.

A. Assume that a consumer has a $50 account balance on March 1. That day, the institution posts a one-time debit card transaction of $60 and a check transaction of $40. The institution charges an overdraft fee of $20 for the check overdraft but cannot assess an overdraft fee for the debit card transaction. At the end of the day, the consumer has an account balance of negative $70. The consumer does not make any deposits to the
account, and no other transactions occur between March 2 and March 6. Because the consumer's negative balance is attributable in part to the $40 check (and associated overdraft fee), the institution may charge a sustained overdraft fee on March 6 in connection with the check.

B. Same facts as in A., except that on March 3, the consumer deposits $40 in the account. The institution allocates the $40 to the debit card transaction first, consistent with its posting order policy. At the end of the day on March 3, the consumer has an account balance of negative $30, which is attributable to the check transaction (and associated overdraft fee). The consumer does not make any further deposits to the account, and no other transactions occur between March 4 and March 6. Because the remaining negative balance is attributable to the March 1 check transaction, the institution may charge a sustained overdraft fee on March 6 in connection with the check.

C. Assume that a consumer has a $50 account balance on March 1. That day, the institution posts a one-time debit card transaction of $50. At the end of that day, the consumer has an account balance of negative $10. The institution may not assess an overdraft fee for the debit card transaction. On March 3, the institution pays a check transaction of $100 and charges an overdraft fee of $20. At the end of that day, the consumer has an account balance of negative $130. The consumer does not make any deposits to the account, and no other transactions occur between March 4 and March 6. Because the consumer's negative balance is attributable in part to the check, the institution may assess a $20 sustained overdraft fee. However, because the check was paid on March 3, the institution must use March 3 as the start date for determining the date on which the sustained overdraft fee may be assessed. Thus, the institution may charge a $20 sustained overdraft fee on March 8.

iii. Alternative approach. For a consumer who does not opt into the institution’s overdraft service for ATM and one-time debit card transactions, an institution may also comply with the fee prohibition in §1005.17(b)(1) by not assessing daily or sustained overdraft, negative balance, or similar fees or charges unless a consumer's negative balance is attributable solely to check, ACH or other types of transactions not subject to the fee prohibition while that negative balance remains outstanding. In such case, the institution would not have to determine how to allocate subsequent deposits that reduce but do not eliminate the negative balance. For example, if a consumer has a negative balance of $30, of which $10 is attributable to a one-time debit card transaction, an institution complies with the fee prohibition if it does not assess a sustained overdraft fee while that negative balance remains outstanding.

17(b)(2) Conditioning Payment of Other Overdrafts on Consumer's Affirmative Consent

1. Application of the same criteria. The prohibitions on conditioning in §1005.17(b)(2) generally require an institution to apply the same criteria for deciding when to pay overdrafts for checks, ACH transactions, and other types of transactions, whether or not the consumer has affirmatively consented to the institution’s overdraft service with respect to ATM and one-time debit card overdrafts. For example, if an institution’s internal criteria would lead the institution to pay a check overdraft if the consumer had affirmatively consented to the institution’s overdraft service for ATM and one-time debit card transactions, it must also apply the same criteria in a consistent manner in determining whether to pay the check overdraft if the consumer has not opted in.

2. No requirement to pay overdrafts on checks, ACH transactions, or other types of transactions. The prohibition on conditioning in §1005.17(b)(2) does not require an institution to pay overdrafts on checks, ACH transactions, or other types of transactions in all circumstances. Rather, the rule simply prohibits institutions from considering the consumer’s decision not to opt in when deciding whether to pay overdrafts for checks, ACH transactions, or other types of transactions.

2(c)(1)(ii) Same Account Terms, Conditions, and Features

1. Variations in terms, conditions, or features. A financial institution may not vary the terms, conditions, or features of an account provided to a consumer who does not affirmatively consent to the payment of ATM or one-time debit card transactions pursuant to the institution’s overdraft service. This includes, but is not limited to:

i. Interest rates paid and fees assessed;

ii. The type of ATM or debit card provided to the consumer. For instance, an institution may not provide consumers who do not opt in a PIN-only card while providing a debit card with both PIN and signature-debit functionality to consumers who opt in;

iii. Minimum balance requirements; or

iv. Account features such as online bill payment services.

2. Limited-feature bank accounts. Section 1005.17(b)(3) does not prohibit institutions from offering deposit account products with limited features, provided that a consumer is not required to open such an account because the consumer did not opt in. For example, §1005.17(b)(3) does not prohibit an institution from offering a checking account designed to comply with state basic banking laws, or designed for consumers who are not eligible for a checking account because of their credit or checking account history.
which may include features limiting the payment of overdrafts. However, a consumer who applies, and is otherwise eligible, for a full-service or other particular deposit account product may not be provided instead with the account with more limited features because the consumer has declined to opt in.

17(c) Timing

1. Permitted fees or charges. Fees or charges for ATM and one-time debit card overdrafts may be assessed only for overdrafts paid on or after the date the financial institution receives the consumer’s affirmative consent to the institution’s overdraft service. See also comment 17(b)–7.

17(d) Content and Format

1. Overdraft service. The description of the institution’s overdraft service should indicate that the consumer has the right to affirmatively consent, or opt into payment of overdrafts for ATM and one-time debit card transactions. The description should also disclose the institution’s policies regarding the payment of overdrafts for other transactions, including checks, ACH transactions, and automatic bill payments, provided that this content is not more prominent than the description of the consumer’s right to opt into payment of overdrafts for ATM and one-time debit card transactions. As applicable, the institution also should indicate that it pays overdrafts at its discretion, and should briefly explain that if the institution does not authorize and pay an overdraft, it may decline the transaction.

2. Maximum fee. If the amount of a fee may vary from transaction to transaction, the financial institution may indicate that the consumer may be assessed a fee “up to” the maximum fee. The financial institution must disclose all applicable overdraft fees, including but not limited to:

   i. Per item or per transaction fees;
   ii. Daily overdraft fees;
   iii. Sustained overdraft fees, where fees are assessed when the consumer has not repaid the amount of the overdraft after some period of time (for example, if an account remains overdrawn for five or more business days); or
   iv. Negative balance fees.

3. Opt-in methods. The opt-in notice must include the methods by which the consumer may consent to the overdraft service for ATM and one-time debit card transactions. Institutions may tailor Model Form A–9 to the methods offered to consumers for affirmatively consenting to the service. For example, an institution need not provide the tear-off portion of Model Form A–9 if it is only permitting consumers to opt-in telephonically or electronically. Institutions may, but are not required, to provide a signature line or check box where the consumer can indicate that he or she declines to opt in.

4. Identification of consumer’s account. An institution may use any reasonable method to identify the account for which the consumer submits the opt-in notice. For example, the institution may include a line for a printed name and an account number, as shown in Model Form A–9. Or, the institution may print a bar code or use other tracking information. See also comment 17(b)–6, which describes how an institution obtains a consumer’s affirmative consent.

5. Alternative plans for covering overdrafts. If the institution offers both a line of credit subject to Regulation Z (12 CFR part 1026) and a service that transfers funds from another account of the consumer held at the institution to cover overdrafts, the institution must state in its opt-in notice that both alternative plans are offered. For example, the notice might state “We also offer overdraft protection plans, such as a link to a savings account or to an overdraft line of credit, which may be less expensive than our standard overdraft practices.” If the institution offers one, but not the other, it must state in its opt-in notice the alternative plan that it offers. If the institution does not offer either plan, it should omit the reference to the alternative plans.

17(f) Continuing Right To Opt-In or To Revoke the Opt-In

1. Fees or charges for overdrafts incurred prior to revocation. Section 1005.17(f)(1) provides that a consumer may revoke his or her prior consent at any time. If a consumer does so, this provision does not require the financial institution to waive or reverse any overdraft fees assessed on the consumer’s account prior to the institution’s implementation of the consumer’s revocation request.

17(g) Duration of Opt-In

1. Termination of overdraft service. A financial institution may, for example, terminate the overdraft service when the consumer makes excessive use of the service.

Section 1005.18 Requirements for Financial Institutions Offering Payroll Card Accounts

18(a) Coverage

1. Issuance of access device. Consistent with §1005.5(a), a financial institution may issue an access device only in response to an oral or written request for the device, or as a renewal or substitute for an accepted access device. A consumer is deemed to request an access device for a payroll card account when the consumer chooses to receive salary or other compensation through a payroll card account.
2. Application to employers and service providers. Typically, employers and third-party service providers do not meet the definition of a “financial institution” subject to the regulation because they neither hold payroll card accounts nor issue payroll cards and agree with consumers to provide EFT services in connection with payroll card accounts. However, to the extent an employer or a service provider undertakes either of these functions, it would be deemed a financial institution under the regulation.

18(b) Alternative to Periodic Statements

1. Posted transactions. A history of transactions provided under §§1005.18(b)(1)(i) and (iii) shall reflect transfers once they have been posted to the account. Thus, an institution does not need to include transactions that have been authorized, but that have not yet posted to the account.

2. Electronic history. The electronic history required under §1005.18(b)(1)(ii) must be provided in a format that the consumer may keep, as required under §1005.4(a)(i). Financial institutions may satisfy this requirement if they make the electronic history available in a format that is capable of being retained. For example, an institution satisfies the requirement if it provides a history at a Web site in a format that is capable of being printed or stored electronically using a web browser.

18(c) Modified Requirements

1. Error resolution safe harbor provision. Institutions that choose to investigate notices of error provided up to 120 days from the date a transaction has posted to a consumer’s account may still disclose the error resolution time period required by the regulation (as set forth in the Model Form in Appendix A-7). Specifically, an institution may disclose to payroll account holders that the institution will investigate any notice of error provided within 60 days of the consumer electronically accessing an account or receiving a written history upon request that reflects the error, even if, for some or all transactions, the institution investigates any notice of error provided up to 120 days from the date that the transaction alleged to be in error has posted to the consumer’s account. Similarly, an institution’s summary of the consumer’s liability (as required under §1005.7(b)(1)) may disclose that liability is based on the consumer providing notice of error within 60 days of the consumer electronically accessing an account or receiving a written history reflecting the error, even if, for some or all transactions, the institution allows a consumer to assert a notice of error up to 120 days from the date of posting of the alleged error.

2. Electronic access. A consumer is deemed to have accessed a payroll card account electronically when the consumer enters a user identification code or password or otherwise complies with a security procedure used by an institution to verify the consumer’s identity. An institution is not required to determine whether a consumer has in fact accessed information about specific transactions to trigger the beginning of the 60-day period for liability limits and error resolution under §§1005.6 and 1005.11.

3. Untimely notice of error. An institution that provides a transaction history under §1005.18(b)(1) is not required to comply with the requirements of §1005.11 for any notice of error from the consumer pertaining to a transfer that occurred more than 60 days prior to the earlier of the date the consumer electronically accesses the account or the date the financial institution sends a written history upon the consumer’s request. (Alternatively, as provided in §1005.18(c)(4)(ii), an institution need not comply with the requirements of §1005.11 with respect to any notice of error received from the consumer more than 120 days after the date of posting of the transfer allegedly in error.) Where the consumer’s assertion of error involves an unauthorized EFT, however, the institution must comply with §1005.6 before it may impose any liability on the consumer.

Section 1005.20 Requirements for Gift Cards and Gift Certificates

20(a) Definitions

1. Form of card, code, or device. Section 1005.20 applies to any card, code, or other device that meets one of the definitions in §§1005.20(a)(1) through (a)(3) (and is not otherwise excluded by §1005.20(b)), even if it is not issued in card form. Section 1005.20 applies, for example, to an account number or bar code that can be used to access underlying funds. Similarly, §1005.20 applies to a device with a chip or other embedded mechanism that links the device to stored funds, such as a mobile phone or sticker containing a contactless chip that enables the consumer to access the stored funds. A card, code, or other device that meets the definitions in §§1005.20(a)(1) through (a)(3) includes an electronic promise (see comment 20(a)-2) as well as a promise that is not electronic. See, however, §1005.20(b)(4). In addition, §1005.20 applies if a merchant issues a code that entitles a consumer to redeem the code for goods or services, regardless of the medium in which the code is issued (see, however, §1005.20(b)(5)), and whether or not it may be redeemed electronically or in the merchant’s store. Thus, for example, if a merchant emails a code that a consumer may redeem in a specified amount either online or in the merchant’s store, that code is covered under §1005.20, unless one of the exclusions in §1005.20 applies.
2. Electronic promise. The term “electronic promise” as used in EFTA sections 91(a)(2)(B), (a)(2)(C), and (a)(2)(D) means a person’s commitment or obligation communicated or stored in electronic form made to a consumer to provide payment for goods or services for transactions initiated by the consumer. The electronic promise is itself repayable by card, code, or other device that is issued or honored by the person, reflecting the person’s commitment or obligation to pay. For example, if a merchant issues a code that can be given as a gift and that entitles the recipient to redeem the code in an online transaction for goods or services, that code represents an electronic promise by the merchant and is a card, code, or other device covered by §1005.20.

3. Cards, codes, or other devices redeemable for specific goods or services. Certain cards, codes, or other devices may be redeemable upon presentation for a specific good or service, or “experience,” such as a spa treatment, hotel stay, or airline flight. In other cases, a card, code, or other device may entitle the consumer to a certain percentage off the purchase of a good or service, such as 20% off of any purchase in a store. Such cards, codes, or other devices generally are not subject to the requirements of this section because they are not issued to a consumer “in a specified amount” as required under the definitions of “gift certificate,” “store gift card,” or “general-use prepaid card.” However, if the card, code, or other device is issued in a specified or denominated amount that can be applied toward the purchase of a specific good or service, such as a certificate or card redeemable for a spa treatment up to $50, the card, code, or other device is subject to this section, unless one of the exceptions in §1005.20(b) apply. See, e.g., §1005.20(b)(3). Similarly, if the card, code, or other device states a specific monetary value, such as “$50 value,” the card, code, or other device is subject to this section, unless an exclusion in §1005.20(b) applies.

4. Issued primarily for personal, family, or household purposes. Section 1005.20 only applies to cards, codes, or other devices that are sold or issued to a consumer primarily for personal, family, or household purposes. A card, code, or other device initially purchased by a business is subject to this section if the card, code, or other device is purchased for redistribution or resale to consumers primarily for personal, family, or household purposes. Moreover, the fact that a card, code, or other device may be primarily funded by a business, for example, in the case of certain rewards or incentive cards, does not mean the card, code, or other device is outside the scope of §1005.20. If the card, code, or other device will be provided to a consumer primarily for personal, family, or household purposes. But see §1005.20(b)(3). Whether a card, code, or other device is issued to a consumer primarily for personal, family, or household purposes will depend on the facts and circumstances. For example, if a program manager purchases store gift cards directly from an issuing merchant and sells those cards through the program manager’s retail outlets, such gift cards are subject to the requirements of §1005.20 because the store gift cards are sold to consumers primarily for personal, family, or household purposes. In contrast, a card, code, or other device generally would not be issued to consumers primarily for personal, family, or household purposes, and reasonable policies and procedures are maintained to avoid such sale or distribution for such purposes. However, if an entity that has purchased cards, codes, or other devices for business purposes sells or distributes such cards, codes, or other devices to consumers primarily for personal, family, or household purposes, that entity does not comply with §1005.20 if it has not otherwise met the substantive and disclosure requirements of the rule or unless an exclusion in §1005.20(b) applies.

5. Examples of cards, codes, or other devices issued for business purposes. Examples of cards, codes, or other devices that are issued and used for business purposes and therefore excluded from the definitions of “gift certificate,” “store gift card,” or “general-use prepaid card” include:

i. Cards, codes, or other devices to reimburse employees for travel or moving expenses.

ii. Cards, codes, or other devices for employees to use to purchase office supplies and other business-related items.
the term includes franchisees that are subject to a common set of corporate policies or practices under the terms of their franchise licenses. The term also applies to two or more merchants or other persons that agree among themselves, by contract or otherwise, to redeem cards, codes, or other devices bearing the same name, mark, or logo (other than the mark, logo, or brand of a payment network), for the purchase of goods or services solely at such merchants or persons. For example, assume a movie theatre chain and a restaurant chain jointly agree to issue cards that share the same “Flix and Food” logo that can be redeemed solely towards the purchase of movie tickets or concessions at any of the participating movie theatres, or towards the purchase of food or beverages at any of the participating restaurants. For purposes of §1005.20, the movie theatre chain and the restaurant chain would be considered to be an affiliated group of merchants, and the cards are considered to be “store gift cards.” However, merchants or other persons are not considered to be affiliated merely because they agree to accept a card that bears the mark, logo, or brand of a payment network.


20(a)(3) General-Use Prepaid Card

1. Redeemable upon presentation at multiple, unaffiliated merchants. A card, code, or other device is redeemable upon presentation at multiple, unaffiliated merchants if, for example, such merchants agree to honor the card, code, or device if it bears the mark, logo, or brand of a payment network, pursuant to the rules of the payment network.

2. Mall gift cards. Mall gift cards that are intended to be used or redeemed for goods or services at participating retailers within a shopping mall may be considered store gift cards or general-use prepaid cards depending on the merchants with which the cards may be redeemed. For example, if a mall card may only be redeemed at merchants within the mall itself, the card is more likely to be redeemable at an affiliated group of merchants and considered a store gift card. However, certain mall cards also carry the brand of a payment network and can be used at any retailer that accepts that card brand, including retailers located outside of the mall. Such cards are considered general-use prepaid cards.

20(a)(4) Loyalty, Award, or Promotional Gift Card

1. Examples of loyalty, award, or promotional programs. Examples of loyalty, award, or promotional programs under §1005.20(a)(4) include, but are not limited to:

   i. Consumer retention programs operated or administered by a merchant or other person that provide to consumers cards or coupons redeemable for or towards goods or services or other monetary value as a reward for purchases made or for visits to the participating merchant.

   ii. Sales promotions operated or administered by a merchant or product manufacturer that provide coupons or discounts redeemable for or towards goods or services or other monetary value.

   iii. Rebate programs operated or administered by a merchant or product manufacturer that provide cards redeemable for or towards goods or services or other monetary value to consumers in connection with the consumer’s purchase of a product or service and the consumer’s completion of the rebate submission process.

   iv. Sweepstakes or contests that distribute cards redeemable for or towards goods or services or other monetary value to consumers as an invitation to enter into the promotion for a chance to win a prize.

   v. Referral programs that provide cards redeemable for or towards goods or services or other monetary value to consumers in exchange for referring other potential consumers to a merchant.

   vi. Incentive programs through which an employer provides cards redeemable for or towards goods or services or other monetary value to employees, for example, to recognize job performance, such as increased sales, or to encourage employee wellness and safety.

   vii. Charitable or community relations programs through which a company provides cards redeemable for or towards goods or services or other monetary value to a charity or community group for their fundraising purposes, for example, as a reward for a donation or as a prize in a charitable event.

2. Issued for loyalty, award, or promotional purposes. To indicate that a card, code, or other device is issued for loyalty, award, or promotional purposes as required by §1005.20(a)(4)(i), it is sufficient for the card, code, or other device to state on the front, for example, “Reward” or “Promotional.”

3. Reference to toll-free number and Web site. If a card, code, or other device issued in connection with a loyalty, award, or promotional program does not have any fees, the disclosure under §1005.20(a)(4)(ii)(D) is not required on the card, code, or other device.

20(a)(6) Service Fee

1. Service fees. Under §1005.20(a)(6), a service fee includes a periodic fee for holding or use of a gift certificate, store gift card, or general-use prepaid card. A periodic fee includes any fee that may be imposed on a gift certificate, store gift card, or general-use prepaid card from time to time for holding or using the certificate or card, such as a monthly maintenance fee, a transaction fee, an ATM fee, or the fee for redeeming the card at a bank or ATM.
fee, a reload fee, a foreign currency transaction fee, or a balance inquiry fee, whether or not the fee is waived for a certain period of time or is only imposed after a certain period of time. A service fee does not include a one-time fee or a fee that is unlikely to be imposed more than once while the underlying funds are still valid, such as an initial issuance fee, a cash-out fee, a supplemental card fee, or a lost or stolen certificate or card replacement fee.

20(a)(7) Activity

1. Activity. Under §1005.20(a)(7), any action that results in an increase or decrease of the funds underlying a gift certificate, store gift card, or general-use prepaid card, other than the imposition of a fee, or an adjustment due to an error or a reversal of a prior transaction, constitutes activity for purposes of §1005.20. For example, the purchase and activation of a certificate or card, the use of the certificate or card to purchase a good or service, or the reloading of funds onto a store gift card or general-use prepaid card constitutes activity. However, the imposition of a fee, the replacement of an expired, lost, or stolen certificate or card, and a balance inquiry do not constitute activity. In addition, if a consumer attempts to engage in a transaction with a gift certificate, store gift card, or general-use prepaid card, but the transaction cannot be completed due to technical or other reasons, such attempt does not constitute activity. Furthermore, if the funds underlying a gift certificate, store gift card, or general-use prepaid card are adjusted because there was an error or the consumer has returned a previously purchased good, the adjustment also does not constitute activity with respect to the certificate or card.

20(b) Exclusions

1. Application of exclusion. A card, code, or other device is excluded from the definition of “gift certificate,” “store gift card,” or “general-use prepaid card” if it meets any of the exclusions in §1005.20. An excluded card, code, or other device generally is not subject to any of the requirements of this section. See, however, §1005.20(a)(4)(i), requiring certain disclosures for loyalty, award, or promotional gift cards.

2. Eligibility for multiple exclusions. A card, code, or other device may qualify for one or more exclusions. For example, a corporation may give its employees a gift card that is marketed solely to businesses for incentive-related purposes, such as to reward job performance or promote employee safety. In this case, the card may qualify for the exclusion for loyalty, award, or promotional gift cards under §1005.20(b)(3), or for the exclusion for cards, codes, or other devices not marketed to the general public under §1005.20(b)(4). In addition, as long as any one of the exclusions applies, a card, code, or other device is not covered by §1005.20, even if other exclusions do not apply. In the above example, the corporation may give its employees a type of gift card that can also be purchased by a consumer directly from a merchant. Under these circumstances, while the card does not qualify for the exclusion for cards, codes, or other devices not marketed to the general public under §1005.20(b)(4) because the card can also be obtained through retail channels, it is nevertheless exempt from the substantive requirements of §1005.20 because it is a loyalty, award, or promotional gift card. See, however, §1005.20(a)(4)(i), requiring certain disclosures for loyalty, award, or promotional gift cards. Similarly, a person may market a reloadable card to teenagers for occasional expenses, that enables parents to monitor their spending. Although the card does not qualify for the exclusion for cards, codes, or other devices not marketed to the general public under §1005.20(b)(4), it may nevertheless be exempt from the requirements of §1005.20 under §1005.20(b)(2) if it is reloadable and not marketed or labeled as a gift card or gift certificate.

Paragraph 20(b)(1)

1. Examples of excluded products. The exclusion for products usable solely for telephone services applies to prepaid cards for long-distance telephone service, prepaid cards for wireless telephone service and prepaid cards for other services that function similar to telephone services, such as prepaid cards for voice over Internet protocol (VoIP) access time.

Paragraph 20(b)(2)

1. Reloadable. A card, code, or other device is “reloadable” if the terms and conditions of the agreement permit funds to be added to the card, code, or other device after the initial purchase or issuance. A card, code, or other device is not “reloadable” merely because the issuer or processor is technically able to add functionality that would otherwise enable the card, code, or other device to be reloaded.

2. Marked or labeled as a gift card or gift certificate. The term “marked or labeled as a gift card or gift certificate” means directly or indirectly offering, advertising, or otherwise suggesting the potential use of a card, code or other device, as a gift for another person. Whether the exclusion applies generally does not depend on the type of entity that makes the promotional message. For example, a card may be marketed or labeled as a gift card or gift certificate if anyone (other than the purchaser of the card), including the issuer, the retailer, the program manager that may distribute the card, or the
payment network on which a card is used, promotes the use of the card as a gift card or gift certificate. A card, code, or other device, including a general-purpose reloadable card, is marketed or labeled as a gift card or gift certificate even if it is only occasionally marketed as a gift card or gift certificate. For example, a network-branded general-purpose reloadable card would be marketed or labeled as a gift card or gift certificate if the issuer principally advertises the card as a less costly alternative to a bank account but promotes the card in a television, radio, newspaper, or Internet advertisement, or on signage as “the perfect gift” during the holiday season. However, the mere mention of the availability of gift cards or gift certificates in an advertisement or on a sign that also indicates the availability of other excluded prepaid cards does not by itself cause the excluded prepaid cards to be marketed as a gift card or gift certificate. For example, the posting of a sign in a store that refers to the availability of gift cards does not by itself constitute the marketing of otherwise excluded prepaid cards that may also be sold in the store as gift cards or gift certificates, provided that a consumer acting reasonably under the circumstances would not be led to believe that the sign applies to all prepaid cards sold in the store. See, however, comment 20(b)(2)–4ii.

3. Examples of marketed or labeled as a gift card or gift certificate. i. Examples of marketed or labeled as a gift card or gift certificate include:

A. Using the word “gift” or “present” on a card, certificate, or accompanying material, including documentation, packaging and promotional displays.

B. Representing or suggesting that a certificate or card can be given to another person, for example, as a “token of appreciation” or a “stocking stuffer,” or displaying a congratulatory message on the certificate, card, or accompanying material.

C. Incorporating gift-giving or celebratory imagery or motifs, such as a bow, ribbon, wrapped present, candle, or congratulatory message, on a card, certificate, accompanying documentation, or promotional material.

ii. The term does not include:

A. Representing that a card or certificate can be used as a substitute for a checking, savings, or deposit account.

B. Representing that a card or certificate can be used to pay for a consumer’s health-related expenses—for example, a card tied to a health savings account.

C. Representing that a card or certificate can be used as a substitute for traveler’s checks or cash.

D. Representing that a card or certificate can be used as a budgetary tool, for example, by teenagers, or to cover emergency expenses.

4. Reasonable policies and procedures to avoid marketing as a gift card. The exclusion for a card, code, or other device that is reloadable and not marketed or labeled as a gift card or gift certificate in §1005.20(b)(2) applies if a reloadable card, code, or other device is not marketed or labeled as a gift card or gift certificate and if persons subject to the rule, including issuers, program managers, retailers, maintain policies and procedures reasonably designed to avoid such marketing. Such policies and procedures may include contractual provisions prohibiting a reloadable card, code, or other device from being marketed or labeled as a gift card or gift certificate, merchandising guidelines or plans regarding how the product must be displayed in a retail outlet, and controls to regularly monitor or otherwise verify that the card, code or other device is not being marketed as a gift card. Whether a reloadable card, code, or other device has been marketed as a gift card or gift certificate will depend on the facts and circumstances, including whether a reasonable consumer would be led to believe that the card, code, or other device is a gift card or gift certificate. The following examples illustrate the application of §1005.20(b)(2):

i. An issuer or program manager of prepaid cards agrees to sell general-purpose reloadable cards through a retailer. The contract between the issuer or program manager and the retailer establishes the terms and conditions under which the cards may be sold and marketed at the retailer. The terms and conditions prohibit the general-purpose reloadable cards from being marketed as a gift card or gift certificate, and require policies and procedures to regularly monitor or otherwise verify that the cards are not being marketed as such. The issuer or program manager sets up one promotional display at the retailer for gift cards and another physically separated display for excluded products under §1005.20(b), including general-purpose reloadable cards and wireless telephone cards, such that a reasonable consumer would not believe that the excluded cards are gift cards. The exclusion in §1005.20(b)(2) applies because policies and procedures reasonably designed to avoid the marketing of the general-purpose reloadable cards as gift cards or gift certificates are maintained, even if a retail clerk inadvertently stocks or a consumer inadvertently places a general-purpose reloadable card on the gift card display.

ii. Same facts as in i., except that the issuer or program manager sets up a single promotional display at the retailer on which a variety of prepaid cards are sold, including store gift cards and general-purpose reloadable cards. A sign stating “Gift Cards” appears prominently at the top of the display. The exclusion in §1005.20(b)(2) does not apply with respect to the general-purpose
rechargeable cards because policies and procedures reasonably designed to avoid the marketing of excluded cards as gift cards or gift certificates are not maintained.

iii. Same facts as in i., except that the issuer or program manager sets up a single promotional multi-sided display at the retailer on which a variety of prepaid card products, including store gift cards and general-purpose rechargeable cards, are sold. Gift cards are segregated from excluded cards, with gift cards on one side of the display and excluded cards on a different side of a display. Signs of equal prominence at the top of each side of the display clearly differentiate between gift cards and the other types of prepaid cards that are available for sale. The retailer does not use any more conspicuous signage suggesting the general availability of gift cards, such as a large sign stating “Gift Cards” at the top of the display or located near the display. The exclusion in §1005.20(b)(2) applies because policies and procedures reasonably designed to avoid the marketing of general-purpose rechargeable cards as gift cards or gift certificates are maintained, even if a retailer clerk inadvertently stocks or a consumer inadvertently places a general-purpose rechargeable card on the gift card display.

iv. Same facts as in i., except that the retailer sells a variety of prepaid card products, including store gift cards and general-purpose rechargeable cards, arranged side-by-side in the same checkout lane. The retailer does not affirmatively indicate or represent that gift cards are available, such as by displaying any signage or other indicia at the checkout lane suggesting the general availability of gift cards. The exclusion in §1005.20(b)(2) applies because policies and procedures reasonably designed to avoid marketing the general-purpose rechargeable cards as gift cards or gift certificates are maintained.

5. Online sales of prepaid cards. Some Web sites may prominently advertise or promote the availability of gift cards or gift certificates in a manner that suggests to a consumer that the Web site exclusively sells gift cards or gift certificates. For example, a Web site may display a banner advertisement or a graphic on the home page that prominently states “Gift Cards,” “Gift Giving,” or similar language without mention of other available products, or use a Web address that includes only a reference to gift cards or gift certificates in the address. In such a case, a consumer acting reasonably under the circumstances could be led to believe that all prepaid products sold on the Web site are card or gift certificates. Under these facts, the Web site has marketed all such products, including general-purpose rechargeable cards, as gift cards or gift certificates, and the exclusion in §1005.20(b)(2) does not apply.

6. Temporary non-rechargeable cards issued in connection with a general-purpose rechargeable card. Certain general-purpose rechargeable cards that are typically marketed as an account substitute initially may be sold in the form of a temporary non-rechargeable card. After the card is purchased, the cardholder is typically required to call the issuer to register the card and to provide identifying information in order to obtain a rechargeable replacement card. In most cases, the temporary non-rechargeable card can be used for purchasing medium, including television, radio, newspaper, the Internet, or signage. However, the posting of a company policy that funds may be disbursed by prepaid card (such as a sign posted at a cash register or customer service center stating that store credit will be issued by prepaid card) does not constitute the marketing of a card, code, or other device to the general public. A card, code, or other device is marketed to the general public if the potential use of the card, code, or other device is directly or indirectly offered, advertised, or otherwise promoted to the general public. A card, code, or other device may be marketed to the general public through any advertising medium, including television, radio, newspaper, the Internet, or signage. However, the posting of a company policy that funds may be disbursed by prepaid card does not constitute the marketing of a card, code, or other device to the general public. Factors that may be considered in determining whether the exclusion applies to a particular card, code, or other device include the means or channel through which the card, code, or device may be obtained by a consumer, the subset of consumers that are eligible to obtain the card, code, or device, and whether the availability of the card, code, or device is advertised or otherwise promoted in the marketplace.

2. Examples. The following examples illustrate the application of the exclusion in §1005.20(b)(4):

1. A merchant sells its gift cards at a discount to a business which may give them to employees or loyal consumers as incentives or rewards. In determining whether the gift card falls within the exclusion in §1005.20(b)(4), the merchant must consider whether the card is of a type that is advertised or made available to consumers generally or can be obtained elsewhere. If the card can also be purchased through retail channels, the exclusion in §1005.20(b)(4) does
Paragraph 20(b)(5)

1. Exclusion explained. To qualify for the exclusion in §1005.20(b)(5), the sole means of issuing the card, code, or other device must be in a paper form. Thus, the exclusion generally applies to certificates issued in paper form where solely the paper itself may be used to purchase goods or services. A card, code or other device is not issued solely in paper form simply because it may be reproduced or printed on paper. For example, a bar code, card or certificate number, or certificate or coupon electronically provided to a consumer and redeemable for goods and services is not issued in paper form, even if it may be reproduced or otherwise printed on paper by the consumer. In this circumstance, although the consumer might hold a paper facsimile of the card, code, or other device, the exclusion does not apply because the information necessary to redeem the value was initially issued in electronic form. A paper certificate is within the exclusion regardless of whether it may be redeemed electronically. For example, a paper certificate or receipt that bears a bar code, code, or account number falls within the exclusion in §1005.20(b)(5) if the bar code, code, or account number is not issued in any form other than on the paper. In addition, the exclusion in §1005.20(b)(5) continues to apply in circumstances where an issuer replaces a lost certificate that was initially issued in paper form with a card or electronic code (for example, to replace a lost paper certificate).

2. Examples. The following examples illustrate the application of the exclusion in §1005.20(b)(5):

i. A merchant issues a paper gift certificate that entitles the bearer to a specified dollar amount that can be applied towards a future meal. The merchant fills in the certificate with the name of the certificate holder and the amount of the certificate. The certificate falls within the exclusion in §1005.20(b)(5) because it is issued in paper form only.

ii. A merchant allows a consumer to prepay for a good or service, such as a car wash or time at a parking meter, and issues a paper receipt bearing a numerical or bar code that the consumer may redeem to obtain the good or service. The exclusion in §1005.20(b)(5) applies because the code is issued in paper form only.

iii. A merchant issues a paper certificate or receipt bearing a bar code or certificate number that can later be scanned or entered into the merchant’s system and redeemed by the certificate or receipt holder towards the purchase of goods or services. The bar code or certificate number is not issued by the merchant in any form other than paper. The exclusion in §1005.20(b)(5) applies because the bar code or certificate number is issued in paper form only.

iv. An online merchant electronically provides a bar code, card or certificate number, or certificate or coupon to a consumer that the consumer may print on a home printer and later redeem towards the purchase of goods or services. The exclusion in §1005.20(b)(5) does not apply because the bar code or card or certificate number was issued to the consumer in electronic form, even though it can be reproduced or otherwise printed on paper by the consumer.
Paragraph 20(b)(6)

1. Exclusion explained. The exclusion for cards, codes, or other devices that are redeemable solely for admission to events or venues at a particular location or group of affiliated locations generally applies to cards, codes, or other devices that are not redeemed for a specified monetary value, but rather solely for admission or entry to an event or venue. The exclusion also covers a card, code, or other device that is usable to purchase goods or services in addition to entry into the event or the venue, either at the event or venue or at an affiliated location or location in geographic proximity to the event or venue.

2. Examples. The following examples illustrate the application of the exclusion in §1005.20(b)(6):

i. A consumer purchases a prepaid card that entitles the holder to a ticket for entry to an amusement park. The prepaid card may only be used for entry to the park. The card qualifies for the exclusion in §1005.20(b)(6) because it is redeemable for admission or entry and for goods or services in conjunction with that admission. In addition, if the prepaid card does not have a monetary value, and therefore is not "issued in a specified amount," the card does not meet the definitions of "gift certificate," "store gift card," or "general-use prepaid card" in §1005.20(a). See comment 20(a)–3.

ii. Same facts as in i., except that the gift card also entitles the holder of the gift card to a dollar amount that can be applied towards the purchase of food and beverages or goods or services at the park or at nearby affiliated locations. The card qualifies for the exclusion in §1005.20(b)(6) because it is redeemable for admission or entry and for goods or services in conjunction with that admission.

iii. A consumer purchases a $25 gift card that the holder of the gift card can use to make purchases at a merchant, or, alternatively, can apply towards the cost of admission to the merchant's affiliated amusement park. The card is not eligible for the exclusion in §1005.20(b)(6) because it is not redeemable solely for the admission or ticket itself (or for goods and services purchased in conjunction with such admission). The card meets the definition of "store gift card" and is therefore subject to §1005.20, unless a different exclusion applies.

20(c) Form of Disclosures

20(c)(1) Clear and Conspicuous

1. Clear and conspicuous standard. All disclosures required by this section must be clear and conspicuous. Disclosures are clear and conspicuous for purposes of this section if they are readily understandable and, in the case of written and electronic disclosures, the location and type size are readily noticeable to consumers. Disclosures need not be located on the front of the certificate or card, except where otherwise required, to be considered clear and conspicuous. Disclosures are clear and conspicuous for the purposes of this section if they are in a print that contrasts with and is otherwise not obstructed by the background on which they are printed. For example, disclosures on a card or computer screen are not likely to be conspicuous if obscured by a logo printed in the background. Similarly, disclosures on the back of a card that are printed on top of indentations from embossed type on the front of the card are not likely to be conspicuous if the indentations obstruct the readability of the disclosures. To the extent permitted, oral disclosures meet the standard when they are given at a volume and speed sufficient for a consumer to hear and comprehend them.

2. Abbreviations and symbols. Disclosures may contain commonly accepted or readily understandable abbreviations or symbols, such as "mo." for month or a "/" to indicate "per." Under the clear and conspicuous standard, it is sufficient to state, for example, that a particular fee is charged "$2.50/mo. after 12 mos."

20(c)(2) Format

1. Electronic disclosures. Disclosures provided electronically pursuant to this section are not subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.). Electronic disclosures must be in a retainable form. For example, a person may satisfy the requirement if it provides an online disclosure in a format that is capable of being printed. Electronic disclosures may not be provided through a hyperlink or in another manner by which the purchaser can bypass the disclosure. A person is not required to confirm that the consumer has read the electronic disclosures.

20(c)(3) Disclosure Prior to Purchase

1. Method of purchase. The disclosures required by this paragraph must be provided before a certificate or card is purchased regardless of whether the certificate or card is purchased in person, online, by telephone, or by other means.

2. Electronic disclosures. Section 1005.20(c)(3) provides that the disclosures required by this section must be provided to the consumer prior to purchase. For certificates or cards purchased electronically, disclosures made to the consumer after a consumer has initiated an online purchase of a certificate or card, but prior to completing the purchase of the certificate or card, would satisfy the prior-to-purchase requirement. However,
Sections 1005.20(d)(2) and (c)(3) contain similar, but not identical, disclosure requirements. Section 1005.20(d)(2) requires the disclosure of dormancy, inactivity, and service fees on a certificate or card. Section 1005.20(c)(3) requires that vendor person that issues or sells such certificate or card disclose to a consumer any dormancy, inactivity, and service fees associated with the certificate or card before such certificate or card may be purchased. Depending on the context, a single disclosure that meets the clear and conspicuous requirements of both §§1005.20(d)(2) and (c)(3) may be used to disclose a dormancy, inactivity, or service fee. For example, if the disclosures on a certificate or card, required by §1005.20(d)(2), are visible to the consumer without having to remove packaging or other materials sold with the certificate or card, for a purchase made in person, the disclosures also meet the requirements of §1005.20(c)(3). Otherwise, a dormancy, inactivity, or service fee may need to be disclosed multiple times to satisfy the requirements of §§1005.20(d)(2) and (c)(3). For example, if the disclosures on a certificate or card, required by §1005.20(d)(2), are obstructed by packaging sold with the certificate or card, for a purchase made in person, they also must be disclosed on the packaging sold with the certificate or card to meet the requirements of §1005.20(c)(3).

3. Relationship between §§1005.20(d)(2), (e)(3), and (f)(2). In addition to any disclosures required under §1005.20(d)(2), any applicable disclosures under §§1005.20(e)(3) and (f)(2) of this section must also be provided on the certificate or card.

4. One fee per month. Under §1005.20(d)(3), no more than one dormancy, inactivity, or service fee may be imposed in any given calendar month. For example, if a dormancy fee is imposed on January 1, a balance inquiry fee may not be imposed at that time because a dormancy fee was already imposed earlier that month and a balance inquiry fee is a type of service fee. If, however, the dormancy fee could be imposed on January 1, following a year of inactivity, and the consumer makes a balance inquiry on the same date, the person assessing the fees may
choose whether to impose the dormancy fee or the balance inquiry fee on January 1. The restriction in §1005.20(d)(3) does not apply to any fee that is not a dormancy, inactivity, or service fee. For example, assume a service fee is imposed on a general-use prepaid card on January 1, following a year of inactivity. If a consumer cashes out the remaining funds by check on January 15, a cash-out fee, to the extent such cash-out fee is permitted under §1005.20(e)(4), may be imposed at that time because a cash-out fee is not a dormancy, inactivity, or service fee.

5. *Accumulation of fees.* Section 1005.20(d) prohibits the accumulation of dormancy, inactivity, or service fees for previous periods into a single fee because such a practice would circumvent the limitation in §1005.20(d)(3) that only one fee may be charged per month. For example, if a consumer purchases and activates a store gift card on January 1 but never uses the card, a monthly maintenance fee of $2.00 a month may not be accumulated such that a fee of $24 is imposed on January 1 the following year.

20(e) Prohibition on Sale of Gift Certificates or Cards With Expiration Dates

1. *Reasonable opportunity.* Under §1005.20(e)(1), no person may sell or issue a gift certificate, store gift card, or general-use prepaid card with an expiration date, unless there are policies and procedures in place to provide consumers with a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date. Consumers are deemed to have a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date if:
   i. There are policies and procedures established to prevent the sale of a certificate or card unless the certificate or card expiration date is at least five years after the date the certificate or card was sold or initially issued to a consumer; or
   ii. A certificate or card is available to consumers to purchase five years and six months before the certificate or card expiration date.

2. *Applicability to replacement certificates or cards.* Section 1005.20(e)(1) applies solely to the purchase of a certificate or card. Therefore, §1005.20(e)(1) does not apply to the replacement of such certificates or cards. Certificates or cards issued as a replacement may bear a certificate or card expiration date of less than five years from the date of issuance of the replacement certificate or card. If the certificate or card expiration date for a replacement certificate or card is later than the date set forth in §1005.20(e)(2)(i), then pursuant to §1005.20(e)(2), the expiration date for the underlying funds at the time the replacement certificate or card is issued must be no earlier than the expiration date for the replacement certificate or card. For purposes of §1005.20(e)(2), funds are not considered to be loaded to a store gift card or general-use prepaid card solely because a replacement card has been issued or activated for use.

3. *Disclosure of funds expiration—date not required.* Section 1005.20(e) does not require disclosure of the precise date the funds will expire. It is sufficient to disclose, for example, “Funds expire 5 years from the date funds last loaded to the card.” “Funds can be used 5 years from the date money was last added to the card.” or “Funds do not expire.”

4. *Disclosure not required if no expiration date.* If the certificate or card and underlying funds do not expire, the disclosure required by §1005.20(e)(3)(i) need not be stated on the certificate or card. If the certificate or card and underlying funds expire at the same time, only one expiration date need be disclosed on the certificate or card.

5. *Reference to toll-free telephone number and Web site.* If a certificate or card does not expire, or if the underlying funds are not available after the certificate or card expires, the disclosure required by §1005.20(e)(3)(ii) need not be stated on the certificate or card. See, however, §1005.20(f)(2).

6. *Relationship to §226.20(f)(2).* The same toll-free telephone number and Web site may be used to comply with §§226.20(e)(3)(i) and (f)(2). Neither a toll-free number nor a Web site must be maintained or disclosed if no fees are imposed in connection with a certificate or card, and the certificate or card and the underlying funds do not expire.

7. *Distinguishing between certificate or card expiration and funds expiration.* If applicable, a disclosure must be made on the certificate or card that notifies a consumer that the certificate or card expires, but the funds either do not expire or expire later than the certificate or card, and that the consumer may contact the issuer for a replacement card. The disclosure must be made with equal prominence and in close proximity to the certificate or card expiration date. The close proximity requirement does not apply to oral disclosures. In the case of a certificate or card, close proximity means that the disclosure must be on the same side as the certificate or card expiration date. For example, if the disclosure is the same type size and is located immediately next to or directly above or below the certificate or card expiration date, without any intervening text or graphical displays, the disclosures would be deemed to be equally prominent and in close proximity. The disclosure need not be embossed on the certificate or card to be deemed equally prominent, even if the expiration date is embossed on the certificate or card. The disclosure may state on the front of the card, for example, “Funds expire..."
§ 1005.20(e)(3)(i).
also fulfills the requirements of § 1005.20(e)(3)(iii)(A) making a disclosure that "Funds do not expire. Call for new card after expiration date that is at least seven years from the date of manufacture need not state the disclosure required by §1005.20(e)(3)(i). However, §1005.20(e)(1) still prohibits the sale or issuance of such certificate or card unless there are policies and procedures in place to provide a consumer with a reasonable opportunity to purchase the certificate or card with at least five years remaining until the certificate or card expiration date. In addition, under §1005.20(e)(2), the funds may not expire before the certificate or card expiration date, even if the expiration date of the certificate or card bears an expiration date that is more than five years from the date of purchase. For purposes of this safe harbor, the date of manufacture is the date on which the certificate or card expiration date is printed on the certificate or card.

§ 1005.20(e)(3)(iii)(A) may also fulfill the requirements of § 1005.20(e)(3)(i), and (f)(2) must also be provided on the certificate or card.

§ 1005.20(e)(3)(i). Replacement of a lost or stolen certificate or card not required. Section 1005.20(e)(4) does not require the replacement of a certificate or card that has been lost or stolen. §1005.20(e)(2)(i), a certificate or card is not issued or loaded with funds until the certificate or card is activated for use.

§ 1005.20(e)(3)(i). Date of issuance or loading. For purposes of §1005.20(e)(2)(i), a certificate or card is not issued or loaded with funds until the certificate or card is activated for use.

§ 1005.20(e)(3)(i). Application of expiration date provisions after redemption of certificate or card. The requirement that funds underlying a certificate or card must not expire for at least five years from the date of issuance or date of last load ceases to apply once the certificate or card has been fully redeemed, even if the underlying funds are not used to contemporaneously purchase a specific good or service. For example, some certificates or cards can be used to purchase music, media, or virtual goods. Once redeemed by a consumer, the entire balance on the certificate or card is debited from the certificate or card and credited or transferred to another “account” established by the merchant of such goods or services. The consumer can then make purchases of songs, media, or virtual goods from the merchant using that “account” either at the time the value is transferred from the certificate or card or at a later time. Under these circumstances, once the card has been fully redeemed and the “account” credited with the amount of the underlying funds, the five-year minimum expiration term no longer applies to the underlying funds. However, the consumer only partially redeems the value of the certificate or card, the five-year minimum expiration term requirement continues to apply to the funds remaining on the certificate or card.

§ 1005.20(f) Additional Disclosure Requirements for Gift Certificates or Cards

1. Reference to toll-free telephone number and Web site. If a certificate or card does not have any fees, the disclosure under §1005.20(f)(2) is not required on the certificate or card. See, however, §1005.20(e)(3)(i).

2. Relationship to § 226.20(e)(3)(ii). The same toll-free telephone number and Web site must be maintained or disclosed if no fees are imposed in connection with a certificate or card, and both the certificate or card and underlying funds do not expire.

3. Relationship between §§1005.20(e)(3), (f)(2), and (f)(4). In addition to any disclosures required pursuant to §1005.20(f)(4), any applicable disclosures under §§1005.20(d)(2) and (f)(2) must also be provided on the certificate or card.

§ 1005.20(g) Compliance Dates

1. Period of eligibility for loyalty, award, or promotional programs. For purposes of §1005.20(g)(2), the period of eligibility is the time period during which a consumer must engage in a certain action or actions to meet the terms of eligibility for a loyalty, award, or promotional program and obtain the card, code, or other device. Under §1005.20(g)(2), a gift card issued pursuant to a loyalty, award, or promotional program that began prior to August 22, 2010 need not state the disclosures in § 1005.20(a)(4)(ii) regardless of whether the consumer became eligible to receive the gift card prior to August 22, 2010, or after that date. For example, a product manufacturer may provide a $20 rebate card to a consumer if the consumer purchases a particular product and submits a fully completed entry between January 1, 2010 and December 31, 2010. Similarly, a merchant may provide a $20 gift card to a consumer if the consumer makes $200 worth of qualifying purchases between June 1, 2010 and October 30, 2010. Under both
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Examples, gift cards provided pursuant to these loyalty, award, or promotional programs need not state the disclosures in § 1005.20(a)(4)(iii) to qualify for the exclusion in § 1005.20(b)(3) for loyalty, award, or promotional gift cards because the period of eligibility for each program began prior to August 22, 2010.

20(h) Temporary Exemption

20(h)(1) Delayed Effective Date

1. Application to certificates or cards produced prior to April 1, 2010. Certificates or cards produced prior to April 1, 2010 may be sold to a consumer on or after August 22, 2010 without satisfying the requirements of §§ 1005.20(c)(3), (d)(2), (e)(1), (e)(3), and (f) through January 30, 2011, provided that issuers of such certificates or cards comply with the additional substantive and disclosure requirements of §§ 1005.20(b)(1)(i) through (iv). Issuers of certificates or cards produced prior to April 1, 2010 need not satisfy these additional requirements if the certificates or cards fully comply with the rule (§§ 1005.20(a) through (f)). For example, the in-store signage and other disclosures required by § 1005.20(b)(2) do not apply to gift cards produced prior to April 1, 2010 that do not have fees and do not expire, and which otherwise comply with the rule.

2. Expiration of temporary exemption. Certificates or cards produced prior to April 1, 2010 that do not fully comply with §§ 1005.20(a) through (f) may not be issued or sold to consumers on or after January 31, 2011.

20(h)(2) Additional Disclosures

1. Disclosures through third parties. Issuers may make the disclosures required by § 1005.20(b)(2) through a third party, such as a retailer or merchant. For example, an issuer may have a merchant install in-store signage with the disclosures required by § 1005.20(b)(2) on the issuer’s behalf.

2. General advertising disclosures. Section 1005.20(h)(2) does not impose an obligation on the issuer to advertise gift certificates, store gift cards, or general-use prepaid cards.

SECTION 1005.30—REMITTANCE TRANSFER DEFINITIONS

1. Applicability of definitions in subpart A. Except as modified or limited by subpart B (which modifications or limitations apply only to subpart B), the definitions in § 1005.2 apply to all of Regulation E, including subpart B.

20(b) Business Day

1. General. A business day, as defined in § 1005.30(b), includes the entire 24-hour period ending at midnight, and a notice given pursuant to any section of subpart B is effective even if given outside of normal business hours. A remittance transfer provider is not required under subpart B to make telephone lines available on a 24-hour basis.

2. Substantially all business functions. “Substantially all business functions” include both the public and the back-office operations of the provider. For example, if the offices of a provider are open on Saturdays for customers to request remittance transfers, but not for performing internal functions (such as investigating errors), then Saturday is not a business day for that provider. In this case, Saturday does not count toward the business-day standard set by subpart B for resolving errors, processing refunds, etc.

3. Short hours. A provider may determine, at its election, whether an abbreviated day is a business day. For example, if a provider engages in substantially all business functions until noon on Saturdays instead of its usual 3 p.m. closing, it may consider Saturday a business day.

4. Telephone line. If a provider makes a telephone line available on Sundays for cancelling the transfer, but performs no other business functions, Sunday is not a business day under the “substantially all business functions” standard.

20(c) Designated Recipient

1. Person. A designated recipient can be either a natural person or an organization, such as a corporation. See § 1005.2(j) (definition of person). The designated recipient is identified by the name of the person provided by the sender to the remittance transfer provider and disclosed by the provider to the sender pursuant to § 1005.31(b)(1)(iii).

2. Location in a foreign country. 1. A remittance transfer is received at a location in a foreign country if funds are to be received at a location physically outside of any State, as defined in § 1005.2(i). A specific pick-up location need not be designated for funds to be received at a location in a foreign country. If it is specified that the funds will be transferred to a foreign country to be picked up by the designated recipient, the transfer will be received at a location in a foreign country, even though a specific pick-up location within that country has not been designated.

ii. For transfers to a designated recipient’s account, whether funds are to be received at a location physically outside of any State depends on where the recipient’s account is located. If the account is located in a State, the funds will not be received at a location in a foreign country.

iii. Where the sender does not specify information about a designated recipient’s account, but instead provides information about the recipient, a remittance transfer provider may make the determination of whether the funds will be received at a location in a foreign country on information that is provided by the sender, and other information the provider may have, at the
time the transfer is requested. For example, if a consumer in a State gives a provider the recipient’s email address, and the provider has no other information about whether the funds will be received by the recipient at a location in a foreign country, then the provider may determine that funds are not to be received at a location in a foreign country. However, if the provider at the time the transfer is requested has additional information indicating that funds are to be received in a foreign country, such as if the recipient’s email address is already registered with the provider and associated with a foreign account, then the provider has sufficient information to conclude that the remittance transfer will be received at a location in a foreign country. Similarly, if a consumer in a State purchases a prepaid card, and the provider mails or delivers the card directly to the consumer, the provider may conclude that funds are not to be received in a foreign country, because the provider does not know whether the consumer will subsequently send the prepaid card to a recipient in a foreign country. In contrast, the provider has sufficient information to conclude that the funds are to be received in a foreign country if the remittance transfer provider sends a prepaid card to a specified recipient in a foreign country, even if a person located in a State, including the sender, retains the ability to access funds on the prepaid card.

3. Sender as designated recipient. A “sender,” as defined in §1005.30(g), may also be a designated recipient if the sender meets the definition of “designated recipient” in §1005.30(c). For example, a sender may request that a provider send an electronic transfer of funds from the sender’s checking account in a State to the sender’s checking account located in a foreign country. In this case, the sender would also be a designated recipient.

30(d) Preauthorized Remittance Transfer

1. Advance authorization. A preauthorized remittance transfer is a remittance transfer authorized in advance of a transfer that will take place on a recurring basis, at substantially regular intervals, and will require no further action by the consumer to initiate the transfer. In a bill-payment system, for example, if the consumer authorizes a remittance transfer provider to make monthly payments to a payee by means of a remittance transfer, and the payments take place without further action by the consumer, the payments are preauthorized remittance transfers. In contrast, if the consumer must take action each month to initiate a transfer (such as by entering instructions on a telephone or home computer), the payments are not preauthorized remittance transfers.

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provides a checking or other account number, or a debit, credit or prepaid card, directly to a foreign merchant as payment for goods or services, the merchant is not acting as a remittance transfer provider when it submits the payment information for processing.

iii. However, a card issuer or a payment network may offer a service to a sender where the card issuer or a payment network is an intermediary that is directly engaged with the sender to obtain funds using the sender’s debit, prepaid or credit card and to send those funds to a recipient’s checking account located in a foreign country. In this case, the card issuer or the payment network is an intermediary that is directly engaged with the sender to send an electronic transfer of funds on behalf of the sender, and this transfer of funds is a remittance transfer because it is made to a designated recipient. See comment 30(e)-2.

3. Examples of remittance transfers.

i. Examples of remittance transfers include:

A. Transfers where the sender provides cash or another method of payment to a money transmitter or financial institution and requests that funds be sent to a specified location or account in a foreign country.

B. Consumer wire transfers, where a financial institution executes a payment order upon a sender’s request to wire money from the sender’s account to a designated recipient.

C. An addition of funds to a prepaid card by a participant in a prepaid card program, such as a prepaid card issuer or its agent, that is directly engaged with the sender to add these funds, where the prepaid card is sent or was previously sent by a participant in the prepaid card program to a person in a foreign country, even if a person located in a State (including a sender) retains the ability to withdraw such funds.

D. International ACH transactions sent by the sender’s financial institution at the sender’s request.

E. Online bill payments and other electronic transfers that a sender schedules in advance, including preauthorized remittance transfers, made by the sender’s financial institution at the sender’s request to a designated recipient.

ii. The term remittance transfer does not include, for example:

A. A consumer’s provision of a debit, credit or prepaid card, directly to a foreign merchant as payment for goods or services because the issuer is not directly engaged with the sender to send an electronic transfer of funds to the foreign merchant when the issuer provides payment to the merchant. See comment 30(e)-2.

B. A consumer’s deposit of funds to a checking or savings account located in a State, because there has not been a transfer of funds to a designated recipient. See comment 30(c)-2.

4. Examples of remittance transfers.

i. The term remittance transfer does not include any transfers that are excluded from the definition of “remittance transfer” due simply to the safe harbor. In contrast, the number of remittance transfers provided includes any transfers excluded from the definition of “remittance transfer” due simply to the safe harbor provider and is not subject to the requirements of subpart B. For purposes of determining whether a person qualifies for the safe harbor in §1005.30(f)(2)(i), the number of remittance transfers provided includes any transfers excluded from the definition of “remittance transfer” due simply to the safe harbor provider and is not subject to the requirements of subpart B. For purposes of determining whether a person qualifies for the safe harbor in §1005.30(f)(2)(i), the number of remittance transfers provided includes any transfers excluded from the definition of “remittance transfer” due simply to the safe harbor provider and is not subject to the requirements of subpart B. For purposes of determining whether a person qualifies for the safe harbor in §1005.30(f)(2)(i), the number of remittance transfers provided includes any transfers excluded from the definition of “remittance transfer” due simply to the safe harbor provider and is not subject to the requirements of subpart B. For purposes of determining whether a person qualifies for the safe harbor in §1005.30(f)(2)(i), the number of remittance transfers provided includes any transfers excluded from the definition of “remittance transfer” due simply to the safe harbor provider and is not subject to the requirements of subpart B. For purposes of determining whether a person qualifies for the safe harbor in §1005.30(f)(2)(i), the number of remittance transfers provided includes any transfers excluded from the definition of “remittance transfer” due simply to the safe harbor provider and is not subject to the requirements of subpart B.
iii. **Transition period.** A person may cease to satisfy the requirements of the safe harbor described in §1005.30(f)(2)(i) if the person provides in excess of 100 remittance transfers in a calendar year. For example, if a person that provided 100 or fewer remittance transfers in the previous calendar year provides more than 100 remittance transfers in the current calendar year, the safe harbor applies only to the first 100 remittance transfers that the person provides in the current calendar year and for any remittance transfers provided in the subsequent calendar year, whether the person provides remittance transfers for a consumer in the normal course of its business, as defined in §1005.30(f)(1), and is thus a remittance transfer provider for those additional transfers, depends on the facts and circumstances. Section 1005.30(f)(2)(ii) provides a reasonable period of time, not to exceed six months, for such a person to begin complying with subpart B. If that person is then providing remittance transfers in the normal course of its business, at the end of that reasonable period of time, such person would be required to comply with subpart B unless, based on the facts and circumstances, the person is not a remittance transfer provider.

iv. **Example of safe harbor and transition period.** Assume that a person provided 90 remittance transfers in 2012 and 90 such transfers in 2013. The safe harbor will apply to the person's transfers in 2013, as well as the person's first 100 remittance transfers in 2014. However, if the person provides a 101st transfer on September 5, the facts and circumstances determine whether the person provides remittance transfers in the normal course of business and is thus a remittance transfer provider for that transfer and any subsequent remittance transfers that it provides in 2014. Furthermore, the person would not qualify for the safe harbor described in §1005.30(f)(2)(i) in 2015 because the person did not provide 100 or fewer remittance transfers in 2014. However, for the 101st remittance transfer provided in 2014, as well as additional remittance transfers provided thereafter in 2014 and 2015, if that person is then providing remittance transfers for a consumer in the normal course of business, the person will have a reasonable period of time, not to exceed six months, to come into compliance with subpart B. Assume that in this case, a reasonable period of time is six months. Thus, compliance with subpart B is not required for remittance transfers made on or before March 5, 2015 (i.e., six months after September 5, 2014). After March 5, 2015, the person is required to comply with subpart B if, based on the facts and circumstances, the person provides remittance transfers in the normal course of business and is thus a remittance transfer provider.

3. **Multiple remittance transfer providers.** If the remittance transfer involves more than one remittance transfer provider, only one set of disclosures must be given, and the remittance transfer providers must agree among themselves which provider must take the actions necessary to comply with the requirements that subpart B imposes on any or all of them. Even though the providers must designate one provider to take the actions necessary to comply with the requirements that subpart B imposes on any or all of them, all remittance transfer providers involved in the remittance transfer remain responsible for compliance with the applicable provisions of the EFTA and Regulation E.

30(g) **Sender**

1. Determining whether a consumer is located in a State. Under §1005.30(g), the definition of "sender" means a consumer in a State who, primarily for personal, family, or household purposes, requests a remittance transfer provider to send a remittance transfer to a designated recipient. For transfers from a consumer's account, whether a consumer is located in a State depends on where the consumer's account is located. If the account is located in a State, the consumer will be located in a State for purposes of the definition of "sender" in §1005.30(g), notwithstanding comment 3(a)-3. Where a transfer is requested electronically or by telephone and the transfer is not from an account, the provider may make the determination of whether a consumer is located in a State based on information that is provided by the consumer and on any records associated with the consumer that the provider may have, such as an address provided by the consumer.

30(h) **Third-Party Fees**

1. Fees imposed on the remittance transfer. Fees imposed on the remittance transfer by a person other than the remittance transfer provider include only those fees that are charged to the designated recipient and are specifically related to the remittance transfer. For example, overdraft fees that are imposed by a recipient's bank or funds that are garnished from the proceeds of a remittance transfer to satisfy an unrelated debt are not fees imposed on the remittance transfer because these charges are not specifically related to the remittance transfer. Account fees are also not specifically related to a remittance transfer if such fees are merely assessed based on general account activity and not for receiving transfers. Where an incoming remittance transfer results in a balance increase that triggers a monthly maintenance fee, that fee is not specifically related to a remittance transfer. Similarly, fees that banks charge one another for handling a remittance transfer or other fees that do not affect the total amount of the transaction or

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the amount that will be received by the designated recipient are not fees imposed on the remittance transfer. For example, an interchange fee that is charged to a provider when a sender uses a credit or debit card to pay for a remittance transfer is not a fee imposed upon the remittance transfer. Fees that specifically relate to a remittance transfer may be structured on a flat per-transaction basis, or may be conditioned on other factors (such as account status or the quantity of remittance transfers received) in addition to the remittance transfer itself. For example, where an institution charges an incoming transfer fee on most customers' accounts, but not on preferred accounts, such a fee is nonetheless specifically related to a remittance transfer. Similarly, if the institution assesses a fee for every transfer beyond the fifth received each month, such a fee would be specifically related to the remittance transfer regardless of how many remittance transfers preceded it that month.

2. Covered third-party fees. i. Under §1005.30(b)(1), a covered third-party fee means any fee that is imposed on the remittance transfer by a person other than the remittance transfer provider that is not a non-covered third-party fee.

ii. Examples of covered third-party fees include:
A. Fees imposed on a remittance transfer by intermediary institutions in connection with a wire transfer (sometimes referred to as “lifting fees”).
B. Fees imposed on a remittance transfer by an agent of the provider at pick-up for receiving the transfer.
C. Non-covered third-party fees. Under §1005.30(b)(2), a non-covered third-party fee means any fee imposed by the designated recipient’s institution for receiving a remittance transfer into an account except if such institution acts as the agent of the remittance transfer provider. For example, a fee imposed by the designated recipient’s institution for receiving an incoming transfer into an account is a non-covered third-party fee, provided such institution is not acting as the agent of the remittance transfer provider. See also comment 31(b)(1)(viii)-1. Furthermore, designated recipient’s account in §1005.30(b)(2) refers to an asset account, regardless of whether it is a consumer account, established for any purpose and held by a bank, savings association, credit union, or equivalent institution. A designated recipient’s account does not, however, include a credit card, prepaid card, or a virtual account held by an Internet-based or mobile telephone company that is not a bank, savings association, credit union or equivalent institution.

31(a)(2) Written and Electronic Disclosures
1. E-Sign Act requirements. If a sender electronically requests the remittance transfer provider to send a remittance transfer, the disclosures required by §1005.31(b)(1) may be provided to the sender in electronic form without regard to the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E–Sign Act) (15 U.S.C. 7001 et seq.). If a sender electronically requests the provider to send a remittance transfer, the disclosures required by §1005.31(b)(2) may be provided to the sender in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E–Sign Act. See §1005.4(a)(1).

2. Paper size. Written disclosures may be provided on any size paper, as long as the disclosures are clear and conspicuous. For example, disclosures may be provided on a register receipt or on an 8.5 inch by 11 inch sheet of paper.

3. Retainable electronic disclosures. A remittance transfer provider may satisfy the requirement to provide electronic disclosures in a retainable form if it provides an online disclosure in a format that is capable of being printed. Electronic disclosures may not be provided through a hyperlink or in another manner by which the sender can bypass the disclosure. A provider is not required to confirm that the sender has read the electronic disclosures.

4. Pre-payment disclosures to a mobile telephone. Disclosures provided via mobile application or text message, to the extent permitted by §1005.31(a)(5), need not be retainable. However, disclosures provided electronically to a mobile telephone that are not provided via mobile application or text message must be retainable. For example, disclosures provided via email must be retainable, even if a sender accesses them by mobile telephone.
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31(a)(3) Disclosures for Oral Telephone Transactions

1. Transactions conducted partially by telephone. For transactions conducted partially by telephone, providing the information required by §1005.31(b)(1) to a sender orally does not fulfill the requirement to provide the disclosures required by §1005.31(b)(1). For example, a sender may begin a remittance transfer at a remittance transfer provider’s dedicated telephone in a retail store, and then provide payment in person to a store clerk to complete the transaction. In such cases, all disclosures must be provided in writing. A provider complies with this requirement, for example, by providing the written pre-payment disclosure in person prior to the sender’s payment for the transaction, and the written receipt when the sender pays for the transaction.

2. Oral Telephone Transactions. Section 1005.31(a)(3) applies to transactions conducted orally and entirely by telephone, such as transactions conducted orally on a landline or mobile telephone.

31(a)(5) Disclosures for Mobile Application or Text Message Transactions

1. Mobile application and text message transactions. A remittance transfer provider may provide the required pre-payment disclosures orally or via mobile application or text message if the transaction is conducted entirely by telephone via mobile application or text message, the remittance transfer provider complies with the requirements of §1005.31(g)(2), and the provider discloses orally or via mobile application or text message a statement about the rights of the sender regarding cancellation required by §1005.31(b)(2)(iv) pursuant to the timing requirements in §1005.31(e)(1). For example, if a sender conducts a transaction via text message on a mobile telephone, the remittance transfer provider may call the sender and orally provide the required pre-payment disclosures. Alternatively, the provider may provide the required pre-payment disclosures via text message. Section 1005.31(a)(5) applies only to transactions conducted entirely by mobile telephone via mobile application or text message.

31(b) Disclosure Requirements

1. Disclosures provided as applicable. Disclosures required by §1005.31(b) need only be provided to the extent applicable. A remittance transfer provider may choose to omit an item of information required by §1005.31(b) if it is inapplicable to a particular transaction. Alternatively, for disclosures required by §1005.31(b)(1) through (vii), a provider may disclose a term and state that an amount or item is “not applicable,” “N/A,” or “None.” For example, if fees or taxes are not imposed in connection with a particular transaction, the provider need not provide the disclosures about fees and taxes generally required by §1005.31(b)(1)(i), the disclosures about covered third-party fees generally required by §1005.31(b)(1)(vi), or the disclaimers about non-covered third-party fees and taxes collected by a person other than the provider generally required by §1005.31(b)(1)(viii). Similarly, a Web site need not be disclosed if the provider does not maintain a Web site. A provider need not provide the exchange rate disclosure required by §1005.31(b)(1)(iv) if a recipient receives funds in the currency in which the remittance transfer is funded, or if funds are delivered into an account denominated in the currency in which the remittance transfer is funded. For example, if a sender in the United States sends funds from an account denominated in Euros to an account in France denominated in Euros, no exchange rate would need to be provided. Similarly, if a sender funds a remittance transfer in U.S. dollars and requests that a remittance transfer be delivered to the recipient in U.S. dollars, a provider need not disclose an exchange rate.

2. Substantially similar terms, language, and notices. Certain disclosures required by §1005.31(b) must be described using the terms set forth in §1005.31(b) or substantially similar terms. Terms may be more specific than those provided. For example, a remittance transfer provider sending funds may describe fees imposed by an agent at pick-up as “Pick-up Fees” in lieu of describing them as “Other Fees.” Foreign language disclosures required under §1005.31(g) must contain accurate translations of the terms, language, and notices required by §1005.31(b) or permitted by §1005.31(b)(1)(vii) and §1005.33(b)(3).

31(b)(1) Pre-Payment Disclosures

1. Fees and taxes. 1. Taxes collected on the remittance transfer by the remittance transfer provider include taxes collected on the remittance transfer by a State or other governmental body. A provider need only disclose fees imposed or taxes collected on the remittance transfer by the provider in §1005.31(b)(1)(ii), as applicable. For example, if no transfer taxes are imposed on a remittance transfer, a provider would only disclose applicable transfer fees. See comment 31(b)-1. If both fees and taxes are imposed, the fees and taxes must be disclosed as separate, itemized disclosures. For example, a provider would disclose all transfer fees using the term “Transfer Fees” or a substantially similar term and would separately disclose all transfer taxes using the term “Transfer Taxes” or a substantially similar term.
ii. The fees and taxes required to be disclosed by §1005.31(b)(1)(ii) include all fees imposed and all taxes collected on the remittance transfer by the provider. For example, financial institutions, any fees imposed by an agent of the provider at the time of the transfer, and any State taxes collected on the remittance transfer at the time of the transfer. Fees imposed on the remittance transfer by the provider required to be disclosed under §1005.31(b)(1)(i) include only those fees that are charged to the sender and are specifically related to the remittance transfer. See also comment 30(h)-1. In contrast, the fees required to be disclosed by §1005.31(b)(1)(vi) are any covered third-party fees as defined in §1005.30(h)(1).

iii. The term used to describe the fees imposed on the remittance transfer by the provider in §1005.31(b)(1)(ii) and the term used to describe covered third-party fees under §1005.31(b)(1)(vi) must differentiate between such fees. For example the terms used to describe fees disclosed under §1005.31(b)(1)(i) and (vi) may not both be described solely as “Fees.”

2. Transfer amount. Sections 1005.31(b)(1)(i) and (v) require two transfer amount disclosures. First, under §1005.31(b)(1)(i), a provider must disclose the transfer amount in the currency in which the remittance transfer is funded to show the calculation of the total amount of the transaction. Typically, the remittance transfer is funded in U.S. dollars, so the transfer amount would be expressed in U.S. dollars. However, if the remittance transfer is funded, for example, from a Euro-denominated account, the transfer amount would be expressed in Euros. Second, under §1005.31(b)(1)(v), a provider must disclose the transfer amount in the currency in which the funds will be made available to the designated recipient. For example, if the funds will be picked up by the designated recipient in Japanese yen, the transfer amount would be expressed in Japanese yen. However, this second transfer amount need not be disclosed if covered third-party fees as described under §1005.31(b)(1)(vi) are not imposed on the remittance transfer. The terms used to describe each transfer amount should be the same.

3. Exchange rate for calculation. The exchange rate used to calculate the transfer amount in §1005.31(b)(1)(v), the covered third-party fees in §1005.31(b)(1)(vi), the amount received in §1005.31(b)(1)(vii), and the optional disclosures of non-covered third-party fees and other taxes permitted by §1005.31(b)(1)(viii) is the exchange rate in §1005.31(b)(1)(iv), including an estimated exchange rate to the extent permitted by §1005.32, prior to any rounding of the exchange rate. For example, if one U.S. dollar exchanges for 11.948779 Mexican pesos, a provider must calculate these disclosures using this rate, even though the provider may disclose pursuant to §1005.31(b)(1)(iv) that the U.S. dollar exchanges for 11.9484 Mexican pesos. Similarly, if a provider estimates pursuant to §1005.32 that one U.S. dollar exchanges for 11.9484 Mexican pesos, a provider must calculate these disclosures using this rate, even though the provider may disclose pursuant to §1005.31(b)(1)(iv) that the U.S. dollar exchanges for 11.9484 Mexican pesos (Estimated). If an exchange rate need not be rounded, a provider must use that exchange rate to calculate these disclosures. For example, if one U.S. dollar exchanges for exactly 11.9 Mexican pesos, a provider must calculate these disclosures using this exchange rate.

31(b)(1)(iv) Exchange Rate

1. Applicable exchange rate. If the designated recipient will receive funds in a currency other than the currency in which the remittance transfer is funded, a remittance transfer provider must disclose the exchange rate to be used by the provider for the remittance transfer. An exchange rate that is estimated must be disclosed pursuant to the requirements of §1005.32. A remittance transfer provider may not disclose, for example, that the exchange rate is “unknown,” “floating,” or “to be determined.” If a provider does not have specific knowledge regarding the currency in which the funds will be received, the provider may rely on a sender’s representation as to the currency in which funds will be received for purposes of determining whether an exchange rate is applied to the transfer. For example, if a sender requests that a remittance transfer be deposited into an account in U.S. dollars, the provider need not disclose an exchange rate, even if the account is actually denominated in Mexican pesos and the funds are converted prior to deposit into the account. If a sender does not know the currency in which funds will be received, the provider may assume that the currency in which funds will be received is the currency in which the remittance transfer is funded.

2. Rounding. The exchange rate disclosed by the provider for the remittance transfer is required to be rounded. The provider may round to two, three, or four decimal places, at its option. For example, if one U.S. dollar exchanges for 11.948779 Mexican pesos, a provider may disclose that the U.S. dollar exchanges for 11.9484 Mexican pesos. The provider may alternatively disclose, for example, that the U.S. dollar exchanges for 11.948 pesos or 11.95 pesos. On the other hand, if one U.S. dollar exchanges for exactly 11.9 Mexican pesos, the provider may disclose that “$US1 = 11.9 MXN.” The exchange rate disclosed for the remittance transfer must be rounded consistently for each currency. For example, a provider may not round to two
must be disclosed by the provider. The exchange rate used by the provider for the remittance transfer need not be set by that provider. For example, an exchange rate set by an intermediary institution and applied to the remittance transfer would be the exchange rate used for the remittance transfer and must be disclosed by the provider.

31(b)(1)(vi) Disclosure of Covered Third-Party Fees

1. Fees disclosed in the currency in which the funds will be received. Section 1005.31(b)(1)(vi) requires the disclosure of covered third-party fees in the currency in which the funds will be received by the designated recipient. A covered third-party fee described in §1005.31(b)(1)(vi) may be imposed in one currency, but the funds may be received by the designated recipient in another currency. In such cases, the remittance transfer provider must calculate the fee to be disclosed under §1005.31(b)(1)(vi) in the currency of receipt using the exchange rate in §1005.31(b)(1)(iv), including an estimated exchange rate to the extent permitted by §1005.32, prior to any rounding of the exchange rate. For example, an intermediary institution involved in sending an international wire transfer funded in U.S. dollars may impose a fee in U.S. dollars, but funds are ultimately deposited in the recipient’s account in Euros. In this case, the provider would disclose the covered third-party fee to the sender expressed in Euros, calculated using the exchange rate disclosed under §1005.31(b)(1)(iv), prior to any rounding of the exchange rate. For purposes of §1005.31(b)(1)(vi), (v), and (vii), if a provider does not have specific knowledge regarding the currency in which the funds will be received, the provider may rely on a sender’s representation as to the currency in which funds will be received. For example, if a sender requests that a remittance transfer be deposited into an account in U.S. dollars, the provider may provide the disclosures required in §1005.31(b)(1)(v), (vi), and (vii) in U.S. dollars, even if the account is actually denominated in Mexican pesos and the funds are subsequently converted prior to deposit into the account. If a sender does not know the currency in which funds will be received, the provider may assume that the currency in which funds will be received is the currency in which the remittance transfer is funded.

31(b)(1)(viii) Amount Received

1. Amount received. The remittance transfer provider is required to disclose the amount that will be received by the designated recipient in the currency in which the funds will be received. The amount received must reflect the exchange rate, all fees imposed and all taxes collected on the remittance transfer by the remittance transfer provider, as well as any covered third-party fees required to be disclosed by §1005.31(b)(1)(vi). The disclosed amount received must be reduced by the amount of any fee or tax—except for a non-covered third-party fee or tax—collected on the remittance transfer by a person other than the provider—that is imposed on the remittance transfer that affects the amount received even if that amount is imposed or itemized separately from the transaction amount.

31(b)(1)(viii) Statement When Additional Fees and Taxes May Apply

1. Required disclaimer when non-covered third-party fees and taxes collected by a person other than the provider may apply. If non-covered third-party fees or taxes collected by a person other than the provider apply to a particular remittance transfer or if a provider does not know if such fees or taxes may apply to a particular remittance transfer, §1005.31(b)(1)(viii) requires the provider to include the disclaimer with respect to such fees and taxes. Required disclosures under §1005.31(b)(1)(viii) may only be provided to the extent applicable. For example, if the designated recipient’s institution is an agent of the provider and thus, non-covered third-party fees cannot apply to the transfer, the provider must disclose all fees imposed on the remittance transfer and may not provide the disclaimer regarding non-covered third-party fees. In this scenario, the provider may only provide the disclaimer regarding taxes collected on the remittance transfer by a person other than the provider, as applicable. See Model Form A–30(c).

2. Optional disclosure of non-covered third-party fees and taxes collected by a person other than the provider. When a remittance transfer provider knows the non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider that will apply to a particular transaction, §1005.31(b)(1)(viii) permits the provider to disclose the amount of such fees and taxes. Section 1005.32(b)(3) additionally permits a provider to disclose an estimate of such fees and taxes, provided any estimates are based on reasonable source of information. See comment 32(b)(3). For example, a provider may know that the designated recipient’s institution imposes an incoming wire fee for receiving a transfer. Alternatively, a provider may know that foreign taxes will be collected on the remittance transfer by a person other than the remittance transfer provider. In these examples, the provider may choose, at its option, to disclose the amounts of the relevant recipient institution
fee and tax as part of the information disclosed pursuant to §1005.3(a)(3) and (a)(5), in accordance with §1005.32(a)(1)(i). The second receipt, which §1005.36(a)(1)(ii) requires to be provided within one business day after the date of the transfer or, for transfers from the sender’s account held by the provider, on the next regularly scheduled periodic statement or within 30 days after payment is made if a periodic statement is not provided, is also required to include the date of transfer. If the provider discloses on either receipt the cancellation period applicable to and dates of subsequent preauthorized remittance transfers in accordance with §1005.36(d)(2), the disclosure must be phrased and formatted in such a way that it is clear to the sender which cancellation period is applicable to any date of transfer on the receipt.

6. Cancellation disclosure. Remittance transfer providers that offer remittance transfers scheduled three or more business days before

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31(b)(2) Receipt

1. Date funds will be available. A remittance transfer provider does not comply with the requirements of §1005.31(b)(2)(ii) if it provides a range of dates that the remittance transfer may be available or an estimate of the date on which funds will be available. If a provider does not know the exact date on which funds will be available, the provider may disclose the latest date on which the funds will be available. For example, if funds may be available on January 3 or later, but are not certain to be available until January 10, then a provider complies with §1005.31(b)(2)(ii) if it discloses January 10 as the date funds will be available. However, a remittance transfer provider may also disclose that funds “may be available sooner” or use a substantially similar term to inform senders that funds may be available to the designated recipient on a date earlier than the date disclosed. For example, a provider may disclose “January 10 (may be available sooner).”

2. Agencies required to be disclosed. A remittance transfer provider must only disclose information about a State agency that licenses or charters the remittance transfer provider with respect to the remittance transfer as applicable. For example, if a financial institution is solely regulated by a Federal agency, and not licensed or chartered by a State agency, then the institution need not disclose information about a State agency. A remittance transfer provider must disclose information about the Consumer Financial Protection Bureau, whether or not the Consumer Financial Protection Bureau is the provider’s primary Federal regulator.

3. State agency that licenses or charters a provider. A remittance transfer provider must only disclose information about one State agency that licenses or charters the remittance transfer provider with respect to the remittance transfer, even if other State agencies also regulate the remittance transfer provider. For example, a provider may disclose information about the State agency which granted its license. If a provider is licensed in multiple States, and the State agency that licenses the provider with respect to the remittance transfer is determined by a sender’s location, a provider may make the determination as to the State in which the sender is located based on information that is provided by the sender and on any records associated with the sender. For example, if the State agency that licenses the provider with respect to an online remittance transfer is determined by a sender’s location, a provider could rely on the sender’s periodic statement regarding the State in which the sender is located and disclose the State agency that licenses the provider in that State. A State-chartered bank must disclose information about the State agency that granted its charter, regardless of the location of the sender.

4. Date of transfer on receipt. Where applicable, §1005.31(b)(2)(vii) requires disclosure of the date of transfer for the remittance transfer that is the subject of a receipt required by §1005.31(b)(2), including a receipt that is provided in accordance with the timing requirements in §1005.36(a). For any subsequent preauthorized remittance transfer subject to §1005.36(d)(2)(ii), the future date of transfer must be provided on any receipt provided for the initial transfer in that series of preauthorized remittance transfers, or where permitted, or disclosed as permitted by §1005.31(a)(3) and (a)(5), in accordance with §1005.36(a)(1)(i).
the date of the transfer, as well as remittance transfers scheduled fewer than three business days before the date of the transfer, may meet the cancellation disclosure requirements of § 1005.31(b)(2)(iv) by describing the three-business-day and 30-minute cancellation periods on the same disclosure and using a checkbox or other method to clearly designate the applicable cancellation period. The provider may use a number of methods to indicate which cancellation period applies to the transaction including, but not limited to, a statement to that effect, use of a checkbox, highlighting, circling, and the like. For transfers scheduled three business days before the date of the transfer, the cancellation disclosures provided pursuant to § 1005.31(b)(2)(iv) should be phrased and formatted in such a way that it is clear to the sender which cancellation period is applicable to the date of transfer disclosed on the receipt.

31(b)(3) Combined Disclosure

1. Proof of payment. If a sender initiating a remittance transfer receives a combined disclosure provided under § 1005.31(b)(3) and then completes the transaction, the remittance transfer provider must provide the sender with proof of payment. The proof of payment must be clear and conspicuous, provided in writing or electronically, and provided in a retainable form. The combined disclosure must be provided to the sender when the sender requests the remittance transfer, but prior to payment for the transfer, pursuant to § 1005.31(e)(1), and the proof of payment must be provided when payment is made for the remittance transfer. The proof of payment for the transaction may be provided on the same piece of paper as the combined disclosure or on a separate piece of paper. For example, a provider may feed a combined disclosure through a computer printer when payment is made to add the date and time of the transaction, a confirmation code, and an indication that the transfer was paid in full. A provider may also provide this additional information to a sender on a separate piece of paper when payment is made. A remittance transfer provider does not comply with the requirements of § 1005.31(b)(3) by providing a combined disclosure with no further indication that payment has been received.

2. Confirmation of scheduling. As discussed in comment 31(e)-2, payment is considered to be made when payment is authorized for purposes of various timing requirements in subpart B, including with regard to the timing requirement for provision of the proof of payment described in § 1005.31(b)(3)(i). However, where a transfer (whether a one-time remittance transfer or the first in a series of preauthorized remittance transfers) is scheduled before the date of transfer and the provider does not intend to process payment until at or near the date of transfer, the provider may provide a confirmation of scheduling in lieu of the proof of payment required by § 1005.31(b)(3)(i). No further proof of payment is required when payment is later processed.

31(c) Specific Format Requirements

31(c)(1) Grouping

1. Grouping. Information is grouped together for purposes of subpart B if multiple disclosures are in close proximity to one another and a sender can reasonably calculate the total amount of the transaction and the amount that will be received by the designated recipient. Model Forms A–30(a)–(d) through A–35 in Appendix A illustrate how information may be grouped to comply with the rule, but a remittance transfer provider may group the information in another manner. For example, a provider could provide the grouped information as a horizontal, rather than a vertical, calculation. A provider could also send multiple text messages sequentially to provide the full disclosure.

31(c)(4) Segregation

1. Segregation. Disclosures may be segregated from other information in a variety of ways. For example, the disclosures may appear on a separate sheet of paper or may appear on the front of a page where other information appears on the back of that page. The disclosures may be set off from other information on a notice by outlining them in a box or series of boxes, with bold print dividing lines or a different color background, or by using other means.

2. Directly related. For purposes of § 1005.31(c)(4), the following is directly related information:

i. The date and time of the transaction;

ii. The sender’s name and contact information;

iii. The location at which the designated recipient may pick up the funds;

iv. The confirmation or other identification code;

v. A company name and logo;

vi. An indication that a disclosure is or is not a receipt or other indicia of proof of payment;

vii. A designated area for signatures or initials;

viii. A statement that funds may be available sooner, as permitted by § 1005.31(b)(2)(ii);

ix. Instructions regarding the retrieval of funds, such as the number of days the funds will be available to the recipient before they are returned to the sender; and

x. A statement that the provider makes money from foreign currency exchange;

xi. Disclosure of any non-covered third-party fees and any taxes collected by a person other than the provider pursuant to § 1005.31(b)(1)(viii).
31(d) Estimates

1. Terms. A remittance transfer provider may provide estimates of the amounts required by §1005.31(b), to the extent permitted by §1005.32. An estimate must be described using the term “Estimated” or a substantially similar term in close proximity to the term or terms described. For example, a remittance transfer provider could describe an estimated disclosure as “Estimated Transfer Amount,” “Other Estimated Fees and Taxes,” or “Total to Recipient (Est.).”

31(e) Timing

1. Request to send a remittance transfer. Except as provided in §1005.36(a), pre-payment and combined disclosures are required to be provided to the sender when the requester requests the remittance transfer, but prior to payment for the transfer. Whether a consumer has requested a remittance transfer depends on the facts and circumstances. A sender that asks a provider to send a remittance transfer, and provides transaction-specific information to the provider in order to send funds to a designated recipient, has requested a remittance transfer. For example, a sender who asks the provider to send money to a recipient in Mexico and provides the sender and recipient information to the provider has requested a remittance transfer. A consumer who solely inquires about that day’s rates and fees to send to Mexico, however, has not requested the provider to send a remittance transfer.

2. When payment is made. Except as provided in §1005.36(a), a receipt required by §1005.31(b)(2) must be provided to the sender when payment is made for the remittance transfer. For example, a remittance transfer provider could give the sender the disclosures after the sender pays for the remittance transfer, but before the sender leaves the counter. A provider could also give the sender the disclosures immediately before the sender pays for the transaction. For purposes of subpart B, payment is made, for example, when a sender provides cash to the remittance transfer provider or when payment is authorized.

3. Telephone transfer from an account. A sender may transfer funds from his or her account, as defined by §1005.3(b), that is held by the remittance transfer provider. For example, a financial institution may send an international wire transfer for a sender using funds from the sender’s account with the institution. Except as provided in §1005.36(a), if the sender conducts such a transfer entirely by telephone, the institution may provide a receipt required by §1005.31(b)(2) on or with the sender’s next regularly scheduled periodic statement for that account or within 30 days after payment is made for the remittance transfer if a periodic statement is not provided.

4. Mobile application and text message transactions. If a transaction is conducted entirely by telephone via mobile application or text message, a receipt required by §1005.31(b)(2) may be mailed or delivered to the sender pursuant to the timing requirements in §1005.31(e)(2). For example, if a sender conducts a transfer entirely by telephone via mobile application, a remittance transfer provider may mail or deliver the disclosures to a sender pursuant to the timing requirements in §1005.31(e)(2).

5. Statement about cancellation rights. The statement about the rights of the sender regarding cancellation required by §1005.31(b)(2)(iv) may, but need not, be disclosed pursuant to the timing requirements of §1005.31(e)(2) if a provider discloses this information pursuant to §1005.31(a)(3)(ii) or (a)(5)(ii). The statement about the rights of the sender regarding error resolution required by §1005.31(b)(2)(iv), however, must be disclosed pursuant to the timing requirements of §1005.31(e)(2).

31(f) Accurate When Payment Is Made

1. No guarantee of disclosures provided before payment. Except as provided in §1005.36(b), disclosures required by §1005.31(b) or permitted by §1005.31(b)(1)(viii) must be accurate when a sender makes payment for the remittance transfer. A remittance transfer provider is not required to guarantee the terms of the remittance transfer in the disclosures required or permitted by §1005.31(b) for any specific period of time. However, if any of the disclosures required by §1005.31(b) or permitted by §1005.31(b)(1)(viii) are not accurate when a sender makes payment for the remittance transfer, a provider must give new disclosures before accepting payment.

31(g) Foreign Language Disclosures

1. Number of foreign languages used in written disclosure. Section 1005.31(g)(1) does not limit the number of languages that may be used on a single document, but such disclosures must be clear and conspicuous pursuant to §1005.31(a)(1). Under §1005.31(g)(1), a remittance transfer provider may, but need not, provide the sender with a written or electronic disclosure that is in English and, if applicable, in each foreign language that the remittance transfer provider principally uses to advertise, solicit, or market either orally, in writing, or electronically, at the office in which a sender conducts a transaction or asserts an error, respectively. Alternatively, the remittance transfer provider may provide the disclosure solely in English and, if applicable, the foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction or assert an error, provided such language is principally used by the remittance transfer provider to advertise, solicit, or
market either orally, in writing, or electronically, at the office in which the sender conducts the transaction or asserts the error, respectively. If the remittance transfer provider chooses the alternative method, it may provide disclosures in a single document with both languages or in two separate documents with one document in English and the other document in the applicable foreign language. The following examples illustrate this concept.

1. A remittance transfer provider principally uses only Spanish and Vietnamese to advertise, solicit, or market remittance transfer services at a particular office. The remittance transfer provider may provide all senders with disclosures in English, Spanish, and Vietnamese, regardless of the language the sender uses with the remittance transfer provider to conduct the transaction or assert an error.

2. Same facts as 1. If a sender primarily uses Spanish with the remittance transfer provider to conduct a transaction or assert an error, the remittance transfer provider may provide a written or electronic disclosure solely in English. If the sender primarily uses a foreign language with the remittance transfer provider to conduct the transaction or assert an error that the remittance transfer provider does not use to advertise, solicit, or market either orally, in writing, or electronically, at the office in which the sender conducts the transaction or asserts the error, respectively, the remittance transfer provider may provide a written or electronic disclosure solely in English.

B. The prominence of the advertising, soliciting, or marketing of remittance transfer services at that office; and

C. The specific foreign language terms used in the advertising soliciting, or marketing of remittance transfer service at that office.

For example, if a remittance transfer provider posts several prominent advertisements in a foreign language for remittance transfer services, including rate and fee information, on a consistent basis in an office, the provider is creating an expectation that a consumer could receive information on remittance transfer services in the foreign language used in the advertisements. The foreign language used in such advertisements would be considered to be principally used at that office based on the frequency and prominence of the advertising. In contrast, an advertisement for remittance transfer services, including rate and fee information, that is featured prominently at an office and is entirely in English, except for a greeting in a
foreign language, does not create an expectation that a consumer could receive information on remittance transfer services in the foreign language used for such greeting. The foreign language used in such an advertisement is not considered to be principally used at that office based on the incidental specific foreign language term used.

2. Advertise, solicit, or market. 1. Any commercial message in a foreign language, appearing in any medium, that promotes directly or indirectly the availability of remittance transfer services constitutes advertising, soliciting, or marketing in such foreign language for purposes of §1005.31(g)(1). Examples illustrating when a foreign language is used to advertise, solicit, or market include:
   A. Messages in a foreign language in a leaflet or promotional flyer at an office.
   B. Announcements in a foreign language on a public address system at an office.
   C. On-line messages in a foreign language, such as on the internet.
   D. Printed material in a foreign language on any exterior or interior sign at an office.
   E. Point-of-sale displays in a foreign language at an office.
   F. Telephone solicitations in a foreign language.

   ii. Examples illustrating use of a foreign language for purposes other than to advertise, solicit, or market include:
   A. Communicating in a foreign language (whether by telephone, electronically, or otherwise) about remittance transfer services in response to a consumer-initiated inquiry.
   B. Making disclosures in a foreign language that are required by Federal or other applicable law.

3. Office. An office includes any physical location, telephone number, or Web site of a remittance transfer provider where a sender may conduct a remittance transfer or assert an error for a remittance transfer. The location need not exclusively offer remittance transfer services. For example, if an agent of a remittance transfer provider is located in a grocery store, the grocery store is considered to be an office for purposes of §1005.31(g)(1). Examples illustrating when a foreign language used for such greeting. The foreign language used in such an advertisement is not considered to be principally used at that office based on the incidental specific foreign language term used.

Section 1005.32—Estimates

1. Disclosures where estimates can be used. Sections 1005.32(a) and (b)(1) permit estimates to be used in certain circumstances for disclosures described in §§1005.31(b)(1) through (3) and 1005.36(a)(1) and (2). To the extent permitted in §1005.32(a)(1) and (b)(1), estimates may be used in the pre-payment disclosure described in §1005.31(b)(1), the receipt disclosure described in §1005.31(b)(2), the combined disclosure described in §1005.31(b)(3), and the pre-payment disclosures and receipt disclosures for both first and subsequent preauthorized remittance transfers described in §1005.36(a)(1) and (a)(2). Section 1005.32(b)(2) permits estimates to be used for certain information if the remittance transfer is scheduled by a sender five or more business days before the date of the transfer, for disclosures described in §1005.36(a)(1)(1) and (a)(2)(1).

32(a) Temporary Exception for Insured Institutions

32(a)(1) General

1. Control. For purposes of this section, an insured institution cannot determine exact amounts “for reasons beyond its control” when a person other than the insured institution has no correspondent relationship sets the exchange rate required to be disclosed under §1005.31(b)(1)(iv) or imposes a covered third-party fee required to be disclosed under.
§ 1005.31(b)(1)(vi). For example, if an insured institution has a correspondent relationship with an intermediary financial institution in another country and that intermediary institution sets the exchange rate or imposes a fee for remittance transfers sent from the insured institution to the intermediary institution, then the insured institution must determine exact amounts for the disclosures required under §1005.31(b)(1)(iv) or (vi), because the determination of those amounts are not beyond the insured institution’s control.

2. Examples of scenarios that qualify for the temporary exception. The following examples illustrate when an insured institution cannot determine an exact amount “for reasons beyond its control” and thus would qualify for the temporary exception.

i. Exchange rate. An insured institution cannot determine the exact exchange rate to disclose under §1005.31(b)(1)(iv) for an international wire transfer if the insured institution does not set the exchange rate, and the rate is set when the funds are deposited into the recipient’s account by the designated recipient’s institution with which the insured institution does not have a correspondent relationship. The insured institution will not know the exchange rate that the recipient institution will apply when the funds are deposited into the recipient’s account.

ii. Covered third-party fees. An insured institution cannot determine the exact covered third-party fees to disclose under §1005.31(b)(1)(vi) if an intermediary institution with which the insured institution does not have a correspondent relationship, imposes a transfer or conversion fee.

3. Examples of scenarios that do not qualify for the temporary exception. The following examples illustrate when an insured institution can determine exact amounts and thus would not qualify for the temporary exception.

i. Exchange rate. An insured institution can determine the exact exchange rate required to be disclosed under §1005.31(b)(1)(iv) if it converts the funds into the local currency to be received by the designated recipient using an exchange rate that it sets. The determination of the exchange rate is in the insured institution’s control even if there is no correspondent relationship with an intermediary institution in the transmittal route or the designated recipient’s institution.

ii. Covered third-party fees. An insured institution can determine the exact covered third-party fees required to be disclosed under §1005.31(b)(1)(vi) if it has agreed upon the specific fees with an intermediary correspondent institution, and this correspondent institution is the only institution in the transmittal route to the designated recipient’s institution.

32(b) Permanent Exceptions

32(b)(1) Permanent Exceptions for Transfers to Certain Countries

1. Laws of the recipient country. The laws of the recipient country do not permit a remittance transfer provider to determine exact amounts required to be disclosed when a law or regulation of the recipient country requires the person making funds directly available to the designated recipient to apply an exchange rate that is:

i. Set by the government of the recipient country after the remittance transfer provider sends the remittance transfer or

ii. Set when the designated recipient receives the funds.

2. Example illustrating when exact amounts can and cannot be determined because of the laws of the recipient country.

i. The laws of the recipient country do not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under §1005.31(b)(1)(iv) when, for example, the government of the recipient country, on a daily basis, sets the exchange rate that must, by law, apply to funds received and the funds are made available to the designated recipient in the local currency the day after the remittance transfer provider sends the remittance transfer.

ii. In contrast, the laws of the recipient country permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under §1005.31(b)(1)(iv) when, for example, the government of the recipient country ties the value of its currency to the U.S. dollar.

3. Method by which transactions are made in the recipient country. The method by which transactions are made in the recipient country does not permit a remittance transfer provider to determine exact amounts required to be disclosed when transactions are sent via international ACH on terms negotiated between the United States government and the recipient country’s government, under which the exchange rate is a rate set by the recipient country’s central bank or other governmental authority after the provider sends the remittance transfer.

4. Example illustrating when exact amounts can and cannot be determined because of the method by which transactions are made in the recipient country.

i. The method by which transactions are made in the recipient country does not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under §1005.31(b)(1)(iv) when the provider sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country’s government, under which the exchange rate is a rate set by the recipient country’s central bank on the business
day after the provider has sent the remittance transfer.

ii. In contrast, a remittance transfer provider would not qualify for the §1005.32(b)(1)(i)(B) methods exception if it sends a remittance transfer via international ACH on terms negotiated between the United States government and a private-sector entity or entities in the recipient country, under which the exchange rate is set by the institution acting as the entry point to the recipient country’s payments system on the next business day. However, a remittance transfer provider sending a remittance transfer using such a method may qualify for the §1005.32(a) temporary exception.

iii. A remittance transfer provider would not qualify for the §1005.32(b)(1)(i)(B) methods exception if, for example, it sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country’s government, under which the exchange rate is set by the recipient country’s central bank or other governmental authority before the provider requests a transfer.

5. Safe harbor list. If a country is included on a safe harbor list published by the Bureau under §1005.32(b)(1)(i), a remittance transfer provider may provide estimates of the amounts to be disclosed under §1005.31(b)(1)(iv) through (b)(1)(vii). If a country does not appear on the Bureau’s list, a remittance transfer provider may provide estimates under §1005.32(b)(1)(i) if the provider determines that the recipient country does not legally permit or method by which transactions are conducted in that country does not permit the provider to determine exact disclosure amounts.

6. Reliance on Bureau list of countries. A remittance transfer provider may rely on the list of countries published by the Bureau to determine whether the laws of a recipient country do not permit the remittance transfer provider to determine exact amounts required to be disclosed under §1005.31(b)(1)(iv) through (vii). Thus, if a country is on the Bureau’s list, the provider may give estimates under this section, unless a remittance transfer provider has information that a country on the Bureau’s list legally permits the provider to determine exact disclosure amounts.

7. Change in laws of recipient country. 1. If the laws of a recipient country change such that a remittance transfer provider cannot determine exact disclosure amounts, the remittance transfer provider may provide estimates under §1005.32(b)(1)(i), even if that country does not appear on the list published by the Bureau.

32(b)(2) Permanent Exceptions for Transfers Scheduled Before the Date of Transfer

1. Fixed amount of foreign currency. The following is an example of when and how a remittance transfer provider may disclose estimates for remittance transfers scheduled five or more business days before the date of transfer where the provider agrees to the sender’s request to fix the amount to be transferred in a currency in which the transfer will be received and not the currency in which it was funded. If on February 1, a sender schedules a 1000 Euro wire transfer to be sent from the sender’s bank account denominated in U.S. dollars to a designated recipient on February 15, §1005.32(b)(2) allows the provider to estimate the amount that will be transferred to the designated recipient (i.e., the amount described in §1005.31(b)(1)(i)), any fees imposed or taxes collected on the remittance transfer by the provider (if based on the amount transferred) (i.e., the amount described in §1005.31(b)(1)(i)), and the total amount of the transaction (i.e., the amount described in §1005.31(b)(1)(iii)). The provider may also estimate any covered third-party fees if the exchange rate is also estimated and the estimated exchange rate affects the amount of fees (as allowed by §1005.32(b)(2)(ii)).

2. Relationship to §1005.10(d). To the extent §1005.10(d) requires, for an electronic fund transfer that is also a remittance transfer, notice when a preauthorized electronic fund transfer from the consumer’s account will vary in amount from the previous transfer under the same authorization or from the preauthorized amount, that provision applies even if subpart B would not otherwise require notice before the date of transfer. However, insofar as §1005.10(d) does not specify the form of such notice, a notice sent pursuant to §1005.36(a)(2)(i) will satisfy §1005.10(d) as long as the timing requirements of §1005.10(d) are satisfied.

32(b)(3) Permanent Exception for Optional Disclosure of Non-Covered Third-Party Fees and Taxes Collected on the Remittance Transfer by a Person Other Than the Provider

1. Reasonable sources of information. Pursuant to §1005.32(b)(3) a remittance transfer provider may estimate applicable non-covered third-party fees and taxes collected on the remittance transfer by a person other than the provider using reasonable sources of information. Reasonable sources of information may include, for example: information obtained from recent transfers to the same institution or the same country or region; fee schedules from the recipient institution;
fee schedules from the recipient institution’s competitors; surveys of recipient institution fees in the same country or region as the recipient institution; information provided or surveys of recipient institutions’ regulators or taxing authorities; commercially or publicly available databases, services or sources; and information or resources developed by international nongovernmental organizations or intergovernmental organizations.

32(c) Bases for Estimates

32(c)(1) Exchange Rate

1. Most recent exchange rate for qualifying international ACH transfers. If the exchange rate for a remittance transfer sent via international ACH that qualifies for the §1005.32(b)(1)(i)(B) exception is set the following business day, the most recent exchange rate available for a transfer is the exchange rate set for the day that the disclosure is provided, i.e., the current business day’s exchange rate.

2. Publicly available. Examples of publicly available sources of information containing the most recent wholesale exchange rate for a currency include U.S. news services, such as Bloomberg, the Wall Street Journal, and the New York Times; a recipient country’s national news services, and a recipient country’s central bank or other government agency.

3. Spread. An estimate for disclosing the exchange rate based on the most recent publicly available wholesale exchange rate must also reflect any spread the remittance transfer provider typically applies to the wholesale exchange rate for remittance transfers for a particular currency.

4. Most recent. For the purposes of §1005.32(c)(1)(i) and (iii), if the exchange rate with respect to a particular currency is published or provided multiple times throughout the day because the exchange rate fluctuates throughout the day, a remittance transfer provider may use any exchange rate available on that day to determine the most recent exchange rate.

32(c)(3) Covered Third-Party Fees

1. Potential transmittal routes. A remittance transfer from the sender’s account at an insured institution to the designated recipient’s institution may take several routes, depending on the correspondent relationships each institution in the transmittal route has with other institutions. In providing an estimate of the fees required to be disclosed under §1005.31(b)(1)(vi) pursuant to the §1005.32(a) temporary exception, an insured institution may rely upon the representations of the designated recipient’s institution and the institutions that act as intermediaries in any one of the potential transmittal routes that it reasonably believes a requested remittance transfer may travel.

32(d) Bases for Estimates for Transfers Scheduled Before the Date of Transfer

1. In general. When providing an estimate pursuant to §1005.32(b)(2), §1005.32(d) requires that a remittance transfer provider’s estimated exchange rate must be the exchange rate (or estimated exchange rate) that the remittance transfer provider would have used or did use that day in providing disclosures to a sender requesting such a remittance transfer to be made on the same day. If, for the same-day remittance transfer, the provider could utilize either of the other two exceptions permitting the provision of estimates in §1005.32(a) or (b)(1), the provider may provide estimates based on a methodology permitted under §1005.32(c). For example, if, on February 1, the sender schedules a remittance transfer to occur on February 10, the provider should disclose the exchange rate as if the sender was requesting the transfer be sent on February 1. However, if at the time payment is made for the requested transfer, the remittance transfer provider could not send any remittance transfer until the next day (for reasons such as the provider’s deadline for the batching of transfers), the remittance transfer provider can use the rate (or estimated exchange rate) that a remittance transfer provider’s estimate for disclosing the exchange rate based on the most recent publicly available wholesale exchange rate must also reflect any spread the remittance transfer provider typically applies to the wholesale exchange rate for remittance transfers for a particular currency.

Section 1005.33—Procedures for Resolving Errors

33(a) Definition of Error

1. Incorrect amount of currency paid by sender. Section 1005.33(a)(1)(i) covers circumstances in which a sender pays an amount that differs from the total amount of the transaction, including fees imposed in connection with the transfer, stated in the receipt or combined disclosure provided under §1005.31(b)(2) or (3). Such error may be asserted by a sender regardless of the form or method of payment provided, including when a debit, credit, or prepaid card is used to fund the transfer and an excess amount is paid. For example, if a remittance transfer provider incorrectly charged a sender’s credit card account for US$150, and US$120 was sent, plus a transfer fee of US$10, the sender could assert an error with the remittance transfer provider for the incorrect charge under §1005.33(a)(1)(i).

2. Incorrect amount of currency received—coverage. Section 1005.33(a)(1)(iii) covers circumstances in which the designated recipient receives an amount of currency that differs from the amount of currency identified
on the disclosures provided to the sender, except where the disclosure stated an estimate of the amount of currency to be received in accordance with §1005.32 and the difference results from application of the actual exchange rate, fees, and taxes, rather than any estimated amounts, or the failure was caused by circumstances outside the remittance transfer provider’s control. A designated recipient may receive an amount of currency that differs from the amount of currency disclosed, for example, if an exchange rate other than the disclosed rate is applied to the remittance transfer, or if the provider fails to account for fees or taxes that may be imposed by the provider or a third party before the transfer is picked up by the designated recipient or deposited into the recipient’s account in the foreign country. However, if the provider rounds the exchange rate used to calculate the amount received consistent with §1005.31(b)(1)(iv) and comment 31(b)(1)(iv)-2 for the disclosed rate, there is no error if the designated recipient receives an amount of currency that results from applying the exchange rate used, prior to any rounding of the exchange rate, to calculate fees, taxes, or the amount received rather than the disclosed rate. Section 1005.33(a)(1)(iii) also covers circumstances in which the remittance transfer provider transmits an amount that differs from the amount requested by the sender.

3. Incorrect amount of currency received—examples. For purposes of the following examples illustrating the error for an incorrect amount of currency received under §1005.33(a)(1)(i)(ii), assume that none of the circumstances permitting an estimate under §1005.32 apply (unless otherwise stated).

i. A consumer requests to send funds to a relative in Mexico to be received in local currency. Upon receiving the sender’s payment, the remittance transfer provider provides a receipt indicating that the amount of currency that will be received by the designated recipient will be 1180 Mexican pesos, after fees and taxes are applied. However, when the relative picks up the transfer in Mexico a day later, he only receives 1150 Mexican pesos because the exchange rate applied by the recipient agent in Mexico was lower than the exchange rate used by the provider, prior to any rounding of the exchange rate, to disclose the amount of currency to be received by the designated recipient on the receipt. Because the designated recipient has received less than the amount of currency disclosed on the receipt, an error has occurred.

ii. A consumer requests to send funds to a relative in Colombia to be received in local currency. The remittance transfer provider provides the sender a receipt stating an amount of currency that will be received by the designated recipient, which does not reflect the additional foreign taxes that will be collected in Colombia on the transfer but does include the statement required by §1005.31(b)(1)(vii). If the designated recipient will receive less than the amount of currency disclosed on the receipt due solely to additional foreign taxes that the provider was not required to disclose, no error has occurred.

iii. Same facts as in ii., except that the receipt provided by the remittance transfer provider does not reflect additional fees that are imposed by the receiving agent in Colombia on the transfer. Because the designated recipient will receive less than the amount of currency disclosed in the receipt due to the additional covered third-party fees, an error has occurred.

iv. A consumer requests to send US$250 to a relative in India to a U.S. dollar-denominated account held by the relative at an Indian bank. Instead of the US$250 disclosed on the receipt as the amount to be sent, the remittance transfer provider sends US$200, resulting in a smaller deposit to the designated recipient’s account than was disclosed as the amount to be received after fees and taxes. Because the designated recipient received less than the amount of currency that was disclosed, an error has occurred.

v. A consumer requests to send US$100 to a relative in a foreign country to be received in local currency. The remittance transfer provider provides the sender a receipt that discloses an estimated exchange rate, other taxes, and amount of currency that will be received due to the law in the foreign country requiring that the exchange rate be set by the foreign country’s central bank. When the relative picks up the remittance transfer, the relative receives less currency than the estimated amount disclosed to the sender on the receipt due to application of the actual exchange rate, fees, and taxes, rather than any estimated amounts. Because §1005.32(b) permits the remittance transfer provider to disclose an estimate of the amount of currency to be received, no error has occurred unless the estimate was not based on an approach set forth under §1005.32(c).

vi. A sender requests that his bank send US$120 to a designated recipient’s account at an institution in a foreign country. The foreign institution is not an agent of the provider. Only US$100 is deposited into the designated recipient’s account because the recipient institution imposed a US$20 incoming wire fee and deducted the fee from the amount transferred. Because this fee is a non-covered third-party fee that the provider is not required to disclose under §1005.31(b)(1)(vii), no error has occurred if the provider provided the disclosure required by §1005.31(b)(1)(viii).

4. Incorrect amount of currency received—extraordinary circumstances. Under §1005.33(a)(1)(iii)(B), a remittance transfer
provider’s failure to make available to a designated recipient the amount of currency disclosed pursuant to §1005.31(b)(1)(vii) and stated in the disclosure provided pursuant to §1005.31(b)(1)(vi)–1. For example, suppose a sender requests U.S. dollars to be deposited into an account number or recipient institution identifier, such as an incorrect name of the recipient institution, then §1005.33(a)(1)(iv) does not apply, but §1005.33(a)(1)(iii) may apply instead. The following are examples of errors for failure to make funds available by the disclosed date of availability: (A) If only a portion of the funds were made available by the disclosed date of availability, then §1005.33(a)(1)(iv) does not apply, but §1005.33(a)(1)(iii) may apply instead. The following are examples of errors for failure to make funds available by the disclosed date of availability (assuming that none of the exceptions in §1005.33(a)(1)(v)–vii) and §1005.33(h) are satisfied. The exception does not apply, however, where the failure to make funds available is the result of a mistake by a provider or a third party or due to incorrect or insufficient information provided by the sender other than an incorrect account number or recipient institution identifier, such as an incorrect name of the recipient institution.

8. Account number or recipient institution identifier. For purposes of the exception in §1005.33(a)(1)(iv)(D), the terms account number and recipient institution identifier refer to alphameric number or institution identifiers other than names or addresses, such as account numbers, routing numbers, Canadian transit numbers, International Bank Account Numbers (IBANs), Business Identifier Codes (BICs) and other similar account or institution identifiers used to route a transaction. In addition and for purposes of this exception, the term designated recipient’s account in §1005.30(v) refers to an asset account, regardless of whether it is a consumer asset account, established for any purpose and held by a bank, savings association, credit union, or equivalent institution. A designated recipient’s account does not, however, include a credit card, prepaid card, or a virtual account held by an Internet-based or mobile telephone company that is not a bank, savings association, credit union or equivalent institution.

9. Recipient-requested changes. Under §1005.33(a)(2)(iii), a change requested by the designated recipient that the remittance transfer provider or others involved in the remittance transfer decide to accommodate is not considered an error. The exception does not apply where a change is made solely because the designated recipient requested the change. For example, if a sender requests to send US$100 to a designated recipient at a designated location, but the designated recipient requests the amount in a different currency (either at the sender-designated location or another location requested by the recipient) and the remittance transfer provider accommodations the recipient’s request, the change does not constitute an error.

10. Change from disclosure made in reliance on sender information. Under the commentary accompanying §1005.31, the remittance transfer provider may rely on the sender’s representations in making certain disclosures. See, e.g., comments 31(b)(1)(iv)–1 and 31(b)(1)(v)–1. For example, suppose a sender requests U.S. dollars to be deposited into an
account of the designated recipient and represents that the account is U.S. dollar-denominated. If the designated recipient’s account is actually denominated in local currency and the recipient account-holding institution must convert the remittance transfer into local currency in order to deposit the funds and complete the transfer, the change in currency does not constitute an error pursuant to §1005.33(a)(2)(iv).

33(b) Notice of Error From Sender

1. Person asserting or discovering error. The error resolution procedures of this section apply only when a notice of error is received from the sender, and not when a notice of error is received from the designated recipient or when the remittance transfer provider itself discovers and corrects an error.

2. Content of error notice. The notice of error is effective even if it does not contain the sender’s account number, so long as the remittance transfer provider is able to identify the account and the transfer in question. For an account-based remittance transfer, the notice of error is effective even if it does not contain the sender’s account number, so long as the remittance transfer provider is able to identify the account and the transfer in question.

3. Address on notice of error. A remittance transfer provider may request, or a sender could provide the confirmation number or code that would be used by the designated recipient to pick up the transfer, or other identification number or code supplied by the remittance transfer provider in connection with the transfer, if such number or code is sufficient for the remittance transfer provider to identify the sender (and contact information), designated recipient, and the transfer in question. For an account-based remittance transfer, the notice of error is effective even if it does not contain the sender’s account number, so long as the remittance transfer provider is able to identify the account and the transfer in question.

4. Effect of late notice. A remittance transfer provider is not required to comply with the requirements of this section for any notice of error from a sender that is received by the provider more than 180 days from the disclosed date of availability of the remittance transfer to which the notice of error applies or, if applicable, more than 60 days after a provider sent documentation, additional information, or clarification requested by the sender, provided such date is later than 180 days after the disclosed date of availability.

5. Notice of error provided to agent. A notice of error provided by a sender to an agent of the remittance transfer provider is deemed to be received by the provider under §1005.33(b)(1)(i) when received by the agent.

6. Consumer notice of error resolution rights. Section 1005.31 requires a remittance transfer provider to include an abbreviated notice of the consumer’s error resolution rights on the receipt or combined notice provided under §1005.31(b)(2) or (3). In addition, the remittance transfer provider must make available to a sender upon request, a notice providing a full description of the sender’s error resolution rights, using the language or substantially similar language provided for in Appendix A of this part (Model Form A–36) or substantially similar language.

33(c) Time Limits and Extent of Investigation

1. Notice to sender of finding of error. If the remittance transfer provider determines during its investigation that an error occurred as described by the sender, the remittance provider may inform the sender of its findings either orally or in writing. However, if the provider determines that no error or a different error occurred, the provider must provide a written explanation of its findings under §1005.33(d)(1).

2. Incorrect or insufficient information provided for transfer. The remedy in §1005.33(c)(2)(iii) applies if a remittance transfer provider’s failure to make funds in connection with a remittance transfer available to a designated recipient by the disclosed date of availability occurred because the sender provided incorrect or insufficient information in connection with the transfer, such as by erroneously identifying the designated recipient’s address or by providing insufficient information such that the entity distributing the funds cannot identify the correct designated recipient. A sender is not considered to have provided incorrect or insufficient information for purposes of §1005.33(c)(2)(iii) if the provider discloses the incorrect location where the transfer may be picked up, gives the wrong confirmation number/code for the transfer, or otherwise miscommunicates information necessary for the designated recipient to pick-up the transfer.

3. Designation of requested remedy. Under §1005.33(c)(2)(i), the sender may generally choose to obtain a refund of funds that were not properly transmitted or delivered to the designated recipient or, request redelivery of the amount appropriate to correct the error at no additional cost unless the error is determined to have occurred because the sender provided incorrect or insufficient information. Upon receiving the sender’s request, the remittance transfer provider shall correct the error within one business day, or as soon as reasonably practicable, applying the same exchange rate, fees, and taxes stated in the disclosure provided under §1005.31(b)(2) or (3), if the sender requests delivery of the amount appropriate to correct the error and
the error did not occur because the sender provided incorrect or insufficient information. The provider may also request that the sender indicate the preferred remedy at the time the notice is provided notice of the error although if provider does so, it should indicate that if the sender chooses a resend at the time, the remedy may be unavailable if the error was not caused by the provider provided incorrect or insufficient information. However, if the sender does not indicate the preferred remedy, the provider may request that the sender indicate the preferred remedy at the time of providing notice of error, the remittance transfer provider must notify the sender of any available remedies in the report provided under § 1005.33(c)(1) or (d)(1) if the provider determines an error occurred.

4. Default remedy. Unless the sender provided incorrect or insufficient information and §1005.33(c)(2)(iii) applies, the remittance transfer provider may set a default remedy that the provider will provide if the sender does not designate a remedy within a reasonable time after the sender receives the report provided under §1005.33(c)(1). A provider that permits a sender to designate a remedy within 10 days after the provider has sent the report provided under §1005.33(c)(1) or (d)(1) before imposing the default remedy is deemed to have provided the sender with a reasonable time to designate a remedy. In the case a default remedy is provided, the provider must correct the error within one business day, or as soon as reasonably practicable, after the reasonable time for the sender to designate the remedy has passed, consistent with §1005.33(c)(2).

5. Amount appropriate to resolve the error. For purposes of the remedies set forth in §1005.33(c)(2)(i)(A), (c)(2)(ii)(B), (c)(2)(ii)(A)(i), and (c)(2)(ii)(A)(ii) the amount appropriate to resolve the error is the specific amount of transferred funds that should have been received if the remittance transfer had been effected without error. The amount appropriate to resolve the error does not include consequential damages.

6. Form of refund. For a refund provided under §1005.33(c)(2)(i)(A), (c)(2)(ii)(A)(i), (c)(2)(ii)(i)(ii), (c)(2)(ii)(i)(iii), or (c)(2)(ii)(i)(iv), a remittance transfer provider may, at its discretion, issue a refund either in cash or in the same form of payment that was initially provided by the sender for the remittance transfer. For example, if the sender originally provided cash as payment for the transfer, the provider may mail a check to the sender in the amount of the payment.

7. Remedies for incorrect amount paid. If an error under §1005.33(c)(1)(i) occurred, the sender may request the remittance transfer provider refund the amount necessary to resolve the error under §1005.33(c)(2)(i)(A) or that the remittance transfer provider make the amount necessary to resolve the error available to the designated recipient at no additional cost under §1005.33(c)(2)(i)(B).

8. Correction of an error if funds not available by disclosed date. If the remittance transfer provider determines an error of failure to make funds available by the disclosed date occurred under §1005.33(a)(1)(iv), it must correct the error in accordance with §1005.33(c)(2)(ii)(A), as applicable, and refund any fees imposed for the transfer (unless the sender provided incorrect or insufficient information to the remittance transfer provider in connection with the remittance transfer), whether the fee was imposed by the provider or a third party involved in sending the transfer, such as an intermediary bank involved in sending a wire transfer or the institution from which the funds are picked up in accordance with §1005.33(c)(2)(ii)(B).

9. Charges for error resolution. If an error occurred, whether as alleged or in a different amount or manner, the remittance transfer provider may not impose a charge related to any aspect of the error resolution process (including charges for documentation or investigation).

10. Correction without investigation. A remittance transfer provider may correct an error, without investigation, in the amount or manner alleged by the sender, or otherwise determined, to be in error, but must comply with all other applicable requirements of §1005.33.

11. Procedure for sending a new remittance transfer after a sender provides incorrect or insufficient information. Section 1005.33(c)(2)(iii) generally requires a remittance transfer provider to refund the transfer amount to the sender even if the sender’s previously designated remedy was a resend or if the provider’s default remedy in other circumstances is a resend. However, if before the refund is processed, the sender receives notice pursuant to §1005.33(c)(1) or (d)(1) that an error occurred because the sender provided incorrect or insufficient information and then requests that the provider send the remittance transfer again, and the provider agrees to that request, §1005.33(c)(2)(iii) requires that the request be treated as a new remittance transfer and the provider must provide new disclosures in accordance with §1005.31 and all other applicable provisions of subpart B. However, §1005.33(c)(2)(iii) does not obligate the provider to agree to a sender’s request to send a new remittance transfer.

12. Determining amount of refund. Section 1005.33(c)(2)(iii) permits the provider to deduct from the amount refunded, or applied...
Insofar as the resend is an entirely new remittance necessary to complete the transfer, the provider may charge the sender another transfer fee. When the provider deducts fees or taxes from the amount refunded pursuant to §1005.33(c)(3)(iii), the provider must inform the sender of the deduction as part of the notice required by either §1005.33(c)(1) or (d)(1) and the reason for the deduction. The following examples illustrate these concepts.

1. A sender instructs a remittance transfer provider to send US$100 to a designated recipient in local currency, for which the provider charges a transfer fee of US$10 and its correspondent imposes a fee of US$15. The sender provides incorrect or insufficient information that results in non-delivery of the remittance transfer as requested. The provider determines that an error occurred because the sender provided incorrect or insufficient information, that it will refund US$85 to the sender within three business days unless the sender chooses to apply the US$85 towards a new remittance transfer. The provider is required to refund its own $10 fee but not the US$15 fee imposed by the correspondent (unless the $15 will be refunded to the provider by the correspondent).

2. A sender instructs a remittance transfer provider to send US$100 to a designated recipient in a foreign country, for which the provider charges a transfer fee of US$10 (and thus the sender pays the provider US$110) and an intermediary institution charges a lifting fee of US$5, such that the designated recipient is expected to receive only US$85, as indicated in the receipt. If an error occurs because the sender provides incorrect or insufficient information that results in non-delivery of the remittance transfer by the date of availability stated in the disclosure provided to the sender for the remittance transfer under §1005.31(b)(2) or (3), the provider is required to refund, or reapply if requested and the provider agrees, $105 unless the intermediary institution refunds to the provider the US$85 fee. If the sender requests to have the transfer amount applied to a new remittance transfer, the provider must provide the corrected or additional information, and the remittance transfer provider agrees to a resend remedy; the remittance transfer provider may charge the sender another transfer fee of US$10 to send the remittance transfer again with the corrected or additional information necessary to complete the transfer. Inssofar as the resend is an entirely new remittance transfer, the provider must provide a prepayment disclosure and receipt or combined disclosure in accordance with, among other provisions, the timing requirements of §1005.31(f) and the cancellation provision of §1005.34(a).

3. In connection with a remittance transfer, a provider imposes a $15 tax that it then remits to a State taxing authority. An error occurs because the sender provided incorrect or insufficient information that resulted in non-delivery of the transfer to the designated recipient. The provider may deduct $15 from the amount it sends to the sender pursuant to §1005.33(c)(2)(iii) unless the relevant tax law will result in the $15 tax being refunded to the provider by the State taxing authority because the transfer was not completed.

33(d) Procedures if Remittance Transfer Provider Determines No Error or Different Error Occurred

1. Error different from that alleged. When a remittance transfer provider determines that an error occurred in a manner or amount different from that described by the sender, it must comply with the requirements of both §1005.33(c) and (d), as applicable. The provider may give the notice of correction and the explanation separately or in a combined form.

33(e) Reassertion of Error

1. Withdrawal of error; right to reassert. The remittance transfer provider has no further error resolution responsibilities if the sender voluntarily withdraws the notice alleging an error. A sender who has withdrawn an allegation of error has the right to reassert the allegation unless the remittance transfer provider had already complied with all of the error resolution requirements before the allegation was withdrawn. The sender must do so, however, within the original 180-day period from the disclosed date of availability or, if applicable, the 60-day period for a notice of error asserted pursuant to §1005.33(b)(2).

33(f) Relation to Other Laws

1. Concurrent error obligations. A financial institution that is also the remittance transfer provider may have error obligations under both §§1005.11 and 1005.33. For example, if a sender asserts an error under §1005.11 with a remittance transfer provider that holds the sender’s account, and the error is not also an error under §1005.33 (such as the omission of an EFT on a periodic statement), then the error-resolution provisions of §1005.11 exclusively apply to the error. However, if a sender asserts an error under §1005.33 with a remittance transfer provider that holds the sender’s account, and the error is also an error under §1005.11 (such as
when the amount the sender requested to be deducted from the sender’s account and sent for the remittance transfer differs from the amount that was actually deducted from the account and sent, then the error-resolution provisions of §1005.33 exclusively apply to the error.

2. **Holder in due course.** Nothing in this section limits a sender’s rights to assert claims and defenses against a card issuer concerning property or services purchased with a credit card under Regulation Z, 12 CFR 1026.12(c)(1), as applicable.

3. **Assertion of same error with multiple parties.** If a sender receives credit to correct an error of an incorrect amount paid in connection with a remittance transfer from either the remittance transfer provider or account-holding institution (or creditor), and subsequently asserts the same error with another party, that party has no further responsibilities to investigate the error if the error has been corrected. For example, assume that a sender initially asserts an error with a remittance transfer provider with respect to a remittance transfer alleging that US$130 was debited from his checking account, but the sender only requested a remittance transfer for US$100, plus a US$10 transfer fee. If the remittance transfer provider refunds US$120 to the sender to correct the error, and the sender subsequently asserts the same error with his account-holding institution, the account-holding institution has no error resolution responsibilities under Regulation E because the error has been fully corrected. In addition, nothing in this section prevents an account-holding institution or creditor from reversing amounts it has previously credited to correct an error if a sender receives more than one credit to correct the same error. For example, assume that a sender concurrently asserts an error with his or her account-holding institution and remittance transfer provider for the same error, and the sender receives credit from the account-holding institution for the error within 45 days of the notice of error. If the remittance transfer provider subsequently provides a credit of the same amount to the sender for the same error, the account-holding institution may reverse the amounts it had previously credited to the consumer’s account, even after the 45-day error resolution period under §1005.11.

### 33(h) Incorrect Account Number Supplied

1. **Reasonable methods of verification.** When a sender provides an incorrect recipient institution identifier, §1005.33(h)(2) limits the exception in §1005.33(a)(1)(iv)(D) to situations where the provider used reasonably available means to verify that the recipient institution identifier provided by the sender did correspond to the recipient institution name provided by the sender. Reasonably available means may include accessing a directory of Business Identifier Codes and verifying that the code provided by the sender matches the provided institution name, and, if possible, the specific branch or location provided by the sender. Providers may also rely on other commercially available databases or directories to check other recipient institution identifiers. If reasonable verification means fail to identify that the recipient institution identifier is incorrect, the exception in §1005.33(a)(1)(iv)(D) will apply, assuming that the provider can satisfy the other conditions in §1005.33(h). Similarly, if no reasonably available means exist to verify the accuracy of the recipient institution identifier, §1005.33(h)(2) would be satisfied and thus the exception in §1005.33(a)(1)(iv)(D) also will apply, again assuming the provider can satisfy the other conditions in §1005.33(h). However, where a provider does not employ reasonably available means to verify a recipient institution identifier, §1005.33(h)(2) is not satisfied and the exception in §1005.33(a)(1)(iv)(D) will not apply.

2. **Reasonable efforts.** Section 1005.33(h)(5) requires a remittance transfer provider to use reasonable efforts to recover the amount that was to be received by the designated recipient. Whether a provider has used reasonable efforts does not depend on whether the provider is ultimately successful in recovering the amount that was to be received by the designated recipient. Under §1005.33(h)(5), if the remittance transfer provider is requested to provide documentation or other supporting information in order for the pertinent institution or authority to obtain the proper authorization for the return of the incorrectly credited amount, reasonable efforts to recover the amount include timely providing any such documentation to the extent that it is available and permissible under law. The following are examples of reasonable efforts:

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i. The remittance transfer provider promptly contacts the institution that received the transfer, either directly or indirectly through any correspondent(s) or other intermediaries or service providers used for the particular transfer, to request that the amount that was to be received by the designated recipient be returned, and if required by law or contract, by requesting that the recipient institution obtain a debit authorization from the holder of the incorrectly credited account.

ii. The remittance transfer provider promptly uses a messaging service through a funds transfer system to contact institution that received the transfer, either directly or indirectly through any correspondent(s) or other intermediaries or service providers used for the particular transfer, to request that the amount that was to be received by the designated recipient be returned, if required by law or contract, by requesting that the recipient institution obtain a debit authorization from the holder of the incorrectly credited account.

3. Promptness of Reasonable Efforts. Section 1005.31(b)(2)(ii) requires that a remittance transfer provider act promptly in using reasonable efforts to recover the amount that was to be received by the designated recipient. Whether a provider acts promptly to use reasonable efforts depends on the facts and circumstances. For example, if, before the date of availability disclosed pursuant to §1005.31(b)(2)(ii), the sender informs the provider that the sender provided a mistaken account number, the provider will have acted promptly if it attempts to contact the recipient’s institution before the date of availability.

Section 1005.34—Procedures for Cancellation and Refund of Remittance Transfers

34(a) Sender Right of Cancellation and Refund

1. Content of cancellation request. A request to cancel a remittance transfer is valid so long as the remittance transfer provider is able to identify the remittance transfer in question. For example, the sender could provide the confirmation number or code that would be used by the designated recipient to pick up the transfer or other identification number or code supplied by the remittance transfer provider in connection with the transfer, if such number or code is sufficient for the remittance transfer provider to identify the transfer. A remittance transfer provider may also request, or the sender may provide, the sender’s email address instead of a physical address, so long as the remittance transfer provider is able to identify the transfer to which the request to cancel applies.

2. Notice of cancellation right. Section 1005.31 requires a remittance transfer provider to include an abbreviated notice of the sender’s right to cancel a remittance transfer on the receipt or combined disclosure given under §1005.31(b)(2) or (3). In addition, the remittance transfer provider must make available to a sender upon request, a notice providing a full description of the right to cancel a remittance transfer using language that is set forth in Model Form A–36 of Appendix A to this part or substantially similar language.

3. Thirty-minute cancellation right. A remittance transfer provider must comply with the cancellation and refund requirements of §1005.34 if the cancellation request is received by the provider no later than 30 minutes after the sender makes payment. The provider may, at its option, provide a longer time period for cancellation. A provider must provide the 30-minute cancellation right regardless of the provider’s normal business hours. For example, if an agent closes less than 30 minutes after the sender makes payment, the provider could opt to take cancellation requests through the telephone number disclosed on the receipt. The provider could also set a cutoff time after which the provider will not accept requests to send a remittance transfer. For example, a financial institution that closes at 3:00 p.m. could stop accepting payment for remittance transfers after 3:30 p.m.

4. Cancellation request provided to agent. A cancellation request provided by a sender to an agent of the remittance transfer provider is deemed to be received by the provider under §1005.34(a) when received by the agent.

5. Payment made. For purposes of subpart B, payment is made, for example, when a sender provides cash to the remittance transfer provider or when payment is authorized.

34(b) Time Limits and Refund Requirements

1. Form of refund. At its discretion, a remittance transfer provider generally may issue a refund either in cash or in the same form of payment that was initially provided by the sender for the remittance transfer. For example, if the sender originally provided a credit card as payment for the transfer, the remittance transfer provider may issue a credit to the sender’s credit card account in the amount of the payment. However, if a sender initially provided cash for the remittance transfer, a provider may issue a refund by check. For example, if the sender originally provided cash as payment for the transfer, the provider may mail a check to the sender in the amount of the payment.

2. Fees and taxes refunded. If a sender provides a timely request to cancel a remittance transfer, a remittance transfer provider must refund all funds provided by the sender in connection with the remittance transfer, including any fees and, to the extent not prohibited by law, taxes that have
been imposed for the transfer, whether the fee or tax was assessed by the provider or a third party, such as an intermediary institution, the agent or bank in the recipient country, or a State or other governmental body.

Section 1005.35—Acts of Agents

1. General. Remittance transfer providers must comply with the requirements of subpart B, including, but not limited to, providing the disclosures set forth in §1005.31 and providing any remedies as set forth in §1005.33, even if an agent or other person performs functions for the remittance transfer provider, and regardless of whether the provider has an agreement with a third party that transfers or otherwise makes funds available to a designated recipient.

Section 1005.36—Transfers Scheduled in Advance

1. Applicability of subpart B. The requirements set forth in subpart B apply to remittance transfers subject to §1005.36, to the extent that §1005.36 does not modify those requirements. For example, the foreign language disclosure requirements in §1005.31(g) and related commentary continue to apply to disclosures provided in accordance with §1005.36(a)(2).

Section 1005.36—Transfers Scheduled Before the Date of Transfer

36(a) Timing

36(a)(2) Subsequent Preauthorized Remittance Transfers

1. Changes in Disclosures. When a sender schedules a series of preauthorized remittance transfers, the provider is generally not required to provide a pre-payment disclosure prior to the date of each subsequent transfer. However, §1005.36(a)(1)(i) requires the provider to provide a pre-payment disclosure and receipt for the first in the series of preauthorized remittance transfers in accordance with the timing requirements set forth in §1005.31(e). While certain information in those disclosures is expressly permitted to be estimated (see §1005.32(b)(2)), other information is not permitted to be estimated, or is limited in how it may be estimated. When any of the information on the most recent receipt provided pursuant to §1005.36(a)(1)(i) or (a)(2)(i), other than the temporal disclosures required by §1005.31(b)(2)(i) and (b)(2)(v(i), is no longer accurate with respect to a subsequent preauthorized remittance transfer for reasons other than as permitted by §1005.32, the provider must provide, within a reasonable time prior to the scheduled date of the next preauthorized remittance transfer, a receipt that complies with §1005.31(b)(2) and which discloses, among the other disclosures required by §1005.31(b)(2), the changed terms. For example, if the provider discloses in the pre-payment disclosure for the first in the series of preauthorized remittance transfers that its fee for each remittance transfer is $20 and, after six preauthorized remittance transfers, the provider increases its fee to $30 (to the extent permitted by contract law), the provider must provide the sender a receipt that complies with §§1005.31(b)(2) and 1005.36(b)(2) within a reasonable time prior to the seventh transfer. Barring a further change, this receipt will apply to transfers after the seventh transfer. Or, if, after the sixth transfer, a tax collected by the provider increases from 1.5% of the amount that will be transferred to the designated recipient to 2% of the amount that will be transferred to the designated recipient, the provider must provide the sender a receipt that complies with §§1005.31(b)(2) and 1005.36(b)(2) within a reasonable time prior to the seventh transfer. In contrast, §1005.36(a)(2)(i) does not require an updated receipt where an exchange rate, estimated as permitted by §1005.32(b)(2), changes.

2. Clearly and conspicuously. In order to indicate clearly and conspicuously that the provider’s fee has changed as required by §1005.36(a)(2)(i), the provider could, for example, state on the receipt: “Transfer Fees (UP-DATED) * * * $30.” To the extent that other figures on the receipt must be revised because of the new fee, the receipt should also indicate that those figures are updated.

3. Reasonable time. If a disclosure required by §1005.36(a)(2)(i) or (d)(1) is mailed, the disclosure would be considered to be received by the sender five business days after it is posted in the mail. If hand delivered or provided electronically, the receipt would be considered to be received by the sender at the time of delivery. Thus, if the provider mails a disclosure required by §1005.36(a)(2)(i) or (d)(1) not later than ten business days before the scheduled date of the transfer, or hand or electronically delivers a disclosure not later than five business days before the scheduled date of the transfer, the provider would be deemed to have provided the disclosure within a reasonable time prior to the scheduled date of the subsequent preauthorized remittance transfer.

36(b) Accuracy

1. Use of estimates. In providing the disclosures described in §1005.36(a)(1)(i) or (a)(2)(i), remittance transfer providers may use estimates to the extent permitted by any of the exceptions in §1005.32. When estimates are permitted, however, they must be disclosed in accordance with §1005.31(d).

2. Subsequent preauthorized remittance transfers. For a subsequent transfer in a series of preauthorized remittance transfers, the receipt provided pursuant to §1005.36(a)(1)(i),
except for the temporal disclosures in that receipt required by §1005.31(b)(2)(ii) (Date Available) and (b)(2)(vii) (Transfer Date), applies to each subsequent preauthorized remittance transfer unless and until it is superseded by a receipt provided pursuant to §1005.36(a)(2)(i). For each subsequent preauthorized remittance transfer, only the most recent receipt provided pursuant to §1005.36(a)(1)(i) or (a)(2)(i) must be accurate as of the date each subsequent transfer is made.

3. Receipts. A receipt required by §1005.36(a)(1)(i) or (a)(2)(i) must accurately reflect the details of the transfer to which it pertains and may not contain estimates pursuant to §1005.32(b)(2). However, the remittance transfer provider may continue to disclose estimates to the extent permitted by §1005.32(a) or (b)(1). In providing receipts pursuant to §1005.36(a)(1)(i) or (a)(2)(i), §1005.36(b)(2) and (3) do not allow a remittance transfer provider to change figures previously disclosed on a receipt provided pursuant to §1005.36(a)(1)(i) or (a)(2)(i), unless a figure was an estimate or based on an estimate disclosed pursuant to §1005.32. Thus, for example, if a provider disclosed its fee as $10 in a receipt provided pursuant to §1005.36(a)(1)(i) and that receipt contained an estimate of the exchange rate pursuant to §1005.32(b)(2), the second receipt provided pursuant to §1005.36(a)(1)(i) must also disclose the fee as $10.

36(c) Cancellation

1. Scheduled remittance transfer. Section 1005.36(c) applies when a remittance transfer is scheduled by the sender at least three business days before the date of the transfer, whether the sender schedules a preauthorized remittance transfer or a one-time transfer. A remittance transfer is scheduled if it will require no further action by the sender to send the transfer after the sender requests the transfer. For example, a remittance transfer is scheduled at least three business days before the date of the transfer, and §1005.36(c) applies, where a sender on March 1 requests a remittance transfer provider to send a wire transfer to pay a bill in a foreign country on March 15, if it will require no further action by the sender to send the transfer after the sender requests the transfer. A remittance transfer is not scheduled, and §1005.36(c) does not apply, where a transfer occurs more than three days after the date the sender requests the transfer solely due to the provider’s processing time. The following are examples of when a sender has not scheduled a remittance transfer at least three business days before the date of the remittance transfer, such that the cancellation rule in §1005.34 applies.

i. A sender on March 1 requests a remittance transfer provider to send a wire transfer to pay a bill in a foreign country on March 3.

ii. A sender on March 1 requests that a remittance transfer provider send a remittance transfer on March 15, but the provider requires the sender to confirm the request on March 14 in order to send the transfer.

iii. A sender on March 1 requests that a remittance transfer provider send an ACH transfer, and that transfer is sent on March 2, but due to the time required for processing, funds will not be deducted from the sender’s account until March 5.

2. Canceled preauthorized remittance transfers. For preauthorized remittance transfers, the provider must assume the request to cancel applies to all future preauthorized remittance transfers, unless the sender specifically indicates that it should apply only to the next scheduled remittance transfer.

3. Concurrent cancellation obligations. A financial institution that is also a remittance transfer provider may have both stop payment obligations under §1005.10 and cancellation obligations under §1005.36. If a sender cancels a remittance transfer under §1005.36 with a remittance transfer provider that holds the sender’s account, and the transfer is a preauthorized transfer under §1005.10, then the cancellation provisions of §1005.36 exclusively apply.

36(d) Date of Transfer for Subsequent Preauthorized Remittance Transfers

1. General. Section 1005.36(d)(2)(iv) permits remittance transfer providers some flexibility in determining how and when the disclosures required by §1005.36(d)(1) may be provided to senders. The disclosure described in §1005.36(d)(1) may be provided as a separate disclosure, or on or with any other disclosure required by this subpart B related to the same series of preauthorized remittance transfers, provided that the disclosure and timing requirements in §1005.36(d)(2) and other applicable provisions in subpart B are satisfied.

For example, the required disclosures may be made on or with a receipt provided pursuant to §1005.36(a)(2); a receipt provided pursuant to §1005.36(a)(1); or a separate disclosure created by the provider. Thus, for example, a remittance transfer provider may provide disclosures required by §1005.36(d)(1) for a period of one year if it provides in the receipt provided to the sender when payment is made for the initial preauthorized remittance transfer, a schedule or summary of the dates of transfer of all the subsequent preauthorized remittance transfers in the series scheduled to occur over the next 12 months (and the applicable cancellation requirements and contact information).
2. Delivery of disclosure. Section 1005.36(d)(2)(i) requires that the sender receive disclosure of the date of transfer, applicable cancellation requirements, and the provider’s contact information no more than 12 months, and no less than 5 business days prior to the date of transfer of the subsequent preauthorized remittance transfer. For purposes of determining when a disclosure required by §1005.36(d)(1) is received by the sender, refer to comment 36(a)(2)-3.

3. Disclosure of the date of transfer. The date of transfer of a subsequent preauthorized remittance transfer may be disclosed as a specific date (e.g., July 19, 2013) or by using a method that clearly permits identification of the date of the transfer, such as periodic intervals (e.g., the third Monday of every month, or the 15th of every month). If the future dates of transfer are disclosed as occurring periodically and there is a break in the sequence, or the date of transfer does not otherwise conform to the described period, e.g., if a holiday or weekend causes the provider to deviate from the normal schedule, the remittance transfer provider should disclose the specific date of transfer for the affected transfer.

4. Accuracy requirements. Section 1005.36(d)(4) sets forth accuracy requirements for disclosures required for subsequent preauthorized remittance transfers under §1005.36(d)(1). If any of the information provided in these disclosures change, the provider must provide an updated disclosure with the revised information that is accurate as of when the transfer is made, pursuant to §1005.36(d)(2).

APPENDIX A—MODEL DISCLOSURE CLAUSES AND FORMS

1. Review of forms. The Bureau will not review or approve disclosure forms or statements for financial institutions. However, the Bureau has issued model clauses for institutions to use in designing their disclosures. If an institution uses these clauses accurately to reflect its service, the institution is protected from liability for failure to make disclosures in proper form.

2. Use of forms. The appendix contains model disclosure clauses for optional use by financial institutions and remittance transfer providers to facilitate compliance with the disclosure requirements of §§1005.5(b)(2) and (3), 1005.6(a), 1005.7, 1005.8(b), 1005.14(b)(1)(ii), 1005.15(d)(1) and (2), 1005.18(c)(1) and (2), 1005.31, 1005.32 and 1005.36. The use of appropriate clauses in making disclosures will protect a financial institution and a remittance transfer provider from liability under sections 916 and 917 of the act provided the clauses accurately reflect the institution’s EPT services and the provider’s remittance transfer services, respectively.

3. Altering the clauses. Financial institutions may use clauses of their own design in conjunction with the Bureau’s model clauses. The inapplicable words or portions of phrases in parentheses should be deleted. The catchlines are not part of the clauses and need not be used. Financial institutions may make alterations, substitutions, or additions in the clauses to reflect the services offered, such as technical changes (including the substitution of a trade name for the word “card,” deletion of inapplicable services, or substitution of lesser liability limits). Several of the model clauses include references to a telephone number and address. Where two or more of these clauses are used in a disclosure, the telephone number and address may be referenced and need not be repeated.

4. Model forms for remittance transfers. The Bureau will not review or approve disclosure forms for remittance transfer providers. However, this appendix contains 15 model forms for use in connection with remittance transfers. These model forms are intended to demonstrate several formats a remittance transfer provider may use to comply with the requirements of §1005.31(b). Model Forms A–30 through A–32 demonstrate how a provider could provide the required disclosures for a remittance transfer exchanged into local currency. Model Forms A–33 through A–35 demonstrate several formats a remittance transfer provider may use to comply with the requirements of §1005.31(b). Model Forms A–36 and A–37 provide long form model error resolution and cancellation disclosures required by §1005.31(b)(4), and Model Form A–37 provides short form model error resolution and cancellation disclosures required by §1005.31(b)(2)(iv) and (vi). Model Forms A–38 through A–41 provide language for Spanish language disclosures.

i. The model forms contain information that is not required by subpart B, including a confirmation code, the sender’s name and contact information, and the optional disclosure of the estimated amount of these non-covered third-party fees and taxes collected by a person other than the provider as part of the disclaimer. Additional information not required by subpart B may be presented
on the model forms as permitted by §1005.31(b)(1)(viii) and (c)(4). Any additional information must be presented consistent with a remittance transfer provider’s obligation to provide required disclosures in a clear and conspicuous manner.

ii. Use of the model forms is optional. A remittance transfer provider may change the forms by rearranging the format or by making modifications to the language of the forms, in each case without modifying the substance of the disclosures. Any rearrangement or modification of the format of the model forms must be consistent with the form, grouping, proximity, and other requirements of §1005.31(a) and (c). Providers making revisions that do not comply with this section will lose the benefit of the safe harbor for appropriate use of Model Forms A–30 to A–41.

iii. Permissible changes to the language and format of the model forms include, for example:

A. Substituting the information contained in the model forms that is intended to demonstrate how to complete the information in the model forms—such as names, addresses, and Web sites; dates; numbers; and State-specific contact information—with information applicable to the remittance transfer. In addition, if the applicable non-covered third-party fees are imposed by an institution other than a bank, a provider could modify the disclaimer accordingly.

B. Eliminating disclosures that are not applicable to the transfer, as described under §1005.31(b). For example, if only covered third-party fees are imposed, a provider would not use a disclaimer related to additional fees that may apply because all applicable fees are covered and included in the disclosure as required under §1005.31(b)(1)(vii).

C. Correcting or updating telephone numbers, mailing addresses, or Web site addresses that may change over time.

D. Providing the disclosures on a paper size that is different from a register receipt and 8.5 inch by 11 inch formats.

E. Adding a term substantially similar to “estimated” in close proximity to the specified terms in §1005.31(b)(1) and (2), as required under §1005.31(d).

F. Providing the disclosures in a foreign language, or multiple foreign languages, subject to the requirements of §1005.31(g).

G. Substituting cancellation language to reflect the right to a cancellation made pursuant to the requirements of §1005.36(c).

iv. Changes to the model forms that are not permissible include, for example, adding information that is not segregated from the required disclosures, other than as permitted by §1005.31(c)(4).


PART 1006—FAIR DEBT COLLECTION PRACTICES ACT (REGULATION F)

Subpart A—Procedures for State Application for Exemption From the Provisions of the Act

§ 1006.1 Purpose and definitions.

(a) Purpose. This part, known as Regulation F, is issued by the Bureau of Consumer Financial Protection (Bureau). This subpart establishes procedures and criteria whereby states may apply to the Bureau for exemption of classes of debt collection practices with the applying state from the provisions of the Fair Debt Collection Practices Act (the Act) as provided in section 817 of the Act, 15 U.S.C. 1692o.

(b) Definitions. For purposes of this subpart:

Class of debt collection practices includes one or more such classes of debt collection practices.

State law includes any regulations that implement state law and formal interpretations thereof by a court of competent jurisdiction or duly authorized agency of that state.
§ 1006.2 Application.
Any state may apply to the Bureau pursuant to the terms of this part for a
determination that, under the laws of that state, any class of debt collection
practices within that state is subject to requirements that are substantially
similar to, or provide greater protection for consumers than, those imposed
under sections 803 through 812 of the Act, and that there is adequate provi-
sion for state enforcement of such require-
ments. The application shall be in
writing, addressed to the Bureau,
signed by the Governor, Attorney Gen-
eral or state official having primary
enforcement or responsibility under
the state law which is applicable to the
class of debt collection practices, and
shall be supported by the documents
specified in this subpart.

§ 1006.3 Supporting documents.
The application shall be accompanied
by the following, which may be sub-
mitted in paper or electronic form:

(a) A copy of the full text of the state
law that is claimed to contain require-
ments substantially similar to those
imposed under sections 803 through 812
of the Act, or to provide greater pro-
tection to consumers than sections 803
through 812 of the Act, regarding the
class of debt collection practices with-
in that state.

(b) A comparison of each provision of
sections 803 through 812 of the Act with
the corresponding provision of the
state law, together with reasons sup-
porting the claim that the cor-
responding provisions of the state law
are substantially similar to or provide
greater protection to consumers than
provisions of sections 803 through 812
of the Act and an explanation as to why
any differences between the state and
Federal law are not inconsistent with
the provisions of sections 803 through
812 of the Act and do not result in a
diminution in the protection otherwise
afforded consumers; and a statement
that no other state laws (including ad-
ministrative or judicial interpreta-
tions) are related to, or would have an
effect upon, the state law that is being
considered by the Bureau in making its
determination.

(c) A copy of the full text of the state
law that provides for enforcement of
the state law referred to in paragraph
(a) of this section.

(d) A comparison of the provisions of
the state law that provides for enforce-
ment with the provisions of section 814
of the Act, together with reasons sup-
porting the claim that such state law
provides for administrative enforce-
ment of the state law referred to in
paragraph (a) of this section that is
substantially similar to, or more ex-
tensive than, the enforcement provided
under section 814 of the Act.

(e) A statement identifying the office
designated or to be designated to ad-
minister the state law referred to in
paragraph (a) of this section, together
with complete information regarding
the fiscal arrangements for administrative
enforcement (including the
amount of funds available or to be pro-
vided), the number and qualifications
of personnel engaged or to be engaged
in enforcement, and a description of
the procedures under which such state
law is to be administratively enforced.
The statement should also include rea-
sions to support the claim that there is
adequate provision for enforcement of
such state law.

§ 1006.4 Criteria for determination.
The Bureau will consider the criteria
set forth below, and any other relevant
information, in determining whether
the law of a state is substantially simi-
lar to, or provides greater protection to
consumers than, the provisions of sec-
tions 803 through 812 of the Act regard-
ing the class of debt collection prac-
tices within that state, and whether
there is adequate provision for state
enforcement of such law. In making
that determination, the Bureau pri-
marily will consider each provision of
the state law in comparison with each
corresponding provision in sections 803
through 812 of the Act, and not the
state law as a whole in comparison
with the Act as a whole.

(a)(1) In order for provisions of state
law to be substantially similar to, or
provide greater protection to con-
sumers than the provisions of sections
803 through 812 of the Act regard-
ing the class of debt collection prac-
tices within that state, and whether
there is adequate provision for state
enforcement of such law, the Bureau
will consider the following:

(i) Definitions and rules of construc-
tion, as applicable, import the same
meaning and have the same application as those prescribed by sections 803 through 812 of the Act.

(ii) Debt collectors provide all of the applicable notifications required by the provisions of sections 803 through 812 of the Act, with the content and in the terminology, form, and time periods prescribed by this part pursuant to sections 803 through 812; however, required references to state law may be substituted for the references to Federal law required in this part. Notification requirements under state law in additional circumstances or with additional detail that do not frustrate any of the purposes of the Act may be determined by the Bureau to be consistent with sections 803 through 812 of the Act;

(iii) Debt collectors take all affirmative actions and abide by obligations substantially similar to, or more extensive than, those prescribed by sections 803 through 812 of the Act under substantially similar or more stringent conditions and within the same or more stringent time periods as are prescribed in sections 803 through 812 of the Act;

(iv) Debt collectors abide by the same or more stringent prohibitions as are prescribed by sections 803 through 812 of the Act;

(v) Obligations or responsibilities imposed on consumers are no more costly, lengthy, or burdensome relative to consumers exercising any of the rights or gaining the benefits of the protections provided in the state law than corresponding obligations or responsibilities imposed on consumers in sections 803 through 812 of the Act;

(vi) Consumers' rights and protections are substantially similar to, or more favorable than, those provided by sections 803 through 812 of the Act under conditions or within time periods that are substantially similar to, or more favorable to consumers than, those prescribed by sections 803 through 812 of the Act.

§ 1006.6 Exemption from requirements.

If the Bureau determines on the basis of the information before it that, under the law of a state, a class of debt collection practices is subject to requirements substantially similar to, or that provide greater protection to consumers than, those imposed under sections 803 through 812 and section 814 of the Act, and that there is adequate provision for state enforcement, the Bureau will exempt the class of debt collection practices in that state from the requirements of sections 803 through 812 and section 814 of the Act in the following manner and subject to the following conditions:

(a) Notice of the exemption shall be published in the Federal Register, and the Bureau shall furnish a copy of such notice to the state official who made application for such exemption, to each Federal authority responsible for administrative enforcement of the requirements of sections 803 through 812 of the Act, and to the Attorney General of the United States. Any exemption granted shall be effective 90
§ 1006.7 Adverse determination.

(a) If, after publication of a notice in the Federal Register as provided under §1006.5 of this part, the Bureau finds on the basis of the information before it that it cannot make a favorable determination in connection with the application, the Bureau shall notify the appropriate state official of the facts upon which such findings are based and shall afford that state authority a reasonable opportunity to demonstrate or achieve compliance.

(b) If, after having afforded the state authority such opportunity to demonstrate or achieve compliance, the Bureau finds on the basis of the information before it that it still cannot make a favorable determination in connection with the application, the Bureau shall publish in the Federal Register a notice of its determination regarding the application and shall furnish a copy of such notice to the state official who made application for such exemption.

§ 1006.8 Revocation of exemption.

(a) The Bureau reserves the right to revoke any exemption granted under the provisions of this part, if at any time it determines that the state law does not, in fact, impose requirements that are substantially similar to, or that provide greater protection to applicants than, those imposed under sections 803 through 812 of the Act or that there is not, in fact, adequate provision for state enforcement.

(b) Before revoking any such exemption, the Bureau shall notify the appropriate state official of the facts or conduct that, in the Bureau’s opinion, warrant such revocation, and shall afford that state such opportunity as the Bureau deems appropriate in the circumstances to demonstrate or achieve compliance.

(c) If, after having been afforded the opportunity to demonstrate or achieve compliance, the Bureau determines that the state has not done so, notice of the Bureau’s intention to revoke such exemption shall be published in the Federal Register. A period of time shall be allowed from the date of such publication for interested persons to submit written comments to the Bureau regarding the intention to revoke.

(d) If such exemption is revoked, notice of such revocation shall be published by the Bureau in the Federal Register, and a copy of such notice shall be furnished to the appropriate state official, to the Federal authorities responsible for enforcement of the requirements of the Act, and to the Attorney General of the United States. The revocation shall become effective, and the class of debt collection practices affected within that state shall become subject to the requirements of sections 803 through 812 of the Act, 90 days after the date of publication of the notice in the Federal Register.
§ 1007.101 Authority, purpose, and scope


(b) Purpose. This part implements the S.A.F.E. Act’s Federal registration requirement for mortgage loan originators. The S.A.F.E. Act provides that the objectives of this registration include aggregating and improving the flow of information to and between regulators; providing increased accountability and tracking of mortgage loan originators; enhancing consumer protections; supporting anti-fraud measures; and providing consumers with easily accessible information at no charge regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators.

(c) Scope—(1) In general. This part applies to:

(i) National banks, Federal branches and agencies of foreign banks, their operating subsidiaries (collectively referred to in this part as national banks), and their employees who act as mortgage loan originators;

(ii) Member banks of the Federal Reserve System; their respective subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act, as amended (12 U.S.C. 1844(c)(5)); branches and agencies of foreign banks; commercial lending companies owned or controlled by foreign banks (collectively referred to in this part as member banks); and their employees who act as mortgage loan originators;

(iii) Insured state nonmember banks (including state-licensed insured branches of foreign banks), their subsidiaries (except brokers, dealers, persons providing insurance, investment companies, and investment advisers) (collectively referred to in this part as insured state nonmember banks), and employees of such banks or subsidiaries who act as mortgage loan originators;

(iv) Savings associations, their operating subsidiaries (collectively referred to in this part as savings associations), and their employees who act as mortgage loan originators;

(v) Farm Credit System lending institutions that actually originate residential mortgage loans pursuant to sections 1.9(3), 1.11 or 2.4(a) and (b) of the Farm Credit Act of 1971 (collectively referred to in this part as Farm Credit System institutions), and their employees who act as mortgage loan originators; and

(vi) Any federally insured credit union and its employees, including volunteers, who act as mortgage loan originators. This part also applies to non-federally insured credit unions and their employees, including volunteers, who act as mortgage loan originators, subject to the conditions in paragraph (c)(3) of this section.

(2) De minimis exception. (i) This part and the requirements of 12 U.S.C. 5103(a)(1)(A) and (2) of the S.A.F.E. Act do not apply to any employee of a national bank, member bank, insured state nonmember bank, savings association, Farm Credit System institution, or credit union who has never been registered or licensed through the Registry as a mortgage loan originator
§ 1007.102 Definitions.

For purposes of this part, the following definitions apply:

Administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the residential mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

Annual renewal period means November 1 through December 31 of each year.

Bureau means the Bureau of Consumer Financial Protection.

Covered financial institution means any national bank, member bank, insured state nonmember bank, savings association, Farm Credit System institution, or federally insured credit union as any such term is defined in §1007.101(c)(3).

Mortgage loan originator means

(1) An individual who:
   (i) Takes a residential mortgage loan application; and
   (ii) Offers or negotiates terms of a residential mortgage loan for compensation or gain.

(2)(i) The term mortgage loan originator does not include:
   (A) An individual who performs purely administrative or clerical tasks on behalf of an individual who is described as a mortgage loan originator in this section;
   (B) An individual who only performs real estate brokerage activities (as defined in 12 U.S.C. 5102(4)(D)) and is licensed or registered as a real estate broker in accordance with applicable state law, unless the individual is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, and meets the definition of mortgage loan originator in this section; or
   (C) An individual or entity solely involved in extensions of credit related to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).
§ 1007.103 Registration of mortgage loan originators.

(a) Registration requirement—(1) Employee registration. Each employee of a covered financial institution who acts as a mortgage loan originator must register with the Registry, obtain a unique identifier, and maintain this registration in accordance with the requirements of this part. Any such employee who is not in compliance with the registration and unique identifier requirements set forth in this part is in violation of the S.A.F.E. Act and this part.

(2) Covered financial institution requirement—(i) In general. A covered financial institution that employs one or more individuals who act as a residential mortgage loan originator must require each such employee to register with the Registry, maintain this registration, and obtain a unique identifier in accordance with the requirements of this part.

(ii) Prohibition. A covered financial institution must not permit an employee who is subject to the registration requirements of this part to act as a mortgage loan originator for the covered financial institution unless such employee is registered with the Registry pursuant to this part.

(3) [Reserved]

(4) Employees previously registered or licensed through the Registry—(i) In general. If an employee of a covered financial institution was registered or licensed through, and obtained a unique identifier from, the Registry and has maintained this registration or license before the employee becomes subject to this part at the current covered financial institution, then the registration requirements of the S.A.F.E. Act and this part as deemed to be met, provided that:

(A) The employment information in paragraphs (d)(1)(i)(C) and (d)(1)(ii) of this section is updated and the requirements of paragraph (d)(2) of this section are met;

(B) New fingerprints of the employee are submitted to the Registry for a background check, as required by paragraph (d)(1)(x) of this section, unless the employee has fingerprints on file with the Registry that are less than 3 years old;
(C) The covered financial institution information required in paragraphs (e)(1)(i) (to the extent the covered financial institution has not previously met these requirements) and (e)(2)(i) of this section is submitted to the Registry; and

(D) The registration is maintained pursuant to paragraphs (b) and (e)(1)(ii) of this section, as of the date that the employee becomes subject to this part.

(ii) Rule for certain acquisitions, mergers, or reorganizations. When registered or licensed mortgage loan originators become covered financial institution employees as a result of an acquisition, consolidation, merger, or reorganization, only the requirements of paragraphs (a)(4)(i)(A), (C), and (D) of this section must be met, and these requirements must be met within 60 days from the effective date of the acquisition, merger, or reorganization.

(b) Maintaining registration. (1) A mortgage loan originator who is registered with the Registry pursuant to paragraph (a) of this section must:

(i) Except as provided in paragraph (b)(3) of this section, renew the registration during the annual renewal period, confirming the responses set forth in paragraphs (d)(1)(i) through (viii) of this section remain accurate and complete, and updating this information, as appropriate; and

(ii) Update the registration within 30 days of any of the following events:

(A) A change in the name of the registrant;

(B) The registrant ceases to be an employee of the covered financial institution; or

(C) The information required under paragraphs (d)(1)(iii) through (viii) of this section becomes inaccurate, incomplete, or out-of-date.

(2) A registered mortgage loan originator must maintain his or her registration, unless the individual is no longer engaged in the activity of a mortgage loan originator.

(3) The annual registration renewal requirement set forth in paragraph (b)(1) of this section does not apply to a registered mortgage loan originator who has completed his or her registration with the Registry pursuant to paragraph (a)(1) of this section less than 6 months prior to the end of the annual renewal period.

(c) Effective dates—(1) Registration. A registration pursuant to paragraph (a)(1) of this section is effective on the date the Registry transmits notification to the registrant that the registrant is registered.

(2) Renewals or updates. A renewal or update pursuant to paragraph (b) of this section is effective on the date the Registry transmits notification to the registrant that the registration has been renewed or updated.

(d) Required employee information—(1) In general. For purposes of the registration required by this section, a covered financial institution must require each employee who is a mortgage loan originator to submit to the Registry, or must submit on behalf of the employee, the following categories of information, to the extent this information is collected by the Registry:

(i) Identifying information, including the employee’s:

(A) Name and any other names used;

(B) Home address and contact information;

(C) Principal business location address and business contact information;

(D) Social security number;

(E) Gender; and

(F) Date and place of birth;

(ii) Financial services-related employment history for the 10 years prior to the date of registration or renewal, including the date the employee became an employee of the covered financial institution;

(iii) Convictions of any criminal offense involving dishonesty, breach of trust, or money laundering against the employee or organizations controlled by the employee, or agreements to enter into a pretrial diversion or similar program in connection with the prosecution for such offense(s);

(iv) Civil judicial actions against the employee in connection with financial services-related activities, dismissals with settlements, or judicial findings that the employee violated financial services-related statutes or regulations, except for actions dismissed without a settlement agreement;
(v) Actions or orders by a state or Federal regulatory agency or foreign financial regulatory authority that:
   (A) Found the employee to have made a false statement or omission or been dishonest, unfair or unethical; to have been involved in a violation of a financial services-related regulation or statute; or to have been a cause of a financial services-related business having its authorization to do business denied, suspended, revoked, or restricted;
   (B) Are entered against the employee in connection with a financial services-related activity;
   (C) Denied, suspended, or revoked the employee’s registration or license to engage in a financial services-related activity; disciplined the employee or otherwise by order prevented the employee from associating with a financial services-related business or restricted the employee’s activities; or
   (D) Barred the employee from association with an entity or its officers regulated by the agency or authority or from engaging in a financial services-related business;
   (vi) Final orders issued by a state or Federal regulatory agency or foreign financial regulatory authority based on violations of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct;
   (vii) Revocation or suspension of the employee’s authorization to act as an attorney, accountant, or state or Federal contractor;
   (viii) Customer-initiated financial services-related arbitration or civil action against the employee that required action, including settlements, or which resulted in a judgment; and
   (ix) Fingerprints of the employee, in digital form if practicable, and any appropriate identifying information for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information in connection with a state and national criminal history background check; however, fingerprints provided to the Registry that are less than 3 years old may be used to satisfy this requirement.

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(2) Employee authorizations and attestation. An employee registering as a mortgage loan originator or renewing or updating his or her registration under this part, and not the employing covered financial institution or other employees of the covered financial institution, must:
   (i) Authorize the Registry and the employing institution to obtain information related to sanctions or findings in any administrative, civil, or criminal action, to which the employee is a party, made by any governmental jurisdiction;
   (ii) Attest to the correctness of all information required by paragraph (d) of this section, whether submitted by the employee or on behalf of the employee by the employing covered financial institution; and
   (iii) Authorize the Registry to make available to the public information required by paragraphs (d)(1)(i)(A) and (C), and (d)(1)(ii) through (viii) of this section.

(3) Submission of information. A covered financial institution may identify one or more employees of the covered financial institution who may submit the information required by paragraph (d)(1) of this section to the Registry on behalf of the covered financial institution’s employees provided that this individual, and any employee delegated such authority, does not act as a mortgage loan originator, consistent with paragraph (e)(1)(i)(F) of this section. In addition, a covered financial institution may submit to the Registry some or all of the information required by paragraphs (d)(1) and (e)(2) of this section for multiple employees in bulk through batch processing in a format to be specified by the Registry, to the extent such batch processing is made available by the Registry.

(e) Required covered financial institution information. A covered financial institution must submit the following categories of information to the Registry:

(1) Covered financial institution record.
   (i) In connection with the registration of one or more mortgage loan originators:
      (A) Name, main office address, and business contact information;
      (B) Internal Revenue Service Employer Tax Identification Number (EIN);
      (C) Research Statistics Supervision and Discount (RSSD) number, as issued
by the Board of Governors of the Federal Reserve System;

(D) Identification of its primary Federal regulator;

(E) Name(s) and contact information of the individual(s) with authority to act as the covered financial institution’s primary point of contact for the Registry;

(F) Name(s) and contact information of the individual(s) with authority to enter the information required by paragraphs (d)(1) and (e) of this section to the Registry and who may delegate this authority to other individuals. For the purpose of providing information required by paragraph (e) of this section, this individual and their delegates must not act as mortgage loan originators unless the covered financial institution has 10 or fewer full time or equivalent employees and is not a subsidiary; and

(G) If a subsidiary of a national bank, member bank, savings association, or insured state nonmember bank, indication that it is a subsidiary and the RSSD number of the parent institution; if an operating subsidiary of an agricultural credit association, indication that it is a subsidiary, and the RSSD number of the parent agricultural credit association.

(ii) Attestation. The individual(s) identified in paragraphs (e)(1)(i)(E) and (F) of this section must comply with Registry protocols to verify their identity and must attest that they have the authority to enter data on behalf of the covered financial institution, that the information provided to the Registry pursuant to this paragraph (e) is correct, and that the covered financial institution will keep the information required by this paragraph (e) current and will file accurate supplementary information on a timely basis.

(iii) A covered financial institution must update the information required by this paragraph (e) of this section within 30 days of the date that this information becomes inaccurate.

(iv) A covered financial institution must renew the information required by paragraph (e) of this section on an annual basis.

(2) Employee information. In connection with the registration of each employee who acts as a mortgage loan originator:

(i) After the information required by paragraph (d) of this section has been submitted to the Registry, confirmation that it employs the registrant; and

(ii) Within 30 days of the date the registrant ceases to be an employee of the covered financial institution, notification that it no longer employs the registrant and the date the registrant ceased being an employee.

§ 1007.104 Policies and procedures.

A covered financial institution that employs one or more mortgage loan originators must adopt and follow written policies and procedures designed to assure compliance with this part. These policies and procedures must be appropriate to the nature, size, complexity, and scope of the mortgage lending activities of the covered financial institution, and apply only to those employees acting within the scope of their employment at the covered financial institution. At a minimum, these policies and procedures must:

(a) Establish a process for identifying which employees of the covered financial institution are required to be registered mortgage loan originators;

(b) Require that all employees of the covered financial institution who are mortgage loan originators be informed of the registration requirements of the S.A.F.E. Act and this part and be instructed on how to comply with such requirements and procedures;

(c) Establish procedures to comply with the unique identifier requirements in §1007.105;

(d) Establish reasonable procedures for confirming the adequacy and accuracy of employee registrations, including updates and renewals, by comparisons with its own records;

(e) Establish reasonable procedures and tracking systems for monitoring compliance with registration and renewal requirements and procedures;

(f) Provide for independent testing for compliance with this part to be conducted at least annually by covered financial institution personnel or by an outside party:
(g) Provide for appropriate action in the case of any employee who fails to comply with the registration requirements of the S.A.F.E. Act, this part, or the covered financial institution’s related policies and procedures, including prohibiting such employees from acting as mortgage loan originators or other appropriate disciplinary actions;

(h) Establish a process for reviewing employee criminal history background reports received pursuant to this part, taking appropriate action consistent with applicable Federal law, including section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829), section 206 of the Federal Credit Union Act (12 U.S.C. 1786(i)), and section 5.65(d) of the Farm Credit Act of 1971, as amended (12 U.S.C. 2277a-14(d)), and implementing regulations with respect to these reports, and maintaining records of these reports and actions taken with respect to applicable employees; and

(i) Establish procedures designed to ensure that any third party with which the covered financial institution has arrangements related to mortgage loan origination has policies and procedures to comply with the S.A.F.E. Act, including appropriate licensing and/or registration of individuals acting as mortgage loan originators.

§ 1007.105 Use of unique identifier.

(a) The covered financial institution shall make the unique identifier(s) of its registered mortgage loan originator(s) available to consumers in a manner and method practicable to the institution.

(b) A registered mortgage loan originator shall provide his or her unique identifier to a consumer:

(1) Upon request; and

(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 PART 1007—EXAMPLES OF MORTGAGE LOAN ORIGINATOR ACTIVITIES

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

(a) Taking a loan application. 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 covered financial institution, collecting only basic identifying information about the consumer and forwarding the consumer to a mortgage loan originator; or

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

(b) Offering or negotiating terms of a loan.

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 covered financial institution's loan approval mechanism function for a specific loan product is communicated without authority to negotiate the rate.
(ii) Responding to a consumer's request for a lower rate or lower points on a pending loan application by presenting to the consumer a revised loan offer, either verbally or in writing, that includes a lower interest rate or lower points than the original offer.
(2) Offering or negotiating terms of a loan does not include solely or in combination:
(i) Providing general explanations or descriptions in response to consumer queries regarding qualification for a specific loan product, such as explaining loan terminology (e.g., debt-to-income ratio); lending policies (e.g., the loan-to-value ratio policy of the covered financial institution); 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 covered financial institution's Web site, for specific types of loan products without communicating to the consumer whether qualifications are met for that loan product;
(iii) Collecting information about a consumer in order to provide the consumer with information on loan products for which the consumer generally may qualify, without 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 days of the month for scheduling loan closings at the covered financial institution;
(vi) Making an underwriting decision about whether the consumer qualifies for a loan;
(vii) Explaining or describing the steps or process that a consumer would need to take in order to obtain a loan offer, including qualifications or criteria that would need to be met without providing guidance specific to that consumer's circumstances; or
(viii) Communicating on behalf of a mortgage loan originator that a written offer, including disclosures provided pursuant to the Truth in Lending Act, has been sent to a consumer without providing any details of that offer.
(c) Offering or negotiating a loan for compensation or gain. 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 covered financial institution.

PART 1008—S.A.F.E. MORTGAGE LICENSING ACT—STATE COMPLIANCE AND BUREAU REGISTRATION SYSTEM (REGULATION H)

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Appendix B to Part 1008—Engaging in the Business of a Loan Originator: Commercial Context and Habitualness
Appendix C to Part 1008—Independent Contractors and Loan Processor and Underwriter Activities That Require a State Mortgage Loan Originator License
Appendix D to Part 1008—Attorneys: Circumstances That Require a State Mortgage Loan Originator License


Source: 76 FR 78487, Dec. 19, 2011, unless otherwise noted.

§ 1008.3 Confidentiality of information.

(a) Except as otherwise provided in this part, any requirement under Federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all state and Federal regulatory officials with mortgage industry oversight authority without the loss of any time the Bureau determines that the nationwide mortgage licensing system and registry is failing to meet the S.A.F.E. Act’s requirements, the Bureau is charged with establishing and maintaining a licensing and registry database for loan originators.

(c) Organization. The regulation is divided into subparts and appendices as follows:

(1) Subpart A establishes the definitions applicable to this part.
(2) Subpart B provides the minimum standards that a state must meet in licensing loan originators, including standards for whom a state must require to be licensed, and sets forth the Bureau’s procedure for determining a state’s compliance with the minimum standards.
(3) Subpart C provides the requirements that the Bureau will apply in any state that the Bureau determines has not established a licensing and registration system in compliance with the minimum standards of the S.A.F.E. Act.
(4) Subpart D provides minimum requirements for the administration of the Nationwide Mortgage Licensing System and Registry.
(5) Subpart E clarifies the Bureau’s enforcement authority in states in which it operates a state licensing system.
(6) Appendices A through D set forth examples to aid in the understanding and application of the regulations.

§ 1008.1 Purpose.


(b) Purpose. The purpose of this part is to enhance consumer protection and reduce fraud by directing states to adopt minimum uniform standards for the licensing and registration of residential mortgage loan originators and to participate in a nationwide mortgage licensing system and registry database of residential mortgage loan originators. Under the S.A.F.E. Act, if the Bureau determines that a state’s loan origination licensing system does not meet the minimum requirements of the S.A.F.E. Act, the Bureau is charged with establishing and implementing a system for all loan originators in that state. Additionally, if at
privilege or the loss of confidentiality protections provided by Federal and state laws.

(b) Information or material that is subject to a privilege or confidentiality under paragraph (a) of this section shall not be subject to:

(1) Disclosure under any Federal or state law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective state; or

(2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry or by the Director with respect to such information or material, the person to whom such information or material pertains, waives, in whole or in part, in the discretion of such person, that privilege.

(c) Any state law, including any state open record law, relating to the disclosure of confidential supervisory information or any information or material described in paragraph (a) of this section that is inconsistent with paragraph (a), shall be superseded by the requirements of such provision to the extent that state law provides less confidentiality or a weaker privilege.

(d) This section shall not apply with respect to the information or material relating to the employment history of, and any publicly adjudicated disciplinary and enforcement action against, any loan originator that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

Subpart A—General

§ 1008.20 Scope of this subpart.

This subpart provides the definitions applicable to this part, and other general requirements applicable to this part.

§ 1008.23 Definitions.

Terms that are defined in the S.A.F.E. Act and used in this part have the same meaning as in the S.A.F.E. Act, unless otherwise provided in this section.

Administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

American Association of Residential Mortgage Regulators (AARMR) is the national association of executives and employees of the various states who are charged with the responsibility for administration and regulation of residential mortgage lending, servicing, and brokering, and dedicated to the goals described at www.aarmr.org.

Application means a request, in any form, for an offer (or a response to a solicitation of an offer) of residential mortgage loan terms, and the information about the borrower or prospective borrower that is customary or necessary in a decision on whether to make such an offer.

Bureau means the Bureau of Consumer Financial Protection.

Clerical or support duties:

(1) Include:

(i) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms; and

(2) Does not include:

(i) Taking a residential mortgage loan application; or

(ii) Offering or negotiating terms of a residential mortgage loan.

Conference of State Bank Supervisors (CSBS) is the national organization composed of state bank supervisors dedicated to maintaining the state banking system and state regulation of financial services in accordance with the CSBS statement of principles described at www.csbs.org.

Director means the Director of the Bureau of Consumer Financial Protection.

Employee means an individual:

(1) Whose manner and means of performance of work are subject to the
right of control of, or are controlled by, a person, and

(2) Whose compensation for Federal income tax purposes is reported, or required to be reported, on a W–2 form issued by the controlling person.

Farm Credit Administration means the independent Federal agency, authorized by the Farm Credit Act of 1971, that examines and regulates the Farm Credit System.

For compensation or gain. See §1008.103(c)(2)(ii).

Independent contractor means an individual who performs his or her duties other than at the direction of and subject to the supervision and instruction of an individual who is licensed and registered in accordance with §1008.103(a), or is not required to be licensed, in accordance with §1008.103(e)(5), (6), or (7).

Loan originator. See §1008.103.

Loan processor or underwriter, for purposes of this part, means an individual who, with respect to the origination of a residential mortgage loan, performs clerical or support duties at the direction of and subject to the supervision and instruction of:

(1) A state-licensed loan originator; or

(2) A registered loan originator.

Nationwide Mortgage Licensing System and Registry or NMLSR means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of loan originators and the registration of registered loan originators or any system established by the Director, as provided in subpart D of this part.

Nontraditional mortgage product means any mortgage product other than a 30-year fixed-rate mortgage.

Origination of a residential mortgage loan, for purposes of the definition of loan processor or underwriter, means all residential mortgage loan-related activities from the taking of a residential mortgage loan application through the completion of all required loan closing documents and funding of the residential mortgage loan.

Real estate brokerage activities mean any activity that involves offering or providing real estate brokerage services to the public including—

(1) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(2) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(3) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(4) Engaging in any activity for which a person engaged in the activity is required to be registered as a real estate agent or real estate broker under any applicable law; and

(5) Offering to engage in any activity, or act in any capacity, described in paragraphs (1), (2), (3), or (4) of this definition.

Residential mortgage loan means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(w) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

State means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Unique identifier means a number or other identifier that:

(1) Permanently identifies a loan originator;

(2) Is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Bureau to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and

(3) Shall not be used for purposes other than those set forth under the S.A.F.E. Act.
Subpart B—Determination of State Compliance With the S.A.F.E. Act

§ 1008.101 Scope of this subpart.
This subpart describes the minimum standards of the S.A.F.E. Act that apply to a state’s licensing and registering of loan originators. This subpart also provides the procedures that the Bureau follows to determine that a state does not have in place a system for licensing and registering mortgage loan originators that complies with the minimum standards. Upon making such a determination, the Bureau will impose the requirements and exercise the enforcement authorities described in subparts C and E of this part.

§ 1008.103 Individuals required to be licensed by states.
(a) Except as provided in paragraph (e) of this section, in order to operate a S.A.F.E.-compliant program, a state must prohibit an individual from engaging in the business of a loan originator with respect to any dwelling or residential real estate in the state, unless the individual first:
(1) Registers as a loan originator through and obtains a unique identifier from the NMLSR, and
(2) Obtains and maintains a valid loan originator license from the state.
(b) An individual engages in the business of a loan originator if the individual, in a commercial context and habitually or repeatedly:
(1)(i) Takes a residential mortgage loan application; and
(ii) Offers or negotiates terms of a residential mortgage loan for compensation or gain; or
(2) Represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such individual can or will perform the activities described in paragraph (b)(1) of this section.

(c)(1) An individual “takes a residential mortgage loan application” if the individual receives a residential mortgage loan application for the purpose of facilitating a decision whether to extend an offer of residential mortgage loan terms to a borrower or prospective borrower (or to accept the terms offered by a borrower or prospective borrower in response to a solicitation), whether the application is received directly or indirectly from the borrower or prospective borrower.
(2) An individual “offers or negotiates terms of a residential mortgage loan for compensation or gain” if the individual:
(i)(A) Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms;
(B) Communicates directly or indirectly with a borrower, or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms; or
(ii) Receives or expects to receive payment of money or anything of value in connection with the activities described in paragraph (c)(2)(i) of this section or as a result of any residential mortgage loan terms entered into as a result of such activities.
(d)(1) Except as provided in paragraph (e) of this section, a state must prohibit an individual who is an independent contractor from engaging in residential mortgage loan origination activities as a loan processor or underwriter with respect to any dwelling or residential real estate in the state, unless the individual first:
(i) Registers as a loan originator through and obtains a unique identifier from the NMLSR, and
(ii) Obtains and maintains a valid loan originator license from the state.
(2) An individual “engages in residential mortgage loan origination activities as a loan processor or underwriter” if, with respect to a residential mortgage loan application, the individual performs clerical or support duties.
(e) A state is not required to impose the prohibitions required under paragraphs (a) and (d) of this section on the following individuals:
(1) An individual who performs only real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the individual is compensated directly or indirectly by a lender, mortgage broker, or other loan originator or by an agent of such lender, mortgage broker, or other loan originator;

(2) An individual who is involved only in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D);

(3) An individual who performs only clerical or support duties and:

(i) Who does so at the direction of and subject to the supervision and instruction of an individual who:

(A) Is licensed and registered in accordance with paragraph (a) of this section, or

(B) Is not required to be licensed in accordance with paragraph (e)(5); or

(ii) Who performs such duties solely with respect to transactions for which the individual who acts as a loan originator is not required to be licensed, in accordance with paragraph (e)(2), (6), or (7) of this section;

(4) An individual who performs only purely administrative or clerical tasks on behalf of a loan originator;

(5) An individual who is lawfully registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry, and who is an employee of a covered financial institution, as that term is defined in 12 CFR part 1007.

(6)(i) An individual who is an employee of a Federal, state, or local government agency or housing finance agency and who acts as a loan originator only pursuant to his or her official duties as an employee of the Federal, state, or local government agency or housing finance agency.

(ii) For purposes of this paragraph (e)(6), the term employee has the meaning provided in paragraph (1) of the definition of employee in §1008.23 and excludes the meaning provided in paragraph (2) of the definition.

(iii) For purposes of this paragraph (e)(6), the term housing finance agency means any authority:

(A) That is chartered by a state to help meet the affordable housing needs of the residents of the state;

(B) That is supervised directly or indirectly by the state government;

(C) That is subject to audit and review by the state in which it operates; and

(D) Whose activities make it eligible to be a member of the National Council of State Housing Agencies.

(7)(i) An employee of a bona fide nonprofit organization who acts as a loan originator only with respect to his or her work duties to the bona fide nonprofit organization, and who acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower.

(ii) For an organization to be considered a bona fide nonprofit organization under this paragraph, a state supervisory authority that opts not to require licensing of the employee must determine, under criteria and pursuant to processes established by the state, that the organization:

(A) Has the status of a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986;

(B) Promotes affordable housing or provides homeownership education, or similar services;

(C) Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;

(D) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;

(E) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients;

(F) Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs; and

(G) Meets other standards that the state determines are appropriate.

(iii) A state must periodically examine the books and activities of an organization that determines is a bona fide nonprofit organization and revoke its status as a bona fide nonprofit organization if it does not continue to meet...
§ 1008.105 Minimum loan originator license requirements.

For an individual to be eligible for a loan originator license required under §1008.103(a) and (d), a state must require and find, at a minimum, that an individual:

(a) Has never had a loan originator license revoked in any governmental jurisdiction, except that a formally vacated revocation shall not be deemed a revocation;

(b)(1) Has never been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court:

(i) During the 7-year period preceding the date of the application for licensing; or

(ii) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.

(2) For purposes of this paragraph (b):

(i) Expunged convictions and pardoned convictions do not, in themselves, affect the eligibility of the individual; and

(ii) Whether a particular crime is classified as a felony is determined by the law of the jurisdiction in which an individual is convicted.

(c) Has demonstrated financial responsibility, character, and general fitness, such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, and efficiently, under reasonable standards established by the individual state.

(d) Completed at least 20 hours of pre-licensing education that has been reviewed and approved by the National Mortgage Licensing System and Registry. The pre-licensing education completed by the individual must include at least:

(1) 3 hours of Federal law and regulations;

(2) 3 hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; and

(3) 2 hours of training on lending standards for the nontraditional mortgage product marketplace.

(e)(1) Achieved a test score of not less than 75 percent correct answers on a written test developed by the NMLSR in accordance with 12 U.S.C. 5105(d).

(2) To satisfy the requirement under paragraph (e)(1) of this section, an individual may take a test three consecutive times, with each retest occurring at least 30 days after the preceding test. If an individual fails three consecutive tests, the individual must wait at least 6 months before taking the test again.

(3) If a formerly state-licensed loan originator fails to maintain a valid license for 5 years or longer, not taking into account any time during which such individual is a registered loan originator, the individual must retake the test and achieve a test score of not less than 75 percent correct answers.

(f) Be covered by either a net worth or surety bond requirement, or pays into a state fund, as required by the state loan originator supervisory authority.

(g) Has submitted to the NMLSR fingerprints for submission to the Federal Bureau of Investigation and to any government agency for a state and national criminal history background check; and

(h) Has submitted to the NMLSR personal history and experience, which must include authorization for the NMLSR to obtain:

(1) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction; and

(2) An independent credit report.

§ 1008.107 Minimum annual license renewal requirements.

(a) For an individual to be eligible to renew a loan originator license as required under §1008.103(f), a state must require the individual:
§ 1008.110 Effective date of state requirements imposed on individuals.

(a) Except as provided in paragraphs (b) and (c) of this section, a state must provide that the effective date for requirements it imposes in accordance with §§ 1008.103, 1008.105, and 1008.107 is no later than August 29, 2011.

(b) For an individual who was permitted to perform residential mortgage loan originations under state legislation or regulations enacted or promulgated prior to the state’s enactment or promulgation of a licensing system that complies with this subpart, a state may delay the effective date for requirements it imposes in accordance with §§ 1008.103, 1008.105, and 1008.107 to no later than August 29, 2011. For purposes of this paragraph (b), an individual was permitted to perform residential mortgage loan originations only if prior state law required the individual to be licensed, authorized, registered, or otherwise granted a form of affirmative and revocable government permission for individuals as a condition of performing residential mortgage loan originations.

(c) The Bureau may approve a later effective date only upon a state’s demonstration that substantial numbers of loan originators (or of a class of loan originators) who require a state license face unusual hardship, through no fault of their own or of the state government, in complying with the standards required by the S.A.F.E. Act and in obtaining state licenses within one year.

§ 1008.111 Other minimum requirements for state licensing systems.

(a) General. A state must maintain a loan originator licensing, supervisory, and oversight authority (supervisory authority) that provides effective supervision and enforcement, in accordance with the minimum standards provided in this section and in §1008.113.

(b) Authorities. A supervisory authority must have the legal authority and mechanisms:

(1) To examine any books, papers, records, or other data of any loan originator operating in the state; and

(2) To summon any loan originator operating in the state, or any person having possession, custody, or care of the reports and records relating to such a loan originator, to appear before the supervisory authority at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for compliance with the requirements of the S.A.F.E. Act;

(c) An individual who is an instructor of an approved continuing education course may receive credit for the individual’s own annual continuing education requirement at the rate of 2 hours credit for every one hour taught.
§ 1008.113 Performance standards.

(a) For the Bureau to determine that a state is providing effective supervision and enforcement, a supervisory authority must meet the following performance standards:

(1) The supervisory authority must participate in the NMLSR;

(2) The supervisory authority must approve or deny loan originator license applications and must renew or refuse to renew existing loan originator licenses for violations of state or Federal law;

(3) The supervisory authority must discipline loan originator licensees with appropriate enforcement actions, such as license suspensions or revocations, cease-and-desist orders, civil money penalties, and consumer refunds for violations of state or Federal law;

(4) The supervisory authority must examine or investigate loan originator licensees in a systematic manner based on identified risk factors or on a periodic schedule.

(b) A supervisory authority that is accredited under the Conference of State Bank Supervisors-American Association of Residential Mortgage Regulators Mortgage Accreditation Program will be presumed by the Bureau to be compliant with the requirements of this section.

§ 1008.115 Determination of noncompliance.

(a) Evidence of compliance. Any time a state enacts legislation that affects its compliance with the S.A.F.E. Act, it must notify the Bureau. Upon request from the Bureau, a state must provide evidence that it is in compliance with the requirements of the S.A.F.E. Act and this part, including citations to applicable state law and regulations; descriptions of processes followed by the state’s supervisory authority; and data concerning examination, investigation, and enforcement actions.

(b) Initial determination of noncompliance. If the Bureau makes an initial determination that a state is not in compliance with the S.A.F.E. Act, the Bureau will notify the state and will publish, in the Federal Register, a notice providing the Bureau’s initial determination and presenting the opportunity for public comment for a period of no less than 30 days. This public comment period will allow the residents of the state and other interested members of the public to comment on the Bureau’s initial determination.

(c) Final determination of noncompliance. In making a final determination of noncompliance, the Bureau will review additional information that may be offered by a state and the comments submitted during the public comment period described in paragraph (b) of this section. If the Bureau makes a final determination that a state does not have in place by law or regulation a system that complies with the minimum requirements of the S.A.F.E. Act, as described in this part, the Bureau will publish that final determination in the Federal Register.
Bur. of Consumer Financial Protection

§ 1008.301 Scope of this subpart.

The S.A.F.E. Act provides the Bureau with “backup authority” to establish a loan originator licensing system for any state that is determined by the Bureau not to be in compliance with the minimum standards of the S.A.F.E. Act. The provisions of this subpart become applicable to individuals in a state as provided in §1008.115(e). The S.A.F.E. Act also authorizes the Bureau to establish and maintain a nationwide mortgage licensing system and registry if the Bureau determines that the NMLSR is failing to meet the purposes and requirements of the S.A.F.E. Act for a comprehensive licensing, supervisory, and tracking system for loan originators.

§ 1008.203 The Bureau’s establishment of loan originator licensing system.

If the Bureau determines, in accordance with §1008.115(e), that a state has not established a licensing and registration system in compliance with the minimum standards of the S.A.F.E. Act, the Bureau shall apply to individuals in that state the minimum standards of the S.A.F.E. Act, as specified in subpart B, which provides the minimum requirements that a state must meet to be in compliance with the S.A.F.E. Act, and as may be further specified in this part.

§ 1008.205 The Bureau’s establishment of nationwide mortgage licensing system and registry.

If the Bureau determines that the NMLSR established by CSBS and AARMR does not meet the minimum requirements of subpart D of this part, the Bureau will establish and maintain a nationwide mortgage licensing system and registry.

Subpart D—Minimum Requirements for Administration of the NMLS

§ 1008.301 Scope of this subpart.

This subpart establishes minimum requirements that apply to administration of the NMLS by the Conference of State Bank Supervisors or by the Bureau. The NMLS must accomplish the following objectives:

(a) Provide uniform license applications and reporting requirements for state-licensed loan originators.

(b) Provide a comprehensive licensing and supervisory database.

(c) Aggregate and improve the flow of information to and between regulators.

(d) Provide increased accountability and tracking of loan originators.

(e) Streamline the licensing process and reduce the regulatory burden.

(f) Enhance consumer protections and support anti-fraud measures.

(g) Provide consumers with easily accessible information, offered at no
§ 1008.303 Financial reporting.

To the extent that CSBS maintains the NMLSR, CSBS must annually provide to the Bureau, and the Bureau will annually collect and make available to the public, NMLSR financial statements, audited in accordance with Generally Accepted Accounting Principles (GAAP) promulgated by the Federal Accounting Standards Advisory Board, and other data. These financial statements and other data shall include, but not be limited to, the level and categories of funds received in relation to the NMLSR and how such funds are spent, including the aggregate total of funds paid for system development and improvements, the aggregate total of salaries and bonuses paid, the aggregate total of other administrative costs, and detail on other money spent, including money and interest paid to reimburse system investors or lenders, and a report of each state’s activity with respect to the NMLSR, including the number of licensees, the state’s financial commitment to the system, and the fees collected by the state through the NMLSR.

§ 1008.305 Data security.

(a) To the extent that CSBS, AARMR, or their successors maintain the NMLSR, CSBS, AARMR, and their successors, as applicable, must complete a background check on their employees, contractors, or other persons who have access to loan originators’ Social Security Numbers, fingerprints, or any credit reports collected by the system.

(b) To the extent that CSBS, AARMR, or their successors maintain the NMLSR, CSBS, AARMR, and their successors as applicable, must keep and adhere to an appropriate information security and privacy policy. If the NMLSR forms a reasonable belief that a security breach has occurred, it shall notify affected parties, as soon as practicable, including the Bureau, any loan originator or registrant whose data may have been compromised, and the employer of the loan originator or registrant, if such employer is also licensed through the system.

§ 1008.307 Fees.

CSBS, AARMR, or the Bureau, as applicable, may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry. Fees shall not be charged to consumers for access to such system and registry. If the Bureau determines to charge fees, the fees to be charged shall be issued by notice with the opportunity for comment prior to any fees being charged.

§ 1008.309 Absence of liability for good-faith administration.

The Bureau or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Bureau under 12 U.S.C. 5108 and in accordance with subpart C, or any officer or employee of the Bureau or the Bureau’s designee, shall not be subject to any civil action or proceeding for monetary damages by reason of the good-faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.
§ 1008.401 The Bureau’s authority to examine loan originator records.

(a) Summons authority. The Bureau may:

(1) Examine any books, papers, records, or other data of any loan originator operating in any state which is subject to a licensing system established by the Bureau under subpart C of this part; and

(2) Summon any loan originator referred to in paragraph (a)(1) of this section or any person having possession, custody, or care of the reports and records relating to such loan originator, to appear before the Bureau at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for compliance with the requirements of the S.A.F.E. Act.

(b) Examination authority—(1) In general. If the Bureau establishes a licensing system under 12 U.S.C. 5107 and in accordance with subpart C of this part for any state, the Bureau shall appoint examiners for the purposes of ensuring the appropriate administration of the Bureau’s licensing system.

(2) Power to examine. Any examiner appointed under paragraph (b)(1) of this section shall have power, on behalf of the Bureau, to make any examination of any loan originator operating in any state which is subject to a licensing system established by the Bureau under 12 U.S.C. 5107 and in accordance with subpart C of this part whenever the Bureau determines that an examination of any loan originator is necessary to determine the compliance by the originator with minimum requirements of the S.A.F.E. Act.

(3) Report of examination. Each Bureau examiner appointed under paragraph (b)(1) of this section shall make a full and detailed report to the Bureau of examination of any loan originator examined under this section.

(4) Administration of oaths and affirmations; evidence. In connection with examinations of loan originators operating in any state which is subject to a licensing system established by the Bureau under 12 U.S.C. 5107, and in accordance with subpart C of this part, or with other types of investigations to determine compliance with applicable law and regulations, the Bureau and the examiners appointed by the Bureau may administer oaths and affirmations and examine and take and preserve testimony under oath as to any matter in respect to the affairs of any such loan originator.

(5) Assessments. The cost of conducting any examination of any loan originator operating in any state which is subject to a licensing system established by the Bureau under 12 U.S.C. 5107 and in accordance with subpart C of this part shall be assessed by the Bureau against the loan originator to meet the Director’s expenses in carrying out such examination.

§ 1008.403 [Reserved]

§ 1008.405 [Reserved]

APPENDIX A TO PART 1008—EXAMPLES OF MORTGAGE LOAN ORIGINATOR ACTIVITIES

This appendix provides examples to aid in the understanding of activities that would cause an individual to fall within or outside the definition of a mortgage loan originator under part 1008. The examples in this appendix are not all-inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise. For purposes of the examples below, the term “loan” refers to a residential mortgage loan as defined in §1008.23 of this part.

(a) Taking a Loan Application. Taking a residential mortgage loan application within the meaning of §1008.103(c)(1) means receipt by an individual, for the purpose of facilitating a decision whether to extend an offer of loan terms to a borrower or prospective borrower, of an application as defined in §1008.23 (a request in any form for an offer, or a response to a solicitation of an offer, of residential mortgage loan terms, and the information about the borrower or prospective borrower that is customary or necessary in a decision whether to make such an offer).

(1) The following are examples to illustrate when an individual takes, or does not take, a loan application:

(i) An individual “takes a residential mortgage loan application” even if the individual:

(A) Has received the borrower or prospective borrower’s request or information indirectly. Section 1008.103(c)(1) provides that an individual takes an application, whether he or she receives it “directly or indirectly”
from the borrower or prospective borrower. This means that an individual who offers or negotiates residential mortgage loan terms for compensation or gain cannot avoid liability simply by having another person physically receive the application from the prospective borrower and then pass the application to the individual;
(B) Is not responsible for verifying information. The fact that an individual who takes application information from a borrower or prospective borrower is not responsible for verifying that information—for example, the individual is a mortgage broker who collects and sends that information to a lender—does not mean that the individual is not taking an application;
(C) Only inputs the information into an online application or other automated system; or
(D) Is not involved in approval of the loan, including determining whether the consumer qualifies for the loan. Similar to an individual who is not responsible for verification, an individual can still “take a residential mortgage loan application” even if he or she is not ultimately responsible for approving the loan. A mortgage broker, for example, can take a residential mortgage loan application even though it is passed on to a lender for a decision on whether the borrower qualifies for the loan and for the ultimate loan approval.
(ii) An individual does not take a loan application merely because the individual performs any of the following actions:
(A) Receives a loan application through the mail and forwards it, without review, to loan approval personnel. The Bureau interprets the term “takes a residential mortgage loan application” to exclude an individual whose only role with respect to the application is physically handling a completed application form or transmitting a completed form to a lender on behalf of a borrower or prospective borrower. This interpretation is consistent with the definition of “loan originator” in section 1503(3) of the S.A.F.E. Act.
(B) Assists a borrower or prospective borrower who is filling out an application by explaining the contents of the application and where particular borrower information is to be provided on the application;
(C) Generally describes for a borrower or prospective borrower the loan application process without a discussion of particular loan products; or
(D) In response to an inquiry regarding a prequalified offer that a borrower or prospective borrower has received from a lender, collects only basic identifying information about the borrower or prospective borrower on behalf of that lender.
(b) Offering or Negotiating Terms of a Loan. The following examples are designed to illustrate when an individual offers or negotiates terms of a loan within the meaning of §1008.103(c)(2) 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 for consideration by a borrower or prospective borrower particular loan terms, whether verbally, in writing, or otherwise, even if:
(A) Further verification of information is necessary;
(B) The offer is conditional;
(C) Other individuals must complete the loan process;
(D) The individual lacks authority to negotiate the interest rate or other loan terms; or
(E) The individual lacks authority to bind the person that is the source of the prospective financing.
(ii) Communicating directly or indirectly with a borrower or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms, including responding to a borrower or prospective borrower’s request for a different rate or different fees on a pending loan application by presenting to the borrower or prospective borrower a revised loan offer, even if a mutual understanding is not subsequently achieved.
(2) Offering or negotiating terms of a loan does not include any of the following activities:
(i) Providing general explanations or descriptions in response to consumer queries, such as explaining loan terminology (e.g., debt-to-income ratio) or lending policies (e.g., the loan-to-value ratio policy of the lender), or describing product-related services;
(ii) Arranging the loan closing or other aspects of the loan process, including by communicating with a borrower or prospective borrower about those arrangements, provided that any communication that includes a discussion about loan terms only verifies terms already agreed to by the borrower or prospective borrower;
(iii) Providing a borrower or prospective borrower with information unrelated to loan terms, such as the best days of the month for scheduling loan closings at the bank;
(iv) Making an underwriting decision about whether the borrower or prospective borrower qualifies for a loan;
(v) Explaining or describing the steps that a borrower or prospective borrower would need to take in order to obtain a loan offer, including providing general guidance about qualifications or criteria that would need to be met that is not specific to that borrower or prospective borrower’s circumstances;
(vi) Communicating on behalf of a mortgage loan originator that a written offer has
been sent to a borrower or prospective borrower without providing any details of that offer; or

(vii) Offering or negotiating loan terms solely through a third-party licensed loan originator, so long as the nonlicensed individual does not represent to the public that he or she can or will perform covered activities and does not communicate with the borrower or potential borrower. For example:

(A) A seller who provides financing to a purchaser of a dwelling owned by that seller in which the offer and negotiation of loan terms with the borrower or prospective borrower is conducted exclusively by a third-party licensed loan originator;

(B) An individual who works solely as a lender, when the individual offers loan terms exclusively to third-party licensed loan originators and not to borrowers or potential borrowers.

(c) For Compensation or Gain. (1) An individual acts “for compensation or gain” within the meaning of §1008.103(c)(2)(ii) if the individual receives or expects to receive in connection with the individual’s activities anything of value, including, but not limited to, payment of a salary, bonus, or commission. The concept “anything of value” is interpreted broadly and is not limited only to payments that are contingent upon the closing of a loan.

(2) An individual does not act “for compensation or gain” if the individual acts as a volunteer without receiving or expecting to receive anything of value in connection with the individual’s activities.

APPENDIX B TO PART 1008—ENGAGING IN THE BUSINESS OF A LOAN ORIGINATOR: COMMERCIAL CONTEXT AND HABITUALNESS

An individual who acts (or holds himself or herself out as acting) as a loan originator in a commercial context and with some degree of habitualness or repetition is considered to be “engage[d](d) in the business of a loan originator[,]” An individual who acts as a loan originator does so in a commercial context if the individual acts for the purpose of obtaining anything of value for himself or herself, or for an entity or individual for which the individual acts, rather than exclusively for public, charitable, or family purposes. The habitualness or repetition of the origination activities that is needed to “engage in the business of a loan originator” may be met either if the individual who acts as a loan originator does so with a degree of habitualness or repetition, or if the source of the prospective financing provides mortgage financing or performs other origination activities with a degree of habitualness or repetition. This appendix provides examples to aid in the understanding of activities that would not constitute engaging in the business of a loan originator, such that an individual is not required to obtain and maintain a state mortgage loan originator license. The examples in this appendix are not all-inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under part 1008. For purposes of the examples below, the term “loan” refers to a “residential mortgage loan” as defined in §1008.23 of this part.

(a) Not Engaged in the Business of a Mortgage Loan Originator. The following examples illustrate when an individual generally does not “engage in the business of a loan originator”:—

(1) An individual who acts as a loan originator in providing financing for the sale of that individual’s own residence, provided that the individual does not act as a loan originator or provide financing for such sales so frequently and under such circumstances that it constitutes a habitual and commercial activity.

(2) An individual who acts as a loan originator in providing financing for the sale of a property owned by that individual, provided that such individual does not engage in such activity with habitualness.

(3) A parent who acts as a loan originator in providing loan financing to his or her child.

(4) An employee of a government entity who acts as a loan originator only pursuant to his or her official duties as an employee of that government entity, if all applicable conditions in §1008.103(e)(7) of this part are met.

(5) If all applicable conditions in §1008.103(e)(7) of this part are met, an employee of a nonprofit organization that has been determined to be a bona fide nonprofit organization by the state supervisory authority, when the employee acts as a loan originator pursuant to his or her duties as an employee of that organization.

(6) An individual who does not act as a loan originator habitually or repeatedly, provided that the source of prospective financing does not provide mortgage financing or perform other loan origination activities habitually or repeatedly.

APPENDIX C TO PART 1008—INDEPENDENT CONTRACTORS AND LOAN PROCESSOR AND UNDERWRITER ACTIVITIES THAT REQUIRE A STATE MORTGAGE LOAN ORIGINATOR LICENSE

The examples below are designed to aid in the understanding of loan processing or underwriting activities for which an individual is required to obtain a S.A.F.E. Act-compliant mortgage loan originator license. The examples in this appendix are not all-inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under part 1008. For purposes of
the examples below, the term “loan” refers to a residential mortgage loan as defined in §1008.23 of this part.

(a) An individual who is a loan processor or underwriter who performs only clerical or support duties and performs those duties only at the direction of and subject to the supervision and instruction of a licensed loan originator employee of the same loan processing and underwriting company.

(b) A state is not required to impose S.A.F.E. Act licensing requirements on any individual loan processor or underwriter who, for example:

(1) Performs only clerical or support duties (i.e., the loan processor’s or underwriter’s activities do not include, e.g., offering or negotiating loan rates or terms, or counseling borrowers or prospective borrowers about loan rates or terms), and who performs those clerical or support duties at the direction of and subject to the supervision and instruction of an individual who either: Is licensed and registered in accordance with §1008.103(a) (state licensing of loan originators); or is not required to be licensed because he or she is excluded from the licensing requirement pursuant to §1008.103(e)(2) (time-share exclusion), (e)(6) (government employees exclusion), or (e)(7) (nonprofit exclusion).

(2) Performs only clerical or support duties as an employee of a mortgage lender or mortgage brokerage firm, and who performs those duties at the direction of and subject to the supervision and instruction of an individual who is employed by the same employer and who is licensed in accordance with §1008.103(a) (state licensing of loan originators).

(3) Is an employee of a loan processing or underwriting company that provides loan processing or underwriting services to one or more mortgage lenders or mortgage brokerage firms under a contract between the loan processing or underwriting company and the mortgage lenders or mortgage brokerage firms, provided the employee performs only clerical or support duties and performs those duties only at the direction of and subject to the supervision and instruction of a licensed loan originator employee of the same loan processing and underwriting company.

(4) Is an individual who does not otherwise perform the activities of a loan originator and is not involved in the receipt, collection, distribution, or analysis of information common for the processing or underwriting of a residential mortgage loan, nor is in communication with the consumer to obtain such information.

(c) In order to conclude that an individual who performs clerical or support duties is doing so at the direction of and subject to the supervision and instruction of a loan originator who is licensed or registered in accordance with §1008.103 (or, as applicable, an individual who is excluded from the licensing and registration requirements under §1008.103(e)(2), (e)(6), or (e)(7)), there must be an actual nexus between the licensed or registered loan originator’s (or excluded individual’s) direction, supervision, and instruction and the loan processor or underwriter’s activities. This actual nexus must be more than a nominal relationship on an organizational chart. For example, there is an actual nexus when:

(1) The supervisory licensed or registered loan originator assigns, authorizes, and monitors the loan processor or underwriter employee’s performance of clerical and support duties.

(2) The supervisory licensed or registered loan originator exercises traditional supervisory responsibilities, including, but not limited to, the training, mentoring, and evaluation of the loan processor or underwriter employee.

APPENDIX D TO PART 1008—ATTORNEYS: CIRCUMSTANCES THAT REQUIRE A STATE MORTGAGE LOAN ORIGINATOR LICENSE

This appendix D clarifies the circumstances in which the S.A.F.E. Act requires a licensed attorney who engages in loan origination activities to obtain a state loan originator license and registration. This special category recognizes limited, heavily regulated activities that meet strict criteria that are different from the criteria for specific exemptions from the S.A.F.E. Act requirements and the exclusions set forth in the regulations and illustrated in other appendices of part 1008.

(a) S.A.F.E. Act-compliant licensing required.

An individual who is a licensed attorney is required to be licensed if the individual is engaged in the business of a loan originator as defined in §1008.103 and such loan origination activities are not all of the following:

(1) Considered by the state’s court of last resort (or other state governing body responsible for regulating the practice of law) to be part of the authorized practice of law within the state;

(2) Carried out within an attorney-client relationship; and
§ 1009.4 Disclosures in advertising and on the premises.

(a) Required disclosures. Each depository institution lacking Federal deposit insurance must include a clear and conspicuous notice disclosing that the institution is not federally insured: (1) At each station or window where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated

(b) S.A.F.E. Act-compliant licensing not required. A licensed attorney performing activities that come within the definition of a loan originator is not required to be licensed, provided that such activities are:

(1) Considered by the state’s court of last resort (or other state governing body responsible for regulating the practice of law) to be part of the authorized practice of law within the state;

(2) Carried out within an attorney-client relationship; and

(3) Accomplished by the attorney in compliance with all applicable laws, rules, ethics, and standards.
§ 1009.5  Disclosure acknowledgment.

(a) New depositors obtained other than through a conversion or merger. With respect to any depositor who was not a depositor at the depository institution on or before October 13, 2006, and who is not a depositor as described in paragraph (b) of this section, a depository institution lacking Federal deposit insurance may receive a deposit for the account of such depositor only if the institution has obtained the depositor’s signed written acknowledgement that:

(1) The institution is not federally insured; and

(2) If the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor’s money.

(b) New depositors obtained through a conversion or merger. With respect to a depositor at a federally insured depository institution that converts to, or merges into, a depository institution lacking Federal deposit insurance after October 13, 2006, a depository institution lacking Federal deposit insurance may receive a deposit for the account of such depositor only if:

(1) The institution has obtained the depositor’s signed written acknowledgement described in paragraph (a) of this section; or

(2) The institution makes an attempt, sent by mail no later than 45 days after the effective date of the conversion or merger, to obtain the acknowledgment. In making such an attempt, the institution must transmit to each depositor who has not signed and returned a written acknowledgement described in paragraph (a) of this section:

(i) A conspicuous card containing the information described in paragraphs (a)(1) and (2) of this section, and a line for the signature of the depositor; and

(ii) Accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

(c) Depositors obtained on or before October 13, 2006. (1) Any depository institution lacking Federal deposit insurance may receive any deposit after October 13, 2006, for the account of a depositor who was a depositor on or before that date only if:

(i) The depositor has signed a written acknowledgement described in paragraph (a) of this section; or

(ii) The institution has transmitted to the depositor:

(A) A conspicuous card containing the information described in paragraphs (a)(1) and (2) of this section, and a line for the signature of the depositor; and

(B) Accompanying materials requesting that the depositor sign the card, and return the signed card to the institution.

(2) An institution described in paragraph (c)(1) of this section must have made the transmission described in paragraph (c)(1)(ii) of this section via mail not later than three months after October 13, 2006. The institution must have made a second identical transmission via mail not less than 30 days, and not more than three months, after the first transmission to the depositor in accordance with paragraph (c)(1)(ii) of this section, if the institution has not, by the date of such mailing, received from the depositor a card referred to in paragraph (c)(1)(i) of this section which has been signed by the depositor.
(d) Format and type size. The disclosures required by this section must be clear and conspicuous and presented in a simple and easy to understand format, type size, and manner.

§ 1009.6 Exception for certain depository institutions.

The requirements of this part do not apply to any depository institution lacking Federal deposit insurance and located within the United States that does not receive initial deposits of less than an amount equal to the standard maximum deposit insurance amount from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

§ 1009.7 Enforcement.


PART 1010—LAND REGISTRATION (REGULATION J)

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§ 1010.1 Definitions.

(a) Statutory terms. All terms are used in accordance with their statutory meaning in 15 U.S.C. 1702, unless otherwise defined in paragraph (b) of this section or elsewhere in this part.

(b) Other terms. As used in this part:


Advisory opinion means the formal written opinion of the Director as to jurisdiction in a particular case or the applicability of an exemption under §§1010.5 through 1010.15, based on facts submitted to the Director.

Available for use means that in addition to being constructed, the subject facility is fully operative and supplied with any materials and staff necessary for its intended purpose.

Beneficial property restrictions means restrictions that are enforceable by the lot owners and are designed to control the use of the lot and to preserve or enhance the environment and the aesthetic and economic value of the subdivision.

Date of filing means the date a Statement of Record, amendment, or consolidation, accompanied by the applicable fee, is received by the Director.

Good faith estimate means an estimate based on documentary evidence. In the case of cost estimates, the documentation may be obtained from the suppliers of the services. In the case of estimates of completion dates, the documentation may be actual contracts let, engineering schedules, or other evidence of commitments to complete the amenities.

ILSRP means the Interstate Land Sales Registration Program.

Lot means any portion, piece, division, unit, or undivided interest in land located in any state or foreign country, if the interest includes the right to the exclusive use of a specific portion of the land.

Owner means the person or entity who holds the fee title to the land and has the power to convey that title to others.

Parent corporation means that entity which ultimately controls the subsidiary, even though the control may arise through any series or chain of other subsidiaries or entities.

Principal means any person or entity holding at least a 10 percent financial or ownership interest in the developer or owner, directly or through any series or chain of subsidiaries or other entities.

Rules means all rules adopted pursuant to the Act, including the general requirements published in this part.

Sale means any obligation or arrangement for consideration to purchase or lease a lot directly or indirectly. The terms “sale” or “seller” include in their meanings the terms “lease” and “lessor.”

Senior Executive Officer means the individual of highest rank responsible for the day-to-day operations of the developer and who has the authority to bind or commit the developing entity to contractual obligations.

Site means a group of contiguous lots, whether such lots are actually divided or proposed to be divided. Lots are considered to be contiguous even though contiguity may be interrupted by a road, park, small body of water, recreational facility, or any similar object.

Start of construction means breaking ground for building a facility, followed by diligent action to complete the facility.

§ 1010.2 [Reserved]

§ 1010.3 General applicability.

Except in the case of an exempt transaction, a developer may not sell or lease lots in a subdivision, making
§ 1010.4 Exemptions—general.

(a) The exemptions available under §§1010.5 through 1010.16 are not applicable when the method of sale, lease or other disposition of land or an interest in land is adopted for the purpose of evasion of the Act.

(b) With the exception of the sales or leases which are exempt under §1010.5, the anti-fraud provisions of the Act (15 U.S.C. 1703(a)(2)) apply to exempt transactions. The anti-fraud provisions make it unlawful for a developer or agent to employ any device, scheme, or artifice to:

(1) Defraud;
(2) To obtain money or property by means of any untrue statement of a material fact, or
(3) To omit to state a material fact necessary in order to make the statements made not misleading, with respect to any information pertinent to the lot or subdivision; or

(4) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser.

(c) The anti-fraud provisions of the Act require that certain representations be included in the contract in transactions which are not exempt under §1010.5. Specifically, the Act requires that if a developer or agent represents that roads, sewers, water, gas or electric service or recreational amenities will be provided or completed by the developer, the contract must stipulate that the services or amenities will be provided or completed. See §1011.15(f).

(d) Eligibility for exemptions available under §§1010.5 through 1010.16 is self-determining. With the exception of the exemptions available under §§1010.15 and 1010.16, a developer is not required to file notice with or obtain the approval of the Director in order to take advantage of an exemption. If a developer elects to take advantage of an exemption, the developer is responsible for maintaining records to demonstrate that the requirements of the exemption have been met.

(e) A developer may present evidence, or otherwise discuss, in an informal hearing before the Office of Nonbank Supervision, the Bureau’s position on the jurisdiction or non-exempt status of a particular subdivision.

§ 1010.5 Statutory exemptions.

A listing of the statutory exemptions is contained in 15 U.S.C. 1703. In accordance with 15 U.S.C. 1703(a)(2), if the sale involves a condominium or multi-unit construction, a presale clause conditioning the sale of a unit on a certain percentage of sales of other units is permissible if it is legally binding on the parties and is for a period not to exceed 180 days. However, the 180-day provision cannot extend the 2-year period for performance. The permissible 180 days is calculated from the date the first purchaser signs a sales contract in the project or, if a phased project, from the date the first purchaser signs the first sales contract in each phase.

§ 1010.6 One hundred lot exemption.

The sale of lots in a subdivision is exempt from the registration requirements of the Act if, since April 28, 1969, the subdivision has contained fewer than 100 lots, exclusive of lots which are exempt from jurisdiction under §1010.5. In the sale of lots in the subdivision that are not exempt under §1010.5, the developer must comply with the Act’s anti-fraud provisions, set forth in §1010.4(b) and (c).

§ 1010.7 Twelve lot exemption.

(a) The sale of lots is exempt from the registration requirements of the Act if, beginning with the first sale after June 20, 1980, no more than twelve lots in the subdivision are sold in the subsequent twelve-month period.
§ 1010.8

Thereafter, the sale of the first twelve lots is exempt from the registration requirements if no more than twelve lots were sold in each previous twelve month period which began with the anniversary date of the first sale after June 20, 1980.

(b) A developer may apply to the Director to establish a different twelve month period for use in determining eligibility for the exemption and the Director may allow the change if it is for good cause and consistent with the purpose of this section.

(c) In determining eligibility for this exemption, all lots sold or leased in the subdivision after June 20, 1980, are counted, whether or not the transactions are otherwise exempt. Sales or leases made prior to June 21, 1980, are not considered in determining eligibility for the exemption.

(d) The sale must also comply with the anti-fraud provisions of §1010.4(b) and (c) of this part.

§ 1010.8 Scattered site subdivisions.

(a) The sale of lots in a subdivision consisting of noncontiguous parts is exempt from the registration requirements of the Act if:

(1) Each noncontiguous part of the subdivision contains twenty or fewer lots; and

(2) Each purchaser or purchaser’s spouse makes a personal, on-the-lot inspection of the lot purchased prior to signing a contract.

(b) For purposes of this exemption, interruptions such as roads, parks, small bodies of water or recreational facilities do not serve to break the contiguity of parts of a subdivision.

(c) The sale must also comply with the anti-fraud provisions of §1010.4(b) and (c) of this part.

§ 1010.9 Twenty acre lots.

(a) The sale of lots in a subdivision is exempt from the registration requirements of the Act if, since April 28, 1969, each lot in the subdivision has contained at least twenty acres. In determining eligibility for the exemption, easements for ingress and egress or public utilities are considered part of the total acreage of the lot if the purchaser retains ownership of the property affected by the easement.

(b) The sale must also comply with the anti-fraud provisions of §1010.4(b) and (c) of this part.

§ 1010.10 Single-family residence exemption.

(a) General. The sale of a lot which meets the requirements specified under paragraphs (b) and (c) of this section is exempt from the registration requirements of the Act.

(b) Subdivision requirements. (1) The subdivision must meet all local codes and standards.

(2) In the promotion of the subdivision there must be no offers, by direct mail or telephone solicitation, of gifts, trips, dinners or use of similar promotional techniques to induce prospective purchasers to visit the subdivision or to purchase a lot.

(c) Lot requirements. (1) The lot must be located within a municipality or county where a unit of local government or the state specifies minimum standards in the following areas for the development of subdivision lots taking place within its boundaries:

(i) Lot dimensions.

(ii) Plat approval and recordation.

(iii) Roads and access.

(iv) Drainage.

(v) Flooding.

(vi) Water supply.

(vii) Sewage disposal.

(2) Each lot sold under the exemption must be either zoned for single-family residences or, in the absence of a zoning ordinance, limited exclusively by enforceable covenants or restrictions to single-family residences. Manufactured homes, townhouses, and residences for one-to-four family use are considered single-family residences for purposes of this exemption provision.

(3) The lot must be situated on a paved street or highway which has been built to standards established by the state or the unit of local government in which the subdivision is located. If the roads are to be public roads they must be acceptable to the unit of local government that will be responsible for maintenance. If the street or highway is not complete, the developer must post a bond or other surety acceptable to the municipality or county in the full amount of the
§ 1010.11 Manufactured home exemption.

(a) The sale of a lot is exempt from the registration requirements of the Act when the following eligibility requirements are met:

1. The lot is sold as a homesite by one party and a manufactured home is sold by another party and the contracts of sale:
   i. Obligate the sellers to perform, contingent upon the other seller carrying out its obligations so that a completed manufactured home will be erected on a completed homesite within two years after the date the purchaser signed the contract to purchase the lot;
   ii. Provide that all funds received by the sellers are to be deposited in escrow accounts independent of the sellers until the transactions are completed;
   iii. Provide that funds received by the sellers will be released to the buyer upon demand if the lot on which the manufactured home has been erected is not conveyed within two years; and
   iv. Contain no provisions which restrict the purchaser’s remedy of bringing suit for specific performance.

2. The homesite is developed in conformance with all local codes and standards, if any, for manufactured home subdivisions.

3. At the time of closing:
   i. Potable water and sanitary sewage disposal are available to the homesite and electricity has been extended to the lot line;
   ii. The homesite is accessible by roads;
   iii. The purchaser receives marketable title to the lot; and
   iv. Other common facilities represented in any manner by the developer or agent to be provided are completed or there are letters of credit,

7. At the time of closing, a title insurance binder or title opinion reflecting the condition of title must be in existence and issued or presented to the purchaser showing that, subject only to exceptions which are approved in writing by the purchaser at the time of closing, marketable title to the lot is vested in the seller.

8. The purchaser or purchaser’s spouse must make a personal, on-the-lot inspection of the lot purchased prior to signing a contract or agreement to purchase.

(d) The sale must also comply with the anti-fraud provisions of §1010.4(b) and (c) of this part.
§ 1010.12 Intrastate exemption.

(a) Eligibility requirements. The sale of a lot is exempt from the registration requirements of the Act if the following requirements are met:

(1) The sale of lots in the subdivision after December 20, 1979, is restricted solely to residents of the state in which the subdivision is located unless the sale is exempt under §1010.5, §1010.11, or §1010.13.

(2) The purchaser or purchaser’s spouse makes a personal on-the-lot inspection of the lot to be purchased before signing a contract.

(3) Each contract:

(i) Specifies the developer’s and purchaser’s responsibilities for providing and maintaining roads, water and sewer facilities and any existing or promised amenities;

(ii) Contains a good faith estimate of the year in which the roads, water and sewer facilities and promised amenities will be completed; and

(iii) Contains a non-waivable provision giving the purchaser the opportunity to revoke the contract until at least midnight of the seventh calendar day following the date the purchaser signed the contract. If the purchaser is entitled to a longer revocation period by operation of state law, that period becomes the Federal revocation period and the contract must reflect the requirements of the longer period.

(4) The lot being sold is free and clear of all liens, encumbrances and adverse claims except the following:

(i) Mortgages or deeds of trust which contain release provisions for the individual lot purchased if:

(A) The contract of sale obligates the developer to deliver, within 180 days, a warranty deed (or its equivalent under local law), which at the time of delivery is free from any monetary liens or encumbrances; and

(B) The purchaser’s payments are deposited in an escrow account independent of the developer until a deed is delivered.

(ii) Liens which are subordinate to the leasehold interest and do not affect the lessee’s right to use or enjoy the lot.

(iii) Property reservations which are for the purpose of bringing public services to the land being developed, such as easements for water and sewer lines.

(iv) Taxes or assessments which constitute liens before they are due and payable if imposed by a state or other public body having authority to assess and tax property or by a property owners’ association.

(v) Beneficial property restrictions that are mutually enforceable by the lot owners in the subdivision. Restrictions, whether separately recorded or incorporated into individual deeds, must be applied uniformly to every lot or group of lots. To be considered beneficial and enforceable, any restriction or covenant that imposes an assessment on lot owners must apply to the developer on the same basis as other lot owners. Developers who maintain control of a subdivision through a Property Owners’ Association, Architectural Control Committee, restrictive covenant or otherwise, shall transfer such control to the lot owners no later than when the developer ceases to own a majority of total lots in, or planned for, the subdivision. Relinquishment of developer control shall require affirmative action, usually in the form of an election based upon one vote per lot.

(vi) Reservations contained in United States land patents and similar Federal grants or reservations.

(5) Prior to the sale the developer discloses in a written statement to the purchaser all qualifying liens, reservations, taxes, assessments and restrictions applicable to the lot purchased.
The developer must obtain a written receipt from the purchaser acknowledging that the statement required by this subparagraph was delivered to the purchaser.

(6) Prior to the sale the developer provides in a written statement good faith estimates of the cost to the purchaser of providing electric, water, sewer, gas and telephone service to the lot. The estimates for unsold lots must be updated every two years or more frequently if the developer has reason to believe that significant cost increases have occurred. The dates on which the estimates were made must be included in the statement. The developer must obtain a written receipt from the purchaser acknowledging that the statement required by this subparagraph was delivered to the purchaser.

(b) Intrastate Exemption Statement. To satisfy the requirements of paragraphs (a)(5) and (6) of this section, an Intrastate Exemption Statement containing the information prescribed in each such paragraph shall be given to each purchaser. A State-approved disclosure document may be used to satisfy this requirement if all the information required by paragraphs (a)(5) and (6) of this section is included in this disclosure. In such a case, the developer must obtain a written receipt from the purchaser and comply with all other requirements of the exemption. To be acceptable for purposes of the exemption, the statement(s) given to purchasers must contain neither advertising nor promotion on behalf of the developer or subdivision nor references to the Bureau of Consumer Financial Protection or the Consumer Financial Protection Bureau. A sample Intrastate Exemption Statement is included in the exemption guidelines.

(c) The sale must also comply with the anti-fraud provisions of §1010.4(b) and (c) of this part.

§ 1010.13 Metropolitan Statistical Area (MSA) exemption.

(a) Eligibility requirements. The sale of a lot which meets the following requirements is exempt from registration requirements of the Act:

(1) The lot is in a subdivision which contains fewer than 300 lots and has contained fewer than 300 lots since April 28, 1969.

(2) The lot is located within a Metropolitan Statistical Area (MSA) as defined by the Office of Management and Budget and characterized in paragraph (b) of this section.

(3) The principal residence of the purchaser is within the same MSA as the subdivision.

(4) The purchaser or purchaser’s spouse makes a personal on-the-lot inspection of the lot to be purchased prior to signing a contract or agreement.

(5) Each contract:

(i) Specifies the developer’s and purchaser’s responsibilities for providing and maintaining roads, water and sewer facilities and any existing or promised amenities;

(ii) Contains a good faith estimate of the year in which the roads, water and sewer facilities and promised amenities will be completed;

(iii) Contains a nonwaivable provision giving the purchaser the opportunity to revoke the contract until at least midnight of the seventh calendar day following the date the purchaser signed the contract, or, if the purchaser is entitled to a longer revocation period by operation of state law, that period becomes the Federal revocation period and the contract must reflect the requirements of the longer period.

(6) The lot being sold must be free and clear of liens such as mortgages, deeds of trust, tax liens, mechanics’ liens, or judgments. For purposes of this exemption, the term liens does not include the following:

(i) Mortgages or deeds of trust which contain release provisions for the individual lot purchased if:

(A) The contract of sale obligates the developer to deliver, within 180 days, a warranty deed (or its equivalent under local law), which at the time of delivery is free from any monetary liens or encumbrances; and

(B) The purchaser’s payments are deposited in an escrow account independent of the developer until a deed is delivered.

(ii) Liens which are subordinate to the leasehold interest and do not affect
the lessee’s right to use or enjoy the lot.

(iii) Property reservations which are for the purpose of bringing public services to the land being developed, such as easements for water and sewer lines.

(iv) Taxes or assessments which constitute liens before they are due and payable if imposed by a state or other public body having authority to assess and tax property or by a property owners’ association.

(v) Beneficial property restrictions that are mutually enforceable by the lot owners in the subdivision. Restrictions, whether separately recorded or incorporated into individual deeds, must be applied uniformly to every lot or group of lots. To be considered beneficial and enforceable, any restriction or covenant that imposes an assessment on lot owners must apply to the developer on the same basis as other lot owners. Developers who maintain control of a subdivision through a Property Owners’ Association, Architectural Control Committee, restrictive covenants, or otherwise, shall transfer such control to the lot owners no later than when the developer ceases to own a majority of total lots in, or planned for, the subdivision. Relinquishment of developer control shall require affirmative action, usually in the form of an election based upon one vote per lot.

(vi) Reservations contained in United States land patents and similar Federal grants or reservations.

(7) Before the sale the developer gives a written MSA Exemption Statement to the purchaser and obtains a written receipt acknowledging that the statement was received. A sample MSA Exemption Statement is included in the exemption guidelines. A State-approved disclosure document may be used to satisfy this requirement if all of the information required by this section is included. The statement(s) given to purchasers must contain neither advertising nor promotion on behalf of the developer or the subdivision nor references to the Bureau of Consumer Financial Protection or the Consumer Financial Protection Bureau. In descriptive and concise terms, the statement that the developer must give the purchaser shall disclose the following:

(i) All liens, reservations, taxes, assessments, beneficial property restrictions which are enforceable by other lot owners in the subdivision, and adverse claims which are applicable to the lot to be purchased.

(ii) Good faith estimates of the cost to the purchaser of providing electric, water, sewer, gas and telephone service to the lot. The estimates for unsold lots must be updated every two years, or more frequently if the developer has reason to believe that significant cost increases have occurred. The dates on which the estimates were made must be included in the statement.

(8) The developer executes and gives to the purchaser a written instrument designating a person within the state of residence of the purchaser as the developer’s agent for service of process. The developer must also acknowledge in writing that it submits to the legal jurisdiction of the state in which the purchaser or lessee resides.

(9) The developer executes a written affirmation for each sale made under this exemption. By January 31 of each year, the developer submits to the Director a copy of the executed affirmation for each sale made during the preceding calendar year or a master affirmation in which are listed all purchasers’ names and addresses and the identity of the lots purchased. Individual affirmations must be available for the Director’s review at all times during the year. The affirmation must be in the form provided in section I of the appendix to this part: Form for Developer’s Affirmation for Land Sale.

(b) Metropolitan Statistical Area. Metropolitan Statistical Areas are defined by the Office of Management and Budget generally on the basis of population statistics reported in a census. To determine whether a subdivision is located within an MSA and the boundaries of an MSA, contact the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503.

(c) The sale must also comply with the anti-fraud provisions of §1010.4(b) and (c).
§ 1010.14 Regulatory exemptions.

(a) Eligibility requirements. The following transactions are exempt from the registration requirements of the Act unless the Director has terminated the exemption in accordance with paragraph (b) of this section.

(1) The sale of lots, each of which will be sold for less than $100, including closing costs, if the purchaser will not be required to purchase more than one lot.

(2) The lease of lots for a term not to exceed five years if the terms of the lease do not obligate the lessee to renew.

(3) The sale of lots to a person who is engaged in a bona fide land sales business.

(4) The sale of a lot to a person who owns the contiguous lot which has a residential, commercial or industrial building on it.

(5) The sale of real estate to a government or government agency.

(6) The sale of a lot to a person who has leased and resided primarily on the lot for at least the year preceding the sale.

(b) Termination. If the Director has reasonable grounds to believe that exemption from the registration requirements in a particular case is not in the public interest, the Director may, after issuing a notice and giving the respondent an opportunity to request a hearing within fifteen days of receipt of the notice, terminate eligibility for exemption. The basis for issuing a notice may be the conduct of the developer or agent, such as unlawful conduct or insolvency, or adverse information about the lots or real estate that should be disclosed to the purchasers. Proceedings will be governed by § 1012.238.

(c) The sale must also comply with the anti-fraud provisions of § 1010.4(b) and (c) of this part.

§ 1010.15 Regulatory exemption—multiple site subdivision—determination required.

(a) General. (1) The sale of lots contained in multiple sites of fewer than 100 lots each, offered pursuant to a single common promotional plan, is exempt from the registration requirements.

(2) For purposes of this exemption, the sale of lots in an individual site that exceeds 99 lots is not exempt from registration. Likewise, the sale of lots in a site containing fewer than 100 lots, where the developer either owns contiguous land or holds an option or other evidence of intent to acquire contiguous land which, when taken cumulatively, would or could result in one site of 100 or more lots, is not exempt from registration. Furthermore, the sale of lots that are within a subdivision established by a separate developer is not exempt from registration by this provision.

(b) Eligibility requirements. The sale of each lot must meet the following requirements to be eligible for this exemption.

(1) The lot is sold "as is" with all advertised improvements and amenities completed and in the condition advertised.

(2) The lot is in conformance with all local codes and standards.

(3) The lot is accessible, both legally and physically. For lots which are advertised or otherwise represented as "residential," either primary or secondary, with any inference that a permanent or temporary dwelling unit of any description (excluding collapsible tents) can be built or installed, physical access must be available by automobile, pick-up truck or equivalent "on-road" vehicle.

(4) At the time of closing, a title insurance binder or title opinion reflecting the condition of title must be issued to the purchaser showing that, subject only to exceptions approved in writing by the purchaser at the time of closing, marketable title is vested in the seller.

(5) Each contract or agreement and any promissory notes:

(i) Contain the non-waivable provision found in section II of the appendix to this part: Language Notifying Buyer of Option to Cancel Contract in bold face type (which must be distinguished from the type used for the rest of the document) on the face or signature page above all signatures. If the purchaser is entitled to a longer revocation period by operation of state or local law, that period becomes the Federal revocation period and the contract
must reflect the requirement of the longer period rather than the seven days. The revocation provisions may not be limited or qualified in the contract or other document by requiring a specific type of notice or by requiring that notice be given at a specified place.

(ii) Obligate the developer to deliver, within 180 days, a warranty deed (or its equivalent under local law) for the lot which at the time of delivery is free from any monetary liens or encumbrances.

(6) The purchaser or purchaser’s spouse makes a personal on-the-lot inspection of the lot to be purchased before signing a contract.

(7) The purchaser’s payments are deposited in an escrow account independent of the developer until a deed is delivered.

(8) Prior to the purchaser signing a contract or agreement of sale, the developer discloses in a written Lot Information Statement all liens, reservations, taxes, assessments, easements and restrictions applicable to the lot purchased (see paragraph (b)(11) of this section).

(9) Prior to the purchaser signing a contract or agreement of sale, the developer discloses in a written Lot Information Statement the name, address and telephone number of the local governmental agency or agencies from which information on permits or other requirements for water, sewer and electrical installations can be obtained. This Statement will also contain the name, address and telephone number of the suppliers which would or could provide the foregoing services.

(10) The lot sale must comply with the anti-fraud provisions of 12 CFR 1010.4(b) and (c) and the sales practices and standards in §§ 1011.10 through 1011.28.

(11) A written Lot Information Statement must be delivered to, and acknowledged by, each purchaser prior to his or her signing a contract or agreement of sale, and must contain the information shown in the format below. The Statement must be typed or printed in at least 10 point font. A copy of the acknowledgement will be maintained by the developer for three years and will be made available to ILSRP upon request. If the Statement is not delivered as required, the contract or agreement of sale may be revoked and a full refund paid, at the option of the purchaser, within two years of the signing date and the contract or agreement of sale will clearly provide this right. A sample format for the Statement is provided in section III of the appendix to this part: Sample Lot Information Statement and Sample Receipt.

(c) Request for Multiple Site Subdivision Exemption. (1) The developer must file a request for the Multiple Site Subdivision Exemption. The request must be accompanied by a filing fee of $500 (prepared in accordance with § 1010.35(a)) and a sample Lot Information Statement, substantially in the form set forth in section IV of the appendix to this part: Request for Multiple Site Subdivision Exemption.

(2) This exemption will become effective upon issuance of an Exemption Order by the Director.

(d) Annual Report. (1) By January 31 of each year the developer will send a report to the Director listing each site and its location available for a sale pursuant to the exemption during the preceding year and indicate the number of lot sales made in each site. The report will describe any changes in the information provided in the Request for the Multiple Site Subdivision Exemption or contain a statement that there are no changes.

(2) The Annual Report must be accompanied by a filing fee of $100.

(3) The Annual Report must be signed and dated by the developer, attesting to its completeness and accuracy.

(4) Failure to submit the Annual Report within ten days after the receipt of notice from the Director will automatically terminate eligibility for the exemption as of the Report due date.

(e) Termination. If, subsequent to the issuance of an Exemption Order, the Director has reasonable grounds to believe that exemption from the registration requirements in the particular case is not in the public interest, the Director may, after issuing a notice and giving the respondent an opportunity to request a hearing within fifteen days of receipt of the notice, terminate the exemption order. The basis
§ 1010.16 Regulatory exemption—determination required.

(a) General. The Director may exempt from the registration requirements of the Act any subdivision or lots in a subdivision by issuing an order in writing if it is determined that registration is not necessary in the public interest and for the protection of purchasers on the basis of the small amount or limited character of the offering and the requirements contained in paragraph (b) of this section.

(b) Eligibility requirements. An exemption order may be issued at the discretion of the Director on the basis of the small amount or limited character of the offering if the following requirements are met:

(1) The subdivision or sales substantially meet the requirements of one of the exemptions available under this chapter.

(2) Each contract:

(i) Specifies the developer’s and purchaser’s responsibilities for providing and maintaining roads, water and sewer facilities and any existing or promised amenities;

(ii) Contains a good faith estimate of the year in which the roads, water and sewer facilities and promised amenities will be completed;

(iii) Contains a non-waivable provision giving the purchaser the opportunity to revoke the contract until at least midnight of the seventh calendar day following the date the purchaser signed the contract. If the purchaser is entitled to a longer revocation period by operation of state law, that period becomes the Federal revocation period and the contract must reflect the requirements of the longer period.

(iv) Contains a provision that obligates the developer to deliver to the purchaser within 180 days of the date the purchaser signed the sales contract, a warranty deed, or its equivalent under local law, which at the time of delivery is free from any monetary liens or encumbrances.

(3) The purchaser or purchaser’s spouse makes a personal on-the-lot inspection of the lot to be purchased before signing a contract.

(4) The developer files a request for an exemption order and supporting documentation in accordance with paragraphs (c) and (d) of this section and submits a filing fee of $500.00 in accordance with §1010.35(a) of this part. This fee is not refundable.

(c) Request. The request for an Exemption Order must be substantially in the format set forth in section V of the appendix to this part: Request for Regulatory Exemption Order.

(d) Supporting documentation. A request for an exemption order must be accompanied by the following documentation:

(1) A plat of the entire subdivision with the lots subject to the exemption request delineated thereon.

(2) A copy of the contract to be used.

(3) A clear and specific statement detailing how the proposed sales of lots subject to the exemption request substantially complies with one of the available exemption provisions.

(4) A description of the method by which the lots have been and will be promoted and to which population centers the promotion has been and will be directed.

(e) The sale must also comply with the anti-fraud provisions of §1010.4(b) and (c) of this part.

(f) Termination. If, subsequent to the issuance of an exemption order, the Director has reasonable grounds to believe that exemption from the registration requirements in the particular case is not in the public interest, the Director may, after issuing a notice and giving the respondent an opportunity to request a hearing within fifteen days of receipt of the notice, terminate the exemption order. The basis for issuing a notice may be apparent omissions or misrepresentations in the documents submitted to the Director, the conduct of the developer or agent, such as unlawful conduct or insolvency, or adverse information about the real estate that should be disclosed.
to purchasers. Proceedings will be governed by §1012.238.

§ 1010.17 Advisory opinion.

(a) General. A developer may request an opinion from the Director as to whether an offering qualifies for an exemption or is subject to the jurisdiction of the Act.

(b) Requirements. All requests for Advisory Opinions must be accompanied by the following:

(1) A $500.00 filing fee submitted in accordance with §1010.35(a). This fee is not refundable.

(2) A comprehensive description of the conditions and operations of the offering. There is no prescribed format for submitting this information, but the developer should at least cite the applicable statutory or regulatory basis for the exemption or lack of jurisdiction and thoroughly explain how the offering either satisfies the requirements for exemption or falls outside the purview of the Act.

(3) An affirmation as set forth in section VI of the appendix to this part: Developer’s Affirmation for Advisory Opinion.

§ 1010.18 No Action Letter.

(a) If the sale of lots is subject to the registration requirements of the Act but the circumstances of the sale are such that no affirmative action to enforce the registration requirements is needed to protect the public interest or prospective purchasers, the Director may issue a No Action Letter.

(b) To obtain a No Action Letter a developer must submit a request which includes a thorough description of the proposed transaction, the property involved, and the circumstances surrounding the sale.

(c) The issuance of a No Action Letter will not affect any right which a purchaser has under the Act, and it will not limit future action by the Director if there is evidence to show that affirmative action is necessary to protect the public interest or prospective purchasers. In no event will a No Action Letter be issued after the sale has occurred.

§ 1010.19 [Reserved]

§ 1010.20 Requirements for registering a subdivision—Statement of Record—filing and form.

(a) Filing. In order to register a subdivision and receive an effective date, the developer or owner of the subdivision must file a Statement of Record with the Director. The official address to be used is: CFPB Interstate Land Sales, c/o: Armedia LLC, 8221 Old Courthouse Road, Suite 206, Vienna, VA 22182. When the Statement of Record is filed, a fee in the amount set out in §1010.35(b) must be paid in accordance with §1010.35(a).

(b) Form. The Statement of Record shall be in the format specified in §§1010.102, 1010.105 through 1010.118, 1010.200, 1010.208 through 1010.216 and 1010.219. It shall be supported by the documents required by §§1010.208 through 1010.216 and 1010.219. It shall include any other information or documents which the Director may require as being necessary or appropriate for the protection of purchasers.

(c) State filings. A Statement of Record submitted under the provisions of 12 CFR part 1010, subpart C—Certification of Substantially Equivalent State Law, shall consist of the materials designated by the Certification Agreement between the Director and the certified state in which the subdivision is located.

§ 1010.21 Effective dates.

(a) General. The effective date of an initial, consolidated or amended Statement of Record is the 30th day after the filing of the latest amendatory material unless the Director notifies the developer in writing prior to such 30th day that:

(1) The effective date has been suspended in accordance with §1010.45(a), or

(2) An earlier effective date has been determined.

(b) Suspension of effective date by developer. (1) A developer, or owner, may request that the effective date of its Statement of Record be suspended, provided there are no administrative proceedings pending against either of
§ 1010.22 Statement of record—initial or consolidated.

(a) Initial Statement of Record. (1) Except in the case of exempt transactions, an initial Statement of Record shall be filed, and an effective date issued, prior to selling or leasing any lot in a subdivision.

(2) If a developer buys from another developer 100 or more lots from an existing registration, the new developer, or owner, may have to submit a new initial Statement of Record and receive an effective date covering the acquired lots prior to selling or leasing any of those lots.

(3) Changes in principals due to a sale of stock in a corporation or changes in partners or joint venturers which are accomplished in accordance with the partnership or joint venture agreement but which do not cause a change in the title to the land in the subdivision may be submitted as an amendment.

(4) Any initial Statement of Record must be accompanied by a fee, as specified in §1010.35(b), based upon the number of lots sought to be registered.

(b) Consolidated Statement of Record. (1) If the developer intends to sell or lease additional lots as part of the same common promotional plan with lots already registered, a consolidated Statement of Record may be submitted for the additional lots. A fee, as specified in §1010.35(b) and based on the number of additional lots, must accompany the submission. The additional lots may not be sold or leased until a new effective date is issued.

(2) If the additional lots are simply the result of a replatting of lots previously registered and enumerated in the Property Report and do not include any additional land, the change may be made by an amendment. However, the amendment must be accompanied by a fee, as specified in §1010.35(b), based on the number of additional lots.

(c) Consolidated Statement of Record—Form. A consolidated Statement of Record shall contain the elements listed in paragraphs (c)(1) through (4) of this section. Pages having no changes and documents in previous submissions which apply equally to the additional lots may be included by reference. However, the developer may, at its option, submit the entire format for an initial filing, including copies of previously submitted documents, to expedite the examination process.

(1) Those pages of the Property Report portion and Additional Information and Documentation portion which contain changes which have occurred since the last effective submission, and

(2) A recapitulation or listing of each of the section headings, and subheadings if necessary, of the Additional Information and Documentation portion. Each item of the listing shall contain a statement as to whether or not any change is made in the section; whether any new or additional information is being submitted and, if documentation is added by cross reference, the previous submission in which that documentation may be found, and

(3) Documentation to support the additional lots (e.g., plat maps, topographic maps and general plan to reflect new lots, title information, permits for additional facilities, financial assurances of completion of additional facilities, financial statements) or updated or expanded documents in support of previous submissions, and

(4) The affirmation required by §1010.219.

(d) Consolidated Statement of Record amends prior Statement of Record. A Consolidated Statement of Record shall contain all applicable information for all registered lots in the subdivision except those deleted pursuant to other
provisions in these regulations. The resulting Property Report shall be used for all sales in the subdivision, except for those transactions which are exempt from the provisions of the Act or which have been granted an exempt status by the Director, unless the Director has specifically authorized the use of multiple Property Reports.

(e) **Initial Statement of Record—when prior approval to submit is required.** In those subdivisions where there is a disparity between the lots already registered and those sought to be registered because of location, terrain, proposed use of the lots or the amenities to be furnished or available, the developer may present a resume of the differences and request the Director's permission to file a separate initial Statement of Record for the additional lots. Upon consideration of the facts submitted, the Director may allow such a procedure.

(f) **Lots which have been deleted from registration.** Should the developer, for any reason, delete by amendment any registered lots from an effective Statement of Record, those lots must be re-registered by a consolidation and a new effective date issued, before they can be sold or leased. An appropriate fee must accompany the submission.

(g) **Lots sold to individual purchasers.** It is not necessary to delete from the registration those lots which have been sold to individual purchasers for their own use.

§ 1010.23 Amendment—filing and form.

(a) **Filing.** If any change occurs in any representation of material fact required to be stated in an effective Statement of Record, an amendment shall be filed. The amendment shall be filed within 15 days of the date on which the developer knows, or should have known, that there has been a change in material fact.

(b) **Form.** An amendment shall include by reference the prior Statement of Record except for any changes in material fact. A change in material fact shall be specifically described and supported by the same documentation which would be required for an initial submission. Any amendment shall be accompanied by:

1. A letter from the developer giving a clear and concise description of the purpose and significance of the amendment and referring to the section and page of the Statement of Record which is being amended, and
2. All pages of the Statement of Record, which have been amended, retyped in the required format to reflect the changes. The ILSRP number of the Statement of Record shall appear at the top of each page of the material submitted.

(c) **Amendments to suspended filings.** Developers wishing to reactivate a suspended filing shall file the following:

1. Any amendments necessary to bring the filing into compliance, submitted in accordance with paragraphs (a) and (b) of this section;
2. An activity report in the form prescribed by §1010.310; and
3. An amendment fee, if required under §1010.35(d)(2).

§§ 1010.24–1010.28 [Reserved]

§ 1010.29 Use of property report—misstatements, omissions, or representation of Bureau approval prohibited.

Nothing in these regulations shall be construed to authorize or approve the use of a property report containing any untrue statement of a material fact or omitting to state a material fact required to be stated therein. Nor shall anything in these regulations be construed to authorize or permit any representation that the Property Report is prepared or approved by the Director, ILSRP or the Bureau of Consumer Financial Protection.

§ 1010.35 Payment of fees.

(a) **Method of payment.** (1) Each fee must be paid by:

(i) Certified check, cashier's check, or postal money order made payable to the Treasurer of the United States, with the registration number, when known, and the name, of the subdivision on the face of the check, and mailed to an address specified by the Director; or

(ii) Electronic payment in a manner specified by the Director.

(2) Information regarding the current mailing address or electronic payment procedures is available from: Office of
§ 1010.45 Suspensions.

(a) Suspension notice—prior to effective date. (1) If it appears to the Director that a Statement of Record or an amendment is on its face incomplete or inaccurate in any material respect, the Director shall so advise the developer, by issuing a suspension notice, within a reasonable time after the filing of such materials but prior to the time the materials would otherwise be effective.

(2) A suspension notice issued pursuant to this subsection shall suspend the effective date of the Statement of Record or the amendment. It shall continue in effect until 30 days, or such earlier date as the Director may determine, after the necessary amendments are submitted which correct all deficiencies cited in the notice.

(3) Upon receipt of a suspension notice, the developer has 15 days in which to request a hearing. If a hearing is requested, it shall be held within 30 days of the receipt of the request by the Director.

(b) Suspension orders—subsequent to effective date. (1) A notice of proceedings to suspend an effective Statement of Record may be issued to a developer if the Director has reasonable grounds to believe that an effective Statement of Record includes an untrue statement of a material fact, or omits a material fact required by the Act or rules and regulations, or omits a material fact which is necessary to make the statements therein not misleading. The Director may, after notice, and after opportunity for a hearing requested pursuant to §1012.220 within 15 days of receipt of such notice, issue an order suspending the Statement of Record. In the event that a suspension order is issued, such order shall remain in effect until the developer has amended the Statement of Record or otherwise complied with the requirements of the order. When the developer has complied with the requirements of the order, the Director shall so declare and thereupon the suspension order shall cease to be effective.

(2) If the Director undertakes an examination of a developer or its records to determine whether a suspension order should be issued, and the developer fails to cooperate with the Director or obstructs, or refuses to permit the Director to make such examination, the Director may issue an order suspending the Statement of Record. Such order shall remain in effect until the developer has complied with the requirements of the order. When the developer has complied with the requirements of the order, the Director shall so declare and thereupon the suspension order shall cease to be effective.

(3) Suspension orders issued pursuant to this subsection shall operate to suspend the Statement of Record as of the date the order is either served on the developer or its registered agent or is delivered by certified or registered mail to the address of the developer or its authorized agent.
Subpart B—Reporting Requirements

§ 1010.100 Statement of Record—format.

(a) The Statement of Record consists of two portions; the Property Report portion and the Additional Information and Documentation portion.

(b) General format. The Statement of Record shall be prepared in accordance with the format set forth in section VIII of the appendix to this part: Property Report:

§ 1010.101 [Reserved]

§ 1010.102 General instructions for completing the Statement of Record.

(a) Paper and type. The Statement of Record shall be on good quality, unglazed white or pastel paper. Letter size paper, approximately 8 1/2 × 11 inches in size, will be used for the Property Report portion and legal size paper, approximately 8 1/2 × 14 inches in size, will be used for the Additional Information and Documentation portion. Side margins shall be no less than 1 inch and no greater than 1 1/2 inches. Top and bottom margins shall be no less than 1 inch and no greater than 1 1/2 inches. Top and bottom margins shall be no less than 1 inch and no greater than 1 1/2 inches. In the preparation of the charts to be included in the Property Report, the developer may vary from the above margin requirements or print the charts lengthwise on the required size paper if such measures are necessary to make the charts readable. The Statement of Record shall be prepared in an easily readable, uniform font.

(b) Numbering and dating. Each page of the Statement of Record as submitted to ILSRP shall be numbered and shall include the date of typing or preparation in the lower right hand corner, except in the final printed version of the Property Report portion.

(c) Signing. The Statement of Record shall be signed by the senior executive officer of the developer or a designated agent.

(d) Printing. The Statement of Record and, insofar as practical, all papers and documents filed as a part thereof, shall be printed, lithographed, photocopied, typewritten, or prepared by any similar process which, in the opinion of the Director, produces copies suitable for a permanent record. Irrespective of the process used, all copies of any such materials shall be clear and easily readable.

(e) Headings, subheadings, captions, introductory paragraphs, warnings. Property Report subject “headings” are those descriptive introductory words which appear immediately after section numbers 1010.106 through 1010.116 (e.g. §1010.108 has “General Information” and §1010.111 has “Utilities”). Each such heading shall be printed in the Property Report in underlined capital letters and centered at the top of a new page. Section numbers shall not be printed in the Property Report. Property Report subheadings are those descriptive introductory words which appear in italics in the regulations at the beginning of paragraphs designated by paragraph letters (a), (b), (c) etc. An example of a subheading is “water” found immediately after the paragraph letter (a) in §1010.111. These subheadings will be printed in the Property Report only if they are relevant to the subject subdivision. If printed these subheadings shall be capitalized and shall begin at the left hand margin of the page. Property Report “captions” are those descriptive introductory words which appear in italics in the Regulations at the beginning of subparagraphs designated by numbers (1), (2), (3), etc. An example of such captions is “Sales Contract and Delivery of Deed” found immediately after the subparagraph number “(1)” in §1010.109(b). These captions are to be printed in the Property Report only if they are applicable to the subject subdivision. If printed, these captions shall be centered on the page from the side margins, and shall have only the first letter of each word capitalized. Readings and subheadings will be used in the Property Report in accordance with the sample page appearing in §1010.102. Introductory paragraphs will follow headings if they are applicable and necessary for a readable entry into the subject matters, but note, the introductory paragraphs for “Title to the Property and Land Use” are to be used in every case as provided in...
§ 1010.102

Subheadings and captions which do not apply to the subdivision should be omitted from the Property Report portion and answered "not applicable" in the Additional Information and Documentation portion, unless specifically required to be included elsewhere in these instructions. Warnings shall be printed substantially as they appear in the instructions in §§1010.105 through 1010.118. They shall be printed in capital letters and enclosed in a box as shown on the sample page in §1010.102. The paragraphs in the Property Report portion need not be numbered. A sample page is set forth in section IX of the appendix to this part: Sample Page for Statement of Record.

(f) Language style. All information given in the Property Report portion shall be stated in narrative form using plain, concise, everyday language which can be readily understood by purchasers who are unfamiliar with real estate transactions. Excessively long paragraphs should be avoided. Keep them as brief as possible. Use separate paragraphs for different points discussed. Disclose all pertinent facts. Potential consequences to a purchaser must be made clear even though not specifically asked for in the format and the instructions. In the Property Report the pronouns "you" and "your" shall generally be used in referring to the prospective purchaser and the pronouns "we," "us," and "our" shall generally be used in referring to the developer. The Director specifically reserves the right to require modification of the text when the narrative does not meet the standards of this section.

(g) Format of the Additional Information and Documentation portion of the Statement of Record. The supporting information and documentation required by these regulations shall be identified by affixing a tab on the right side of the cover sheet of the required information or documentation and by identifying on the tab the section number of the Statement of Record instructions to which the information or documentation corresponds. This information or documentation shall then be placed immediately after the page(s) on which the section number and answers for that section appear. If the data in a document is applicable to more than one section of instructions, the developer may substitute as a document in the second case a statement incorporating the earlier document. Deeds, title policies, subdivision plats or maps and other documentary information required to be contained in the Additional Information and Documentation portion of the Statement of Record need not be on the same size paper as the Statement of Record but, if larger, shall be folded to a size no larger than 8 1/2 × 14 inches. Supporting documents shall be inserted into the binding in such a manner as to permit them to be examined without the necessity of removing them from the binding. This may be accomplished by proper folding or through the use of envelopes.

(h) Binding. The Statement of Record shall be bound with the Property Report portion on top, including any documents which may be required to be attached when delivered to the purchaser, followed by the Additional Information and Documentation portion.

(i) Advertising and promotional material. No advertising, or promotional material or statements which are self-serving on behalf of the developer or owner may be included in the Statement of Record or resulting Property Report.

(j) Additional information. (1) In addition to the information expressly required to be stated in the Statement of Record, there shall be added, and the Director may require, such further material information, documentation and certification as may be necessary in the public interest and for the protection of purchasers or necessary in order to make the statements not misleading in the light of circumstances under which they are made.

(2) The instructions are not all inclusive. The developer shall include any other facts which would have a bearing upon the use by the purchaser of any of the facilities, services or amenities, which would cause or result in additional expenses to the purchaser, which would have an effect upon the use and enjoyment of the lot by the purchaser for the purpose for which it is sold or which would adversely affect the value of the lot.
§ 1010.103

(k) Modification of format or content. The Director may require or permit modification to the content and format of the Property Report to include additional information, to modify or omit required information, or to change the sequence or position of information when such changes are deemed to be in the public interest or for the protection of purchasers.

(l) Required documentation. Where the documentation required by the Statement of Record cannot be obtained, the Director may permit the best available alternative documentation to be substituted.

(m) Final version of property report. On the date that a Statement of Record becomes effective, the Property Report portion shall become the Property Report for the subject subdivision. The version of the Property Report delivered to prospective lot purchasers shall be verbatim to that found effective by the Director and shall have no covers, pictures, emblems, logograms or identifying insignia other than as required by these regulations. It shall meet the same standards as to grade of paper, type size, margins, style and color of print as those set herein for the Statement of Record, except where required otherwise by these regulations. However, the date of typing or preparation of the pages and the ILSRP number shall not appear in the final version. If the final version of the Property Report is commercially printed, or photocopied by a process which results in a commercial printing quality, and is bound on the left side, both sides of the pages may be used for printed material. If it is typed or photocopied by a process which does not result in a clear and legible product on both sides of the page or is bound at the top, printing shall be done on only one side of the page. Three copies of the final version of the Property Report, in the exact form in which it is delivered to prospective lot purchasers, shall be sent to ILSRP Office within 20 days of the date on which the advertising is first used. A Property Report prepared pursuant to these regulations shall not be distributed to potential lot purchasers until after the Statement of Record of which it is a part or any amendment to that Statement of Record has been made effective by the Director.

§ 1010.103 Developer obligated improvements.

(a) If the developer represents either orally or in writing that it will provide or complete roads or facilities for water, sewer, gas, electricity or recreational amenities, it must be contractually obligated to do so (see §1011.15(f)), and the obligation shall be clearly stated in the Property Report. While the developer may disclose relevant facts about completion, the obligation to complete cannot be conditioned, other than as provided for in §1011.15(f), and an estimated completion date (month and year) must be stated in the Property Report. However, a developer that has only tentative plans to complete may so state in the Property Report, provided that the statement clearly identifies conditions to which the completion of the facilities are subject and states that there are no guarantees the facilities will be completed.

(b) If a party other than the developer is responsible for providing or completing roads or facilities for water, sewer, gas, electricity or recreational amenities, that entity shall be clearly identified in the Property Report under the categories described in §1010.110, §1010.111 or §1010.114, as applicable. A statement shall be included in the proper section of the Property Report that the developer is not responsible for providing or completing the facility or amenity and can give no assurance that it will be completed or available for use.

§ 1010.104 [Reserved]

§ 1010.105 Cover page.

The cover page of the Property Report shall be prepared in accordance with the following directions:
§ 1010.106 Table of contents.

(a) The second page(s) shall consist of a Table of Contents which lists the headings in the Property Report, the major subheadings, if any, and the page on which they appear. An example is set forth in section XI of the appendix to this part: Sample Entry in Table of Contents for Statement of Record.

(b) Use of “You” and “We.” At the end of the Table of Contents insert the following remark: “In this Property Report, the words “you” and “your” refer to the buyer. The words “we,” “us” and “our” refer to the developer.”

§ 1010.107 Risks of buying land.

(a) The next page shall be headed “Risks of Buying Land” and shall contain the paragraphs listed in section XII of the appendix to this part: Required Paragraphs for Risks of Buying Land.

(b) Warnings. If the instructions of the Director require any warnings to be included in the Property Report portion, the following statement shall be added beneath the “Risks of Buying Land” under a heading “Warnings”: “Throughout this Property Report there are specific warnings concerning the developer, the subdivision or individual lots. Be sure to read all warnings carefully before signing any contract or agreement.” Both the heading, “Warnings,” and the statement shall be printed in capital letters and enclosed in a box.
§ 1010.108 General information.

Insert and complete the format set forth in section XIII of the appendix to this part: Format for General Information.

§ 1010.109 Title to the property and land use.

(a) General instructions. (1) Below the heading “Title to the Property and Land Use” insert the introductory paragraphs set forth in section XIV of the appendix to this part: Paragraphs to be included in the General Report—Title to the Property and Land Use.

(2) Information to be provided. After the above introductory paragraphs provide the information required by the following instructions and questions. Follow a general form identical to the sample page set forth in section IX of the appendix to this part: Sample Page for Statement of Record.

(b) Method of sale: (1) Sales contract and delivery of deed. (i) Will the buyer sign a purchase money or installment contract or similar instrument in connection with the purchase of the lot? When will a deed be delivered?

(ii) If an installment contract is used, include the following, or substantially the same, language in the disclosure narrative under “Method of Sale”: “If you fail to make your payments required by the contract, you may lose your lot and all monies paid.”

(iii) If, at the time of a credit sale, the developer gives the buyer a deed to the lot, what type of security must the buyer give the seller?

(iv) If the lots are to be sold on the basis of an installment contract, can the developer or the owner of the subdivision or their creditors encumber the lots under contract? If so, include the following warning in the disclosure narrative under the caption “Sales contract and delivery of deed”: “The (indicate subdivision developer, owner, or their creditors) can place a mortgage or lien on or encumber the lots in this subdivision after they are under contract. This may cause you to lose your lot and any monies paid on it.”

(2) Type of deed. What type of deed will be used to convey title to lots in the subdivision?

(3) Quitclaim deeds. If a quitclaim deed is to be given to lot purchasers insert the below warning, or a warning which is substantially the same, in the disclosure narrative below the caption “Quitclaim Deeds.” This particular warning may be deleted at the direction of the Director if an acceptable attorney’s opinion is submitted with the Statement of Record which indicates that a quitclaim deed has a meaning in the jurisdiction where the subdivision is located which is substantially contrary to the effect of this warning. This warning shall be phrased substantially as follows: “The quitclaim deed used to transfer title to lots in this subdivision gives you no assurance of ownership of your lot.”

(4) Oil, gas, and mineral rights. If oil, gas or mineral rights have been reserved, insert the following statement or one substantially the same in the narrative answer under the caption “oil, gas, and mineral rights”: “The (indicate oil, gas, or mineral rights) to (state which lots) in this subdivision will not belong to the purchaser of those lots. The exercise of these rights could affect the use, enjoyment and value of your lot.”

(c) Encumbrances, mortgages and liens—(1) In general. State whether any of the lots or common facilities which serve the subdivision, other than recreation facilities, are subject to a blanket encumbrance, mortgage or lien. If yes, identify the type of encumbrance (e.g., deed of trust, mortgage, mechanics liens), the holder of the lien, and the lots covered by the lien. If any blanket encumbrance, mortgage, or lien is not current in accordance with its terms, so indicate.

(2) Release provisions. (i) Explain the effect of any release provisions of any blanket encumbrance, mortgage or lien and include the one of the following statements that pertains.

(A) If the release clauses are not included in a recorded instrument, insert the statement set forth in section XV of the appendix to this part: Statement on Release Provisions, or one substantially the same in the disclosure narrative below the caption “Release Provisions.”

(B) If the developer or subdivision owner states that the release provisions are recorded and that the lot purchaser may pay the release price of the
mortgage, the statement shall be supported by documentation supplied in §1010.209. If the purchaser may pay the release fee, state the amount of the release fee and inform the purchaser that the amount may be in addition to the contract payments unless there is a bona fide trust or escrow arrangement in which the purchaser’s payments are set aside to pay the release price before any payments are made to the developer.

(C)(1) If there are no provisions in the blanket encumbrance for release of an individual purchaser’s lot from a blanket encumbrance, include the warning set forth in section XVI of the appendix to this part: Warning for Release Provisions or a warning substantially the same, in the disclosure narrative under the “Release Provisions” caption.

(2) If the provisions for release of individual lots from the blanket encumbrance may be exercised only by the developer insert the following statement, or one substantially the same, in the disclosure narrative under the “Release Provisions” caption: “The release provisions in the (state the type of encumbrance) on (indicate all or particular lots) in this subdivision may be exercised only by us. Therefore, if we default on the (state type of encumbrance) before obtaining a release of your lot, you may lose your lot and any money you have paid for it.”

(d) Recording the contract and deed—

(1) Method or purpose of recording. (i) State what protection, if any, recording of deeds and contracts gives a lot purchaser in your jurisdiction.

(ii) If the sales contract or deed may be recorded, so state. Also state whose responsibility it is to record the contract or deed.

(iii) If the developer or subdivision owner will not have the sales contract officially acknowledged or if the applicable jurisdiction will not record sales contracts, state that sales contracts will not be recorded and why they will not be recorded.

(iv) If at, or immediately after, the signing of a contract, the contract or a deed transfer to the buyer is not recorded by the developer or owner or if title to the lot is not otherwise transferred of record to a trust, or if other sufficient notice of transfer or sale is not placed of record, then the developer shall include the warning set forth in section XVII of the appendix to this part: Method and Purpose of Recording Warning, or substantially the same warning in the disclosure narrative under the caption “Method and Purpose of Recording.” The reference to contracts shall be deleted from the above warning if the answer to paragraph (d)(1)(i) of this section indicates that recording of a contract in the subject jurisdiction does not protect the purchaser from claims of later purchasers or creditors of anyone having an interest in the land.

(2) Title insurance. If the developer does not deliver a title insurance policy to the buyer, state that the purchaser should obtain an attorney’s opinion of title or a title insurance policy which will describe the rights of ownership which are being acquired in the lot. Recommend that an appropriate professional should interpret the opinion or policy.

(e) Payments—(1) Escrow. If purchasers’ deposits, down payments, or installment payments are to be placed in a third party controlled escrow or similar account, describe the arrangement including the name and address of the escrow holder or similar person. If there is no such arrangement, insert the statement set forth in section XVIII of the appendix to this part: Escrow Statement. The questions regarding an escrow agreement or similar protection may be answered affirmatively only if the money is under the control of an independent third party, allowing a purchaser to receive a return of all money paid in the event of the developer’s failure to convey title or the developer’s default on any obligation which would otherwise result in the purchaser’s loss of that money.

(2) Prepayments. Explain any prepayment penalties or privileges in everyday language.

(3) Default. What are the developer’s or subdivision owners’ remedies against a defaulted purchaser?

(f) Restrictions on the use of your lot—

(1) Restrictive covenants (i) Have any restrictive covenants been recorded against the land in the subdivision? If so, do they contain items which require the purchaser to secure permissions,
approvals or take any other action prior to using or disposing of his lot (e.g., architectural control, developer’s right of first refusal, building deadlines, etc.)? If any of these or similar items are included, explain their meaning and effect upon the purchaser.

(ii) If any restrictive covenants are to be used and if they have not been recorded, how will they be imposed? Include a statement to the effect that the restrictive covenants have not been recorded; that there is no assurance they will be applied uniformly; that they may be changed and that they may be difficult to enforce. If no restrictive covenants will be imposed, include a statement to the effect that the use and enjoyment of surrounding lots.

(iii) If there are restrictive covenants, whether recorded or unrecorded, the following statement shall be made: “A complete copy of these restrictions is available upon request.”

(2) Easements. (i) Are there easements which may have an effect on the purchaser’s building or lot use plans (e.g., large drainage easements along lot lines, high voltage electric transmission lines, pipe lines or drainage easements which encroach upon the building area of the lot or inhibit its use)?

(ii) Is the subdivision subject to any type of flood control or flowage easements?

(iii) If the answer to either (2)(i) or (2)(ii) is in the affirmative, identify the affected lots and state the effect upon the use of the lots.

(g) Plats, zoning, surveying, permits and environment—(1) Plats (i) Have the subdivision plans and plats of specific units been approved by the regulatory authorities? If the approvals have not been obtained, include a warning to the effect that regulatory authorities have not approved the proposed plats; that they may require significant alterations before they will approve them and they may not allow the land to be used for the purpose for which it is being sold.

(ii) Have plats covering the lots in this Report been recorded? If so, where are they recorded? If they have not been recorded, is the description of the lots given in this Report legally adequate for the conveyance of land in the jurisdiction where the subdivision is located? If it is not, include a statement to the effect that the description of the lots is not legally adequate for the conveyance of the lots and that it will not be until the plat is recorded.

(2) Zoning. For what purpose may the lots be used (e.g., single family homes, camping, commercial)? Does this use conform to local zoning requirements and the restrictive covenants?

(3) Surveying. Has each lot been surveyed and is each lot marked for identification? If not, and the purchaser is responsible for the expense, state the estimated cost.

(4) Permits. Must the purchaser obtain a building permit before beginning construction on his lot? Where is the permit obtained? Are any other permits necessary to use the lot for the purpose for which it is sold or for construction in connection with its use?

(5) Environment. Has there been any environmental impact study prepared which considers the effect of the subdivision on the environment? If a study has been prepared, summarize any adverse conclusions and refer the lot buyer to the proper State Clearinghouse for complete information. If a study has not been prepared, include a statement that “No determination has been made as to the possible adverse effects the subdivision may have upon the environment and surrounding area.” If the developer does not know whether an environmental impact study has been prepared, or the name and location of the Office where any study made can be found, inquiry should be made to the State or Area Clearinghouse established under the authority of title IV of the Intergovernmental Cooperation Act of 1968.

§ 1010.110 Roads.

(a) Access to the subdivision. (1) Is access to the subdivision provided by public or private roads? What type of surface do they have? How many lanes? What is the width of the wearing surface?
§ 1010.111 Utilities.

(a) Water. (1) How is water to be supplied to the individual lots (e.g., central system or individual wells)? Of the following items only those which apply to the subdivision need be included.

(i) Individual system. (A) If water is to be supplied by an individual private well, cistern or other individual system, what are the total estimated costs of the system, including but not limited to, the costs of installation, storage, any treatment facilities and other necessary equipment?

(B) If individual cisterns or similar storage tanks are to be used, state where water to fill them can be secured; the cost of the water, and its delivery costs for a supply sufficient to serve the monthly needs of a family of four living in a house on a year-round basis. Include a statement to the effect that water stored for extended periods tends to become stale and may acquire an unpleasant taste or odor.

(C) If individual wells are to be used and if the sales contract contains no provisions for refund or exchange in the event a productive well cannot be installed, include a statement to the effect that there is no assurance a productive well can be installed and, if it cannot, no refund of the purchase price of the lot will be made.

(D) If individual wells or individual cisterns are to be used, include a brief statement to the effect that the purity rate and access may become difficult or impossible.

(5) If estimated completion dates given in prior Statements of Record have not been met, state that previous dates have not been met and give the previous dates. Underline the answer. If the roads are 100 percent completed, no dates are needed.

(6) Complete the chart in section XX of the appendix to this part: Nearby Communities Chart by listing the county seat (identify) and at least two nearby communities. Include at least one community of significant size which offers general services.

(7) If the purchasers will be individually responsible for providing access to their lots and for maintaining that access, what is the estimated cost of construction and maintenance?
and chemical content of the water cannot be determined until each individual well or source of water is completed and tested.

(E) If there have been no hydrological surveys in connection with the use of individual wells or sources of hauled water for cisterns, include a warning to the effect that there is no assurance of a sufficient supply of water for the anticipated population.

(F) Is a permit required to install the individual system to be used? If so, from whom and where is the permit secured? State the cost of a permit.

(ii) Central system. (A) If water is to be provided by a central system, who is the supplier? What is the supplier’s address?

(B) Will the water mains be extended in front of, or adjacent to, each lot? When will construction begin? What is the present percentage of completion of the water mains and central supply plant? When will service be available to the individual lots? If the central system is not complete and there are separate units or sections of the subdivision included in the Statement of Record which have different completion dates, then the starting date for construction (month and year), the percentage of construction now complete and the estimated service availability date (month and year) shall be set forth in the chart in section XXI of the appendix to this part: Water Chart Form rather than in a narrative paragraph.

(C) What is the present capacity of the central plant (i.e., how many connections can be supplied)? If the capacity is not sufficient to serve all lots in the Statement of Record and is to be expanded in phases, what is the timetable for each phase to be in service and what will trigger the beginning of the expansion for each phase? If an entity other than the developer or an affiliate or subsidiary of the developer will supply the water for the central system; if the operation of that entity is supervised by a governmental agency and if that entity states it can supply the anticipated population of the development, then information as to the capacity of the plant and a hydrological survey is not necessary. If the entity does not indicate it can supply enough water for the anticipated population or if the capacity of any central system is not sufficient to serve all lots in the Statement of Record, include a warning which describes the limitations and sets forth the number of lots which can now be served.

(D) Have there been any hydrological surveys to determine that a sufficient source of water is available to serve the anticipated population of the subdivision? Has the water in the central system been tested for purity and chemical content? If so, did the results show that the water meets all standards for a public water supply? If there have been no hydrological surveys showing a sufficient supply of water or no tests for purity and chemical content for the central system, include a warning to the effect that there is no assurance of a sufficient supply or that the water is drinkable.

(E) Is there any financial assurance of completion of the central system and any future expansion? If not, include a warning to the effect that no funds have been set aside in an escrow or trust account nor have any other financial arrangements been made to assure completion of the water system.

(F) If the developer or an affiliate or subsidiary of the developer operates the central system, have all permits been obtained from the proper agencies for the construction, use and operation of the central system? If not, include a warning to the effect that the required permits, approvals or licenses for construction, operation or use of the water system have not been obtained, therefore there is no assurance the system can be constructed or used.

(G) If previous completion dates given in prior Statements of Record have not been met, state that previous completion dates have not been met and give the previous dates. Underline the answer. If the central water system is 100 percent completed, no dates are needed.

(H) Is the purchaser to pay any construction costs, one-time connection fees, availability fees, special assessments or deposits for the central system? If so, what are the amounts? If not, state that there are no charges other than use fees. If the purchaser
will be responsible for construction costs of the water mains, state the cost to install the mains to the most remote lot covered by this report.

(I) If a purchaser wishes to use a lot prior to the date central water is available to it, may the purchaser install an individual system? If so, include the information required for individual systems in §1010.111(a)(1)(i). Will the purchaser be required to discontinue use of any individual system and connect to the central system when service is available to the lot? If the purchaser is not required to connect to the central system, must any construction costs, connection fees, availability fees, special assessments or deposits in connection with the central system still be paid? If an individual system may not be installed, so state and indicate water will not be available until the central system is extended to the lot.

(J) If connection to the system is voluntary and not all purchasers elect to use the system, will the cost to those who do use the system be increased? If so, include a statement to the effect that connection to the central system is voluntary and those who use the system may have to pay a disproportionate share of the cost of the system and its operation.

(K) If the developer is to construct the system and will later turn it over to a property owners’ association for operation and maintenance, state the estimated date and conditions of the conveyance and if it will be conveyed free and clear of any encumbrance. If there is a charge or if the association must assume an encumbrance, state the estimated amount of either and the terms for retirement of either obligation.

(L) If the supplier of water is other than a governmental agency or an entity which is regulated and supervised by a governmental agency, state that neither the operation of the water system nor the rates are regulated by a public authority.

(M) The warning “We do not own or operate the central water system so we cannot assure its continued availability for your use” shall be included unless:

(i) The central water system is owned and operated by the developer, or an affiliate or subsidiary of the developer, or

(2) The central water system is owned and operated by a governmental agency or by an entity which is regulated and supervised by a governmental agency.

(b) Sewer. (1) What methods of sewage disposal are to be used (e.g., central system, comfort stations or individual on-site systems such as septic tanks, holding tanks, etc.) in the subdivision? Of the following items, only those which apply to the subdivision need be included.

(i) Individual systems. (A) If individual systems are to be used, have the local authorities given general approval to the use of these systems in the subdivision or have they given specific approval for each lot? Are permits necessary? From whom and where are they obtained? Must testing of the lot be done prior to the issuance of a permit? State the cost of a permit and the estimated costs of the system and any necessary tests.

(B) If holding tanks are to be used, state whether pumping and hauling service is available and the estimated monthly costs of that service for a family of four living in a house on a year-round basis.

(C) If each and every lot has not been approved for the use of an individual on-site system, include a warning to the effect that there is no assurance permits can be obtained for the installation and use of individual on-site systems. If the sales contract contains no provisions for refund or exchange in the event a permit cannot be obtained, include a statement to the effect that there is no assurance an individual on-site system can be installed and, if it cannot, no refund of the purchase price of the lot will be made.

(D) If no permit is required for the installation and use of individual on-site systems, explain whether this may have an effect upon the purchaser or the availability of construction or permanent financing.

(E) If the developer has knowledge that permits for the installation of individual on-site systems have been denied, that there have been unsatisfactory percolation tests or that systems have not operated satisfactorily in the
subdivision, state the number of these rejections, unsatisfactory tests or operations.

(ii) Comfort stations. (A) If comfort stations are to be used, how many lots will be served by each station? When will construction be started? When will the station or stations be completed and ready for use? Have the necessary permits been obtained for the construction and use of comfort stations? If the necessary permits have not been obtained, include a warning that the necessary permits, approvals or licenses have not been obtained for the construction and use of the comfort stations; therefore there is no assurance they can be constructed or used. If there are comfort stations located in different units and having different completion dates, the chart found in section XXII of the appendix to this part: Comfort Station Chart shall be used to show the estimated construction starting date (month and year), the present percentage of completion and the date on which they will be used rather than a narrative paragraph.

(B) Who is to construct the comfort stations? Is there any financial assurance of their completion? If not, include a warning to the effect that no financial arrangements have been made to assure completion of the comfort stations and there is no assurance the facilities will be completed.

(C) Who will be responsible for maintenance of the comfort stations? Is there any cost to the purchaser for construction, use or maintenance?

(iii) Central system. (A) If a central sewage treatment and collection system is being installed, who is responsible for construction of the system? Will the sewer mains be installed in front of, or adjacent to, each lot? When will construction be started (month and year)? When will service be available (month and year)? Who will own and operate the system? Give the name and address of the entity.

(B) What is the present percentage of completion and the present capacity of the system (i.e., number of connections which can be served)? If the present capacity is not sufficient to serve all lots in the Statement of Record and it is to be expanded in phases, what is the time-table for expansion and what will trigger that expansion? If the central system is not complete and there are separate units or sections of the subdivision which have different service availability dates, the chart found in section XXIII of the appendix to this part: Sewer Chart shall be used to show the construction starting date (month and year); the percentage of completion and service availability date (month and year) in each unit or section rather than a narrative paragraph. If sewage treatment facilities are to be supplied by an entity which is regulated by a governmental agency and which is not the developer or an affiliate or subsidiary of the developer and the entity has stated it can serve the anticipated population of the development, then information on capacity need not appear.

(C) If the developer or an affiliate or subsidiary of the developer operates the central system, have all necessary permits been obtained for the construction, operation and use of the central system? Do these permits limit the number of connections or homes which the system may serve? If the permits have not been obtained, enter a warning to the effect that the necessary permits, approvals or licenses have not been obtained for the central sewage system; therefore there is no assurance that the system can be completed, operated or used.

(D) If the system cannot now serve all lots included in the Statement of Record, either because the supplier of the service has not stated it can and will serve all lots or if construction has not reached a stage where all lots can be served or permits to serve all lots have not been obtained, include a warning which states that all lots cannot now be served; the number which can be served and the reason for the lack of capacity.

(E) Will the purchaser pay any construction costs, special assessments, one time connection fees or availability fees? What are the amounts of these charges? If the purchaser is to pay construction costs of the sewer mains, state the cost of installation of the mains to the most remote lot in this Report.
§1010.111

(F) If the purchaser wishes to use the lot prior to the date central sewer service is available, may the purchaser install an individual system? If so, include the information on individual systems required by §1010.111(b)(1)(i). Will the purchaser be required to discontinue use of the individual system and connect to the central system when service is available? If the purchaser is not required to connect to the central system, must the purchaser still pay any construction costs, connection fees, availability fees, or special assessments? If the purchaser may not install an individual system, so state and indicate service will not be available until the central system reaches the lot.

(G) If connection to the system is voluntary and not all purchasers elect to use the system, will the cost to those who do use the system be increased? If so, include a statement to the effect that connection to the central system is voluntary and those who use the system may have to pay a disproportionate share of the cost of the system and its operation.

(H) Is there any financial assurance of completion of the central system and any future expansion? If not, include a warning that no funds have been set aside in an escrow or trust account nor have any other financial arrangements been made to assure the completion of the central system; therefore there is no assurance that it will be completed.

(I) If previous completion dates given in prior Statements of Record have not been met, state that previous dates have not been met and give the previous dates. Underline the answer. If the central sewage treatment and collection system are 100 percent completed, no dates are needed.

(J) If the developer is to construct the system and will later turn it over to a property owners’ association for operation and maintenance, state the date of the transfer and whether there will be any charge for the conveyance and if it will be conveyed free and clear of any encumbrance. If there is a charge or if the association must assume an encumbrance, state the estimated amount of either and the terms for retirement of either obligation.

(K) If the owner or operator of the central sewer system is other than a governmental agency or an entity which is regulated and supervised by a governmental agency, state that neither the operation of the sewer system nor the rates are regulated by a public authority.

(L) The warning “We do not own or operate the central sewer system so we cannot assure its continued availability for your use.” shall be included unless:

(1) The central sewer system is owned and operated by the developer, or an affiliate or subsidiary of the developer, or

(2) The central sewer system is owned and operated by a governmental agency or by an entity which is regulated and supervised by a governmental agency.

(c) Electricity. (1) Who will provide electrical services to the subdivision?

(2) Have primary electrical service lines been extended in front of, or adjacent to, all of the lots? If not, when (month and year) or under what conditions will construction begin and when will service be available? If they have not been installed, who is responsible for their construction? If electrical service lines have not been extended in front of, or adjacent to, all lots and there are separate units or sections having different service availability dates, the chart found in section XXIV of the appendix to this part: Electric Service Chart shall be used rather than a narrative paragraph.

(3) If construction of the lines or service to the ultimate consumer is provided by an entity other than a publicly regulated utility, who provides, or will provide, the service? Who will be responsible for maintenance? What is the assurance of completion? If service is not provided by a publicly regulated utility, what charges or assessments will the purchaser pay?

(4) If the primary service lines have not been extended in front of, or adjacent to each lot, will the purchaser be responsible for any construction costs? If so, what is the utility company’s policy and charges for extension of primary lines? Based on that policy, what would be the cost to the purchaser for
extending primary service to the most remote lot in this Report?

(5) If electrical service will not be provided, what is an alternate source (e.g., generators, etc.) and what are the estimated costs?

(6) If the lines are to be installed by some entity other than a publicly regulated utility and if there is no financial assurance of completion, include a warning to the effect that no funds have been set aside in an escrow or trust account nor have any other financial arrangements been made to assure construction of the electric lines.

(d) Telephone. (1) Is telephone service now, or will it be, available? Who will furnish the service?

(2) Have the service lines been extended in front of, or adjacent to, each of the lots? If not, when, and under what conditions, will construction be started and when will service be available (month and year)?

(3) If the service lines have not been extended in front of, or adjacent to, each lot, will the purchaser be responsible for any construction costs? If so, what is the utility company’s policy and charges for extension of service lines? Based on that policy, what would be the cost to the purchaser of extending service lines to the most remote lot in this Report?

(e) Fuel or other energy source. (1) What fuel, or other energy source, will be available for heating, cooking, etc. in the subdivision? If other than electricity is to be used, describe the availability of the fuel or other energy source. Give the name and address of the supplier. If the fuel is natural gas, when will the mains be installed to the lots? What is the cost to the purchaser for installation fees and connection fees? If oil or propane gas will be used, include the cost of a storage tank.

(2) [Reserved]

§ 1010.112 Financial information.

(a) The information required by paragraphs (b) and (c) of this section need appear only if the answer to the question is an affirmative one.

(b) Has the developer had a deficit in retained earnings or experienced an operating loss during the last fiscal year or, if less than a year old, since its formation? If so, include a statement to the effect that this may affect the developer’s ability to complete promised facilities and to discharge financial obligations. This statement may be omitted if:

(1) All facilities, utilities and amenities proposed to be completed by the developer in the Property Report and sales contract have been completed so that the lots included in the Statement of Record are immediately usable for the purpose for which they are sold, or if:

(2) The developer is contractually obligated to the purchaser to complete all facilities, utilities and amenities promised by it in the Statement of Record, and:

(i) The developer has made financial arrangements, such as the posting of surety bonds (corporate or individual notes or bonds are not acceptable), irrevocable letters of credit, escrow or trust accounts, to assure that the facilities, utilities and amenities will be completed by the dates set out in the Property Report or contract;

(ii) The sales contract provides for delivery of a deed within 180 days of the signing of the contract which conveys title free of any mortgage or lien, or the developer has filed an assurance of title agreement with ILSRP as outlined in §1010.212(e); and

(iii) Any down payments or deposits are held in an escrow or trust account.

(c) If the developer’s financial statements have been audited, did the accountant qualify the opinion or decline to give an opinion? If so, why was the opinion qualified or declined?

(d) The following statement shall appear: “A copy of our financial statements for the period ending 11111 is available from us upon request.”

(e) The information furnished in §1010.212(b) may necessitate a warning as to costs and/or feasibility of the completion of the subdivision.

§ 1010.113 Local services.

(a) Fire protection. Describe the availability of fire protection and indicate whether it is available year round.

(b) Police protection. Describe the availability of police protection.

(c) Schools. State whether elementary, junior high and senior high
§ 1010.114 Recreational facilities.

(a) Recreational facilities to be covered. Unless otherwise indicated, all information required by paragraphs (b) and (c) of this section shall be provided for only those recreational facilities which:

(1) The developer is contractually responsible to provide or complete and which are:
   (i) Within, adjacent or contiguous to the subdivision, and
   (ii) Maintained substantially for the use of lot owners; or

(2) For which a third party is responsible and which are:
   (i) Within, adjacent or contiguous to the subdivision, and
   (ii) Maintained substantially for the use of lot owners.

(b) Recreational facility chart. Complete the chart found in section XXV of the appendix to this part: Recreational Facility Chart in accordance with the instructions which follow it. This chart shall immediately follow the §1010.114 heading. Limit the chart to facilities provided essentially for use of lot buyers.

(1) Facility. Identify each recreational facility. Identify closely related facilities (e.g., swimming pool and bathhouse) separately only if their availability dates differ. If any recreational facility is not owned by the developer, insert a warning below the chart phrased substantially as follows: “We do not own the (name of facility or facilities) so we can not assure its (their) continued availability.”

(2) Percent complete. State the present percentage of completion for each recreational facility.

(3) Estimated date of start of construction. Insert the estimated date of the start of construction for the facility (month and year).

(4) Estimated date available for use. If the construction of the facility is not complete or if it is not available to lot owners for its intended use, indicate the estimated date (month and year) that the facility will be available for use. If the “estimated date available for use” for any facility has been amended to delay it to a later date, indicate such delay in a statement immediately below the chart. Underline the response. This statement shall include the name of the facility and the prior estimated availability date, and it shall be referenced to the appropriate facility listed on the chart by use of an asterisk or other appropriate symbol.

(5) Financial assurance of completion. If the construction of the facility is not complete, state whether there is any financial assurance of completion. If none, state “none.” If such exists, state the type of assurance (i.e., bond, escrow, or trust). If no documentation for such assurance has been provided in §1010.214 of the Statement of Record, then do not indicate such assurance on the chart, but in place of such assurance on the chart state “none.”

(6) Buyer’s annual cost or assessments. State the lot buyer’s annual cost or assessments for using the facility. These costs should include any applicable property owners’ association assessment, and the developer’s maintenance assessment. If the cost information is lengthy, you may use an asterisk or other appropriate symbol and include the cost information in a paragraph below the chart.

(c) Information to be provided below the recreational facility chart and related warnings.

(1) Constructing the facilities. If the facilities are not complete, indicate who is responsible for the construction of
§ 1010.115 Subdivision characteristics and climate.

(a) General topography. What is the general topography and the major physical characteristics of the land in the subdivision? State the percentage of the subdivision which is to remain as natural open space and as developed parkland. Are there any steep slopes, rock outcroppings, unstable or expansive soil conditions, etc., which will necessitate the use of special construction techniques to build on, or use, any lot in the subdivision? If so, identify the lots affected, and describe the techniques recommended. If any lots in the subdivision have a slope of 20%, or more, include a warning that “Some lots in this subdivision have a slope of 20%, or more. This may affect the type and cost of construction.”

(b) Water coverage. Are any lots, or portions of any lots, covered by water at any time? What lots are affected? When are they covered by water? How does this affect their use for the purpose for which they are sold? Can the condition be corrected? At what cost to the purchaser?

(c) Drainage and fill. Identify the lots which require draining or fill prior to being used for the purpose for which they are being sold. Who will be responsible for any corrective action? If

the facilities. Indicate whether the purchaser will be required to pay any of the cost of construction of these facilities (estimate and disclose such cost, if any).

(2) Maintaining the facilities. Indicate who is responsible for the operation and maintenance of these facilities.

(3) Facilities which will be leased to lot purchasers. If no facilities covered here will be leased to a Property Owners’ Association or other lot owners in the subject subdivision, omit this caption and any information requested under it from the Property Report. If such leases exist or are anticipated, state which facilities are or will be leased and indicate the term of the lease. Also, state whether the lot owners will have an opportunity to terminate or ratify the lease after control of the Property Owners’ Association is turned over to them. Indicate whether the owner of a recreational facility leased to the Property Owners’ Association or other lot owners may encumber it and whether the holders of such encumbrances may acquire the leased facilities and not honor the lease. Indicate whether the lease payments may be increased on an escalating or other basis and what costs or expenses, if any, will be borne by the owner. State whether the lease can be assigned or sublet. State how the lease can be terminated.

(4) Transfer of the facilities. If there are presently any liens or mortgages on any of these recreational facilities, describe such liens or mortgages. If the developer, or owner of the subdivision, their principals, or subsidiaries, intend to transfer the title of a listed recreational facility in the future, explain at what time, by what type of conveyance, and to whom such transfer will be made. Disclose any adverse effects on, or cost to, lot purchasers which may be caused by such transfer. If any facility is to be transferred to lot owners as a Property Owners’ Association or otherwise, state whether the facility will be transferred free and clear of all liens and encumbrances. If not, state the amount of the encumbrance to be assumed and disclose any contractual conditions on such transfer which relate to lot purchasers.

(5) Permits. If the necessary permits have not been obtained for the construction and/or use of the facilities, identify the facilities for which such permits have not been obtained and include the following statement, or one substantially the same, in the narrative under the caption “Permits”: ‘‘The (identify the permit or license) has not been obtained and therefore there is no assurance that the lot owners will be able to use the (identify the facility).”

(6) Who may use the facilities. Indicate who will be permitted to use the recreational facilities (e.g., lot owners, their guests, employees of developer, general public). If the general public will be permitted to use the facilities include the following statement in the narrative under the caption “Who may use the facilities”: ‘‘The (identify the facility) is open to use by the general public and their use of the facility may limit use of it by lot owners.”
the purchaser is responsible, what are the estimated costs?

(d) **Flood plain.** Is the subdivision located within a flood plain or an area designated by any Federal, state or local agency as being flood prone? What lots are affected? Is flood insurance available? Is it required in connection with the financing of any improvements to the lot? What is the estimated cost of the flood insurance?

(e) **Flooding and soil erosion.** (1) Does the developer have a program which provides, or will provide, at least minimum controls for soil erosion, sedimentation or periodic flooding throughout the subdivision? (2) If there is a program, describe it. Include in the description information as to whether the program has been approved by the appropriate government officials; when it is to start; when it is to be completed (month and year); whether the developer is obligated to comply with the program and whether there is any financial assurance of completion.

(3) If there is no program or if the program has not been approved by the appropriate officials or if the program does not provide minimum protection, include a statement to the effect that the measures being taken may not be sufficient to prevent property damage or health and safety hazards. A minimum program will usually provide for:

(i) Temporary measures such as mulching and seeding of exposed areas and silt basins to trap sediments in runoff water, and

(ii) Permanent measures such as sodding and seeding in areas of heavy grading or cut and fill along with the construction of diversion channels, ditches, outlet channels, waterway stabilizers and sediment control basins.

(f) **Nuisances.** Are there any land uses which may adversely affect the subdivision (e.g., unusual or unpleasant noises or odors, pollutants or nuisances such as existing or proposed industrial activity, military installations, airports, railroads, truck terminals, race tracks, animal pens, noxious smoke, chemical fumes, stagnant ponds, marshes, slaughterhouses and sewage treatment facilities)? If any nuisances exist, describe them. If there are none, state there are no nuisances which affect the subdivision.

(g) **Hazards.** (1) Are there any unusual safety factors which affect the subdivision (e.g., dilapidated buildings, abandoned mines or wells, air or vehicular traffic hazards, danger from fire or explosion or radiation hazards)? Is the developer aware of any proposed plans for construction which may create a nuisance or safety hazard or adversely affect the subdivision? If there are any existing hazards or if there is any proposed construction which will create a nuisance or hazard, describe the hazard or nuisance. If there are no existing or possible future hazards, state that there are none.

(2) Is the area subject to natural hazards or has it been formally identified by any Federal, state or local agency as an area subject to the frequent occurrence of natural hazards (e.g., tornadoes, hurricanes, earthquakes, mudslides, forest fires, brush fires, avalanches, flash flooding)? If the jurisdiction in which the subdivision is located has a rating system for fire hazard, state the rating assigned to the land in the subdivision and explain its meaning.

(h) **Climate.** What are the average temperature ranges, summer and winter, for the area in which the subdivision is located (i.e., high, low and mean)? What is the average annual rainfall and snowfall?

(i) **Occupancy.** How many homes are occupied on a full- or part-time basis as of (date of submission)?

§1010.116 **Additional information.**

(a) **Property Owners’ Association.** (1) Will there be a property owners’ association for the subdivision? Has it been formed? What is its name? Is it operating? If not yet formed, when will it be formed? Who is responsible for its formation?

(2) Does the developer exercise, or have the right to exercise, any control over the Association because of voting rights or placement of officers or directors? For how long will this control last?

(3) Is membership in the association voluntary? Will non-member lot owners be subject to the payment of dues
or assessments? What are the association dues? Can they be increased? Are members subject to special assessments? For what purpose? If membership in the association is voluntary and if the association is responsible for operating or maintaining facilities which serve all lot owners, include the following statement: “Since membership in the association is voluntary, you may be required to pay a disproportionate share of the association costs or it may not be able to carry out its responsibilities.”

(4) What are the functions and responsibilities of the association? Will the association hold architectural control over the subdivision?

(5) Are there any functions or services that the developer now provides at no charge for which the association may be required to assume responsibility in the future? If so, will an increase in assessments or fees be necessary to continue these functions or services?

(6) Does the current level of assessments, fees, charges or other income provide the capability for the association to meet its present, or planned, financial obligations including operating costs, maintenance and repair costs and reserves for replacement? If not, how will any deficit be made up?

(b) Taxes. (1) When will the purchaser’s obligation to pay taxes begin? To whom are the taxes paid? What are the annual taxes on an unimproved lot after the sale to a purchaser? If the taxes are to be paid to the developer, include a statement that “Should we not forward the tax funds to the proper authorities, a tax lien may be placed against your lot.”

(2) If the subdivision is encompassed within a special improvement district or if a special district is proposed, describe the purpose of the district and state the amount of assessments. Describe the purchaser’s obligation to retire the debt.

(c) Violations and litigations. This information need appear only if any of the questions are answered in the affirmative. Unless the Director gives prior approval for it to be omitted, a brief description of the action and its present status or disposition shall be given.

(1) With respect to activities relating to or in violation of a Federal, state or local law concerned with the environment, land sales, securities sales, construction or sale of homes or home improvements, consumer fraud or similar activity, has the developer, the owner of the land or any of their principals, officers, directors, parent corporation, subsidiaries or an entity in which any of them hold a 10% or more financial interest, been:

(i) Disciplined, debarred or suspended by any governmental agency, or is there now pending against them an action which could result in their being disciplined, debarred or suspended or,

(ii) Convicted by any court, or is there now pending against them any criminal proceedings in any court? ILSRP suspension notices on pre-effective Statements of Record and amendments need not be listed.

(2) Has the developer, the owner of the land, any principal, any person holding a 10% or more financial or ownership interest in either, or any officer or director of either, filed a petition in bankruptcy? Has an involuntary petition in bankruptcy been filed against it or them or have they been an officer or director of a company which became insolvent or was involved, as a debtor, in any proceedings under the Bankruptcy Act during the last 13 years?

(3) Is the developer or any of its principals, any parent corporation or subsidiary, any officer or director a party to any litigation which may have a material adverse impact upon its financial condition or its ability to transfer title to a purchaser or to complete promised facilities? If so, include a warning which describes the possible effects which the action may have upon the subdivision.

(d) Resale or exchange program. (1) Are there restrictions which might hinder lot owners in the resale of their lots (e.g., a prohibition against posting signs, limitations on access to the subdivision by outside brokers or prospective buyers; the developer’s right of first refusal; membership requirements)? If so, briefly explain the restrictions.

(2) Does the developer have an active resale program? If the answer is “no,”
include the following statement: “We have no program to assist you in the sale of your lot.”

(3) Does the developer have a lot exchange program? If the answer is “yes,” describe the program; state any conditions and indicate if the program reserves a sufficient number of lots to accommodate all those wishing to participate. If there is no program or if sufficient lots are not reserved, include one of the following statements as applicable: “We do not have any provision to allow you to exchange one lot for another” or “We do not have a program which assures that you will be able to exchange your lot for another.”

(e) Unusual situations. This topic need appear only if one or more of the following cases apply to the subdivision, then only the applicable subject, or subjects, will appear.

(1) Leases. What is the term of the lease? Is it renewable? Is it recordable? Can creditors of the developer, or owner, acquire title to the property without any obligation to honor the terms of the lease? Are the lease payments a flat sum or are they graduated? Can the lessee mortgage or otherwise encumber the leasehold? Will the lessee be permitted to remove any improvements which have been installed when the lease expires or is terminated?

(2) Foreign subdivision. (i) Is the owner or developer of the subdivision a foreign country corporation? If legal action is necessary to enforce the contract, must it be taken in the courts of the country where the subdivision is located? (ii) Does the country in which the subdivision is located have any laws which restrict, in any way, the ownership of land by aliens? If so, what are the restrictions?

(iii) Must an alien obtain a permit or license to own land, build a home, live, work or do business in the country where the subdivision is located? If so, where is such permit or license secured; for how long is it valid and what is its cost?

(3) Time sharing. (i) How is title to be conveyed? How many shares will be sold in each lot? How is use time allocated? How are taxes, maintenance and utility expenses divided and billed? How are voting rights in any Association apportioned? Are there management fees? If so, what are their amounts and how are they apportioned?

(ii) Is conveyance of any portion of the lot contingent upon the sale of the remaining portions? Is the initial buyer responsible for any greater portion of the expense than his normal share until the remaining interests are sold? If the purchase of any of the portions is financed, will the default of one owner have any effect upon the remaining owners?

(4) Memberships. (i) Does the purchaser receive any interest in title to the land? What is the term of the membership? Is it renewable? What disposition is made of the membership in the event of the death of the member? Are the lots individually surveyed and the corners marked? If not, how does the member identify the area which the member is entitled to use? What is the approximate square footage the member is entitled to use? Are there different classes of membership? How are the different classes identified and what are the differences between them?

(ii) If the member does not receive any interest in the title to the land, include a warning to the effect that “you receive no interest in the title to the land but only the right to use it for a certain period of time.”

(f) Equal opportunity in lot sales. State whether or not the developer is in compliance with title VIII of the Civil Rights Act of 1968 by not directly or indirectly discriminating on the basis of race, color, religion, sex, national origin, familial status, and handicap in any of the following general areas: Lot marketing and advertising, rendering of lot services, and in requiring terms and conditions on lot sales and leases. An affirmative answer cannot be given if the developer, directly or indirectly, because of race, color, religion, sex, national origin, familial status, or handicap is:

(1) Refusing to sell or lease lots after the making of a bona fide offer or to negotiate for the sale or lease of lots or is otherwise making unavailable or denying a lot to any person, or

(2) Discriminating against any person in the terms, conditions or privileges
in the sale or leasing of lots or in providing services or facilities in connection therewith, or

(3) Making, printing, publishing or causing to be made, printed or published any notice, statement or advertisement with respect to the sale or leasing of lots that indicates any preference, limitation or discrimination against any person, or

(4) Representing to any person that any lot is not available for inspection, sale or lease when such lot is in fact available, or

(5) For profit, inducing or attempting to induce any person to sell or lease any lot by representations regarding the entry or non-entry into the neighborhood of a person or persons of a particular race, color, religion, sex, national origin, familial status, or handicap.

(g) Listing of lots. Provide a listing of lots which shall consist of a description of the lots included in the Statement of Record by the names or number of the section or unit, if any; the block number, if any; and the lot numbers. The lots shall be listed in the most efficient and concise manner. If the filing is a consolidation, the listing shall include all lots registered to date in the subdivision, except any which have been deleted by amendment.

§ 1010.117 Cost sheet, signature of Senior Executive Officer.

(a) Cost sheet—Format. (1) The cost sheet shall be prepared in accordance with the format found in section XXVI of the appendix to this part: Cost Sheet Format and paragraph (a)(2) of this section.

(2) Cost sheet instructions. (i) All amounts for cost sheet items will be entered before the purchaser signs the receipt. However, any costs that are identical for all lots may be pre-printed.

(ii) If a central water or sewer system will be used in all or part of the subdivision and a private system in all or other parts, then the portion that does not apply to the purchaser’s lot shall be crossed out.

(iii) If individual private systems may be used prior to the availability of service from any central system and the purchaser is not required to connect to any central system, both figures may be entered or only the highest cost figures may be used with a parenthetical explanation or footnote. If the purchaser is required to connect to any central system and discontinue the use of his private system when central service is available, both cost figures shall be given, together with an explanation or footnote.

(iv) If there is a one time, lump sum “availability fee” which is assessed to the purchaser in connection with a central utility, include under “other” and identify.

(v) Dues and assessments need be included only if they are involuntary regardless of use.

(vi) At the discretion of the Director, where there is extreme diversity in the figures for different areas of the subdivision, variations may be permitted as to whether the figures will be printed, entered manually, or a range of costs used or any combination of these features.

(vii) The estimated annual taxes shall be based upon the projected valuation of the lot after sale to a purchaser.

(b) Signature of the Senior Executive Officer. The Senior Executive Officer or a duly authorized agent shall sign the property report. Facsimile signatures may be used for purposes of reproduction of the property report.

§ 1010.118 Receipt, agent certification, and cancellation page.

(a) Format. The receipt, agent certification and cancellation page shall be prepared in accordance with the sample found in section XXVII of the appendix to this part: Sample Receipt, Agent Certification and Cancellation Page.

(b) The original and one copy of this executed page shall be attached to the Property Report delivered to prospective purchasers. After the purchaser has signed the receipt and the salesman has signed the certification, the copies can be retained by the developer for a period of three years from the date of execution or the term of the contract, whichever is the longer. Upon demand by the Director, the developer shall, without delay, make the copies of these receipts and certifications available for inspection by the Director.
or the developer shall forward to the Director any of the receipts and certifications, or copies thereof, as the Director may specify.

(c) If the transaction takes place through the mails, the cost figures shall be entered and the person most active in dealing with the prospective purchaser shall sign the certification prior to mailing the Property Report to the purchaser. Otherwise, the certification shall be executed in the presence of the purchaser.

(d) The date of Report appearing on the receipt shall be the same as that appearing on the cover sheet of the Property Report.

(e) Notification of cancellation by mail shall be considered given at the time post-marked.

§ 1010.200 Instructions for Statement of Record, Additional Information and Documentation.

The Additional Information and Documentation portion of the Statement of Record shall contain the statements and documents required in §§ 1010.208 through 1010.219. Each section number and its associated heading and each paragraph letter or number and their associated subheadings or captions must appear in this portion. Following each heading, subheading, or caption printed in this portion, the registrant shall insert an appropriate response. If a heading, subheading, or caption does not apply to the subdivision, it shall be followed by the words "not applicable". Immediately after the page(s) on which the section number and answers for that section appear, insert the information or documents which support that section. In addition to the statements and documentation expressly required there shall be added any further material, information, documentation and certifications as may be necessary in the public interest and for the protection of purchasers or to cause the statements made to be not misleading in the light of the circumstances under which they are made.

§§ 1010.201–1010.20 [Reserved]

§ 1010.208 General information.

(a) Administrative information. (1) State whether the material represents an initial Statement of Record or a consolidated Statement of Record. If it is a consolidated Statement of Record, identify the original ILSRP number assigned to the initial Statement of Record. State whether subsequent Statements of Record will be submitted for additional lots in the subdivision.

(2) Has the developer submitted a request for an exemption for the subdivision?

(3) List the states in which registration has been made by the developer for the sale of lots in the subdivision.

(4) If any state listed in paragraph (a)(3) of this section has not permitted a registration to become effective or has suspended the registration or prohibited sales, name the state involved and give the reasons cited by the state for their action.

(5) State whether the developer has made, or intends to make, a filing with the U.S. Securities and Exchange Commission (SEC) which is related in any way to the subdivision. If a filing has been made with the SEC, give the SEC identification number; identify the prospectus by name; date of filing and state the page number of the prospectus upon which specific reference to the subdivision is made. Any disciplinary action taken against the developer by the SEC should be disclosed in §§ 1010.116 and 1010.216.

(b) Subdivision information. (1) If this is a consolidated Statement of Record, state the number of lots being added, the number of lots in prior Statements of Record and the new total number of lots. The Director must be able to reconcile the numbers stated here with the title evidence; the plat maps and the disclosure in §1010.108.

(2) State the number of acres represented by the lots in this Statement of Record. If this is a consolidated Statement of Record, state the number of acres being added, the number of acres in prior Statements of Record and the new total number of acres. State the total acreage owned in the subdivision, the number of acres under option or similar arrangement for acquisition of title to the land and the total acreage to be offered pursuant to the same common promotional plan.
(3) State whether any lots have been sold in this subdivision since April 28, 1969, and prior to registration with ILSRP. If they were sold pursuant to an exemption, identify the exemption provision and state whether an advisory opinion, exemption order or exemption determination was obtained with respect to those lots sales. Give the ILSRP number assigned to the exemption, if any.

(c) Developer information. (1) State the name, address, Internal Revenue Service number and telephone number of the owner of the land. If the owner is other than an individual, name the type of legal entity and list the interest, and extent thereof, of each principal. Identify the officers and directors.

(2) If the developer is not the owner of the land, state the developer’s name, address, Internal Revenue Service number and telephone number. If the developer is other than an individual, name the type of legal entity and list the interest, and the extent thereof, of each principal. Identify the officers and directors.

(3) If you wish to appoint an authorized agent, state the agent’s name, address and telephone number and scope of responsibility. This shall be the party designated by the developer to receive correspondence, service of process and notice of any action taken by ILSRP. In all Statements of Record, including those for foreign subdivisions, the authorized agent shall be a resident of the United States. A change of the authorized agent will require an appropriate amendment.

(4) State whether the owner of the land, the developer, its parent, subsidiaries or any of the principals, officers or directors of any of them are directly or indirectly involved in any other subdivision containing 100 or more lots. If so, identify the subdivision by name, location, and ILSRP number, if any.

(5) State whether the owner or developer is a subsidiary corporation. If either the owner or developer is a subsidiary corporation or if any of the principals of the owner or developer are corporate entities, name the parent and/or corporate entity and state the principals of each to the ultimate parent entity.

(d) Documentation. (1) Submit a copy of the property report, subdivision report, offering statement or similar document filed with the state or states with which the subdivision has been registered.

(2) Submit a copy of a general plan of the subdivision. This general plan must consist of a map, prepared to scale, and it must identify the various proposed sections or blocks within the subdivision, the existing or proposed roads or streets, and the location of the existing or proposed recreational and/or common facilities. In an initial filing, this map must at least show the area included in the Statement of Record. In a consolidated Statement of Record, show areas being added, as well as the areas previously registered. If a map of the entire subdivision is submitted with the initial Statement of Record, and if no substantial changes are made when material for a consolidated Statement of Record is submitted, the original map may be included by reference.

(3)(i) If the developer is a corporation, submit a copy of the articles of incorporation, with all amendments; a copy of the certificate of incorporation or a certificate of a corporation in good standing and, if the subdivision is located in a state other than the one in which the original certificate of corporation was issued, a certificate of registration as a foreign corporation with the state where the subdivision is located.

(ii) If the developer is a partnership, unincorporated association, joint stock company, joint venture or other form of organization, submit a copy of the articles of partnership or association and all other documents relating to its organization.

(iii) If the developer is not the owner of the land, submit copies of the above documents for the owner.

§1010.209 Title and land use.

(a) General information. (1) State whether the developer has reserved the right to exchange or withdraw lots after a purchaser has signed a sales contract (e.g., for prior sales, failure to pass credit check). If yes, indicate this authority and make reference to the
applicable paragraph in the sales contract or other document.

(2) State whether there is a provision giving purchasers an option to exchange lots. If yes, indicate this and make reference to the applicable paragraph in the sales contract or other document.

(3) State whether the developer knows of any instruments not of record which, if recorded, would affect title to the subdivision. If yes, copies of these instruments shall be submitted, except that copies of unrecorded contracts for sales of lots in the subdivision need not be submitted.

(4)(i) Identify the Federal, State, and local agencies or similar organizations which have the authority to regulate or issue permits, approvals or licenses which may have a material effect on the developer’s plans with respect to the proposed division of the land, and any existing or proposed facilities, common areas or improvements to the subdivision.

(ii) Describe or identify the land or facilities affected; the permit, approval or license required; and indicate whether the permit, approval or license has been obtained by the developer.

(iii) If no agency regulates the division of the land or issues any permits, approvals or licenses with respect to improvements, so state.

(iv) Answers must specifically cover the areas of environmental protection; environmental impact statements; and construction, dredging, bulkheading, etc. that affect bodies of water within or around the subdivision. Also include licenses or permits required by water resources boards, pollution control boards, river basin commissions, conservation agencies or similar organizations.

(5) State whether it is unlawful to sell lots prior to the final approval and recording of a plat map in the jurisdiction where the subdivision is located.

(b) Title evidence. (1) Submit title evidence that specifically states the status of the legal and equitable title to the land comprising the lots covered by the Statement of Record and any common areas or facilities disclosed in the Property Report. Title evidence need not be submitted for those common areas and facilities which are not owned by the developer.

(2) Acceptable title evidence shall be dated no earlier than 20 business days preceding the date of the filing of the Statement of Record with the Director. Previously issued title evidence may be updated to the date referred to in the preceding sentence by endorsements or attorneys’ opinions of title.

(3) The developer shall amend the title evidence to reflect the change in status of title of any previously registered, reacquired lots unless their status is at least as marketable as they were when first offered for sale by the developer as registered lots.

(c) Forms of acceptable title evidence. (1) An original or a copy of a signed owner’s or mortgagee’s policy of title insurance, title commitment, certificate of title or similar instrument issued by a title company authorized by law to issue such instruments in the state in which the subdivision is located. Title evidence that limits insurance or negligence liability to amounts less than the market value of the subject land at the time of its acquisition by the subdivision owner is not acceptable;

(2) A legal opinion stating the condition of title, prepared and signed by an attorney at law experienced in the examination of titles and a member of the Bar in the state in which the property is located. The title opinion may be based on a Torrens land registration system certificate of title, or similar instrument, provided it meets all general title evidence requirements of this section and a copy of the registration certificate of title is submitted. Title opinions that limit negligence liability to amounts less than the market value of the subject land at the time of its acquisition by the subdivision owner are not acceptable.

(d) Title searches. The required evidence of the status of title shall be based on a search of all public records which may contain documents affecting title to the land or the developer’s ability to deliver marketable title. The search must cover a period which is required or generally considered adequate for insuring marketability of title in the jurisdiction in which the subdivision is located. Such search
shall include an examination of at least the documents listed in paragraphs (d)(1) through (5) of this section. This search may be accomplished through the use of a title insurance company title plant, the information in which is based on current searches of the appropriate and necessary documents, including as a minimum those listed immediately above. For any attorney’s title opinion based on Torrens certificates of title, the title search need only go beyond the original time of registration of the certificate of title for those types of encumbrances which were not conclusively settled by the proceedings at the time of such registration. In such cases, the required statement shall clearly reflect the documents and periods searched.

1. The records of the recorder of deeds or similar authority;
2. U.S. Internal Revenue Liens;
3. The records of the circuit, probate, or other courts including Federal courts and bankruptcy or reorganization proceedings which have jurisdiction to affect the title to the land;
4. The tax records;
5. Financing statements filed pursuant to the Uniform Commercial Code or similar law. If it is held that the financing statements do not affect the title of the land, include a statement of the legal authority for that opinion.

(e) Items to be included in the title evidence. The acceptable title evidence must include the following information, instruments and statements and need not be repeated or duplicated elsewhere in the Statement of Record.

1. A legal description of the land on which the lots, common areas, and facilities covered by the title evidence are located. This legal description shall be adequate for conveying land in the jurisdiction in which the subdivision is located. If this legal description is based on a recorded plat, the lot numbers, recording place, book name, book number, and page number shall be stated in the description. If this legal description is given by metes and bounds, the title evidence shall include or be accompanied by a certified statement of the preparer of the title evidence, a licensed attorney, or an engineer or surveyor, indicating that all subject lots, common areas, and common facilities are encompassed within the metes and bounds description in the evidence. If at any time after the submission of the legal description required above, the description of the subject land is changed or found to be in error, a correcting amendment shall be made to the Statement of Record.
2. The name of the person(s) or other legal entity(ies) holding fee title to the property described.
3. The name of any person(s) or other legal entity(ies) holding a leasehold estate or other interest of record in the property described.
4. A listing of any and all exceptions or objections to the title, estate or interest of the person(s) or legal entity(ies) referred to in paragraph (e)(2) or (3) of this section, including any encumbrances, easements, covenants, conditions, reservations, limitations or restrictions of record. Any reference to exceptions or objections to title shall include specific references to the instruments in the public records upon which they are based. When an objection or exception to title affects less than all of the property covered by this Statement of Record, the title evidence shall specifically note what portion of the property is so affected.
5. Copies of all instruments in the public records specifically referred to in paragraph (e)(4) of this section. Abstracts of such instruments are acceptable if prepared by an attorney or professional or official abstractor qualified and authorized by law to prepare and certify such abstracts and if the abstracts contain a material portion of the recorded instruments sufficient to determine the nature and effect of such instruments. Also include copies of any release provisions, relating to encumbrances on the property described, which are not included in the documents otherwise required by this section.
6. If an attorney’s title opinion has been submitted pursuant to this section which has been based on a Torrens land registration certificate of title, submit a copy of such certificate.

(f) Supplemental title information. (1) If there is a holder of an ownership interest in the land other than the developer, submit a copy of any documentation which evidences the developers’
(2) Submit copies of any trust deeds, deeds in trust, escrow agreements or other instruments which purport to protect the purchaser in the event of default or bankruptcy by the developer on any instrument or instruments which create a blanket encumbrance upon the property unless they have been previously provided as part of "title evidence" submitted pursuant to paragraph (e) of this section.

(3)(i) Submit copies of all forms of contracts or agreements and notes to be used in selling or leasing lots. The contracts or agreements, including promissory notes, must contain the following language in boldface type (which must be distinguished from the type used for the rest of the contract) on the face or signature page above all signatures: "You have the option to cancel your contract or agreement of sale by notice to the seller until midnight of the seventh day following the signing of the contract or agreement. If you did not receive a Property Report prepared pursuant to the rules and regulations of the Bureau of Consumer Financial Protection, in advance of your signing the contract or agreement, the contract or agreement of sale may be cancelled at your option for two years from the date of signing."

(ii) If the purchaser is entitled to a longer revocation period by operation of state law or the Act, that period becomes the Federal revocation period and the contract or agreement must reflect the requirements of the longer period, rather than the seven days. This language shall be consistent with that shown on the cover page (see §1010.105).

(iii) Whether recorded or unrecorded, the plat or map should show:
   (A) The dimensions of each lot, stated in the standard unit of measure acceptable for such purposes in the political subdivision where the land is located.
   (B) A clear delineation of each of the lots and any common areas or facilities.
   (C) Any encroachments or rights-of-way on, over, or under the land, or a notation of these items together with the identity of the lots affected.
   (D) The courses, distances and monuments, natural or otherwise, of the land's boundaries; contiguous boundaries and identification or ownership of adjoining land and names of abutting streets, ways, etc.
   (E) The location of the section or unit encompassing the lots in relationship to the larger tract, or tracts, in the subdivision.
   (F) The delineation of any flood plains or flood control easements affecting any of the lots.

(iv) If it is represented that the developer will provide or complete roads or facilities for waters, sewer, gas, electric service or recreational amenities, the contract must contain a provision that the developer is obligated to provide or complete such roads, facilities and amenities (see §1011.15(f)).

(4) Submit copies of deeds and leases by which the developer will lease or convey title to the lots to purchasers or lessees.

(g) Plat maps, environmental studies and restrictions—(1) Plat maps. (i) In those jurisdictions where it is unlawful to sell lots prior to final approval and recording of the plat, and in those cases where a plat has been recorded, submit a copy of the recorded plat. This plat should be an exact copy of the recorded document. It should reflect the signatures of the approving authorities and bear a stamp or notation by the recorder of deeds, or similarly constituted officer, as to the recording data.

(ii) If the plat has not been approved by the local authorities nor recorded, and if it is not unlawful to sell lots prior to final approval and recording, submit a map which has been prepared to scale and which shows the proposed division of the land, the lot dimensions and their relation to proposed or existing streets and roads. The map shall contain sufficient engineering data to enable a surveyor to locate the lots.

(iii) Whether recorded or unrecorded, the plat or map should show:
   (A) The dimensions of each lot, stated in the standard unit of measure acceptable for such purposes in the political subdivision where the land is located.
   (B) A clear delineation of each of the lots and any common areas or facilities.
   (C) Any encroachments or rights-of-way on, over, or under the land, or a notation of these items together with the identity of the lots affected.
   (D) The courses, distances and monuments, natural or otherwise, of the land's boundaries; contiguous boundaries and identification or ownership of adjoining land and names of abutting streets, ways, etc.
   (E) The location of the section or unit encompassing the lots in relationship to the larger tract, or tracts, in the subdivision.
   (F) The delineation of any flood plains or flood control easements affecting any of the lots.
§ 1010.210 Roads.

(a) State the estimated cost to the developer of the proposed road system.

(b) If the developer is to complete any roads providing access to the subdivision, submit copies of any bonds or escrow agreements which have been posted to guarantee completion thereof.

(c) Submit copies of any bonds or escrow agreements which have been posted to assure completion of the roads within the subdivision.

(d) If the interior roads are to be maintained by a public authority, submit a copy of a letter from that authority which states that the roads have been, or the conditions upon which they will be, accepted for maintenance and when.

§ 1010.211 Utilities.

(a) Water. (1) State the estimated cost to the developer of the central water system.

(b) If water is to be supplied by a central system, furnish a letter from the supplier that it will supply the water. If the system is operated by a governmental division or by an entity whose operations are regulated by a governmental agency but which is not affiliated with or under the control of the developer, the letter shall include a statement that the supply of water will be sufficient to serve the anticipated population of the subdivision or how many homes or connections it can and will serve and that the water is tested at regular intervals and has been found to meet all standards for a public water supply.

(2) Environmental impact study. If the developer is aware of any environmental impact study which considers the effect of the subdivision on the environment, submit a summary of that study.

(3) Restrictions or covenants. Submit a copy of any recorded or proposed restrictions or covenants for the subdivision if not submitted elsewhere in this Statement of Record. A copy of these restrictions or covenants shall be delivered to a prospective purchaser upon request. A supply shall be maintained at whatever place or places as will be necessary to allow immediate delivery upon request.

(4) If the supplier of water is not in one of the categories in paragraph (a)(2) of this section, submit a copy of a letter or report from a cognizant health officer, or from a private laboratory licensed by the state to perform tests and issue reports on water, to the effect that the water was found to meet all drinking water standards required by the state for a public water system.

(5) If any bond, escrow agreement or other financial assurance of the completion of the central system, including any phases which are to be constructed in the future, has been posted by the developer or an entity not regulated by a governmental agency, furnish a copy of the document.

(6) Furnish a copy of any permits which have been obtained by the developer or any entity affiliated with or under the control of the developer in connection with the construction and operation of the central system. If a permit is required to install individual wells, submit a letter from the proper authority which states the requirements for obtaining the permit and that there is no objection to the use of individual wells in the subdivision.

(7) Furnish a copy of any membership agreement or contract which allows or
§ 1010.212 Financial information.

(a) Financing of improvements. Describe the financing plan that is to be used in financing on-site or off-site improvements proposed in the Statement of Record.

(b) Complete the following format (If the subdivision or common promotional plan contains, or will contain, 1000 or more lots, furnish this information in its entirety. If the subdivision or common promotional plan contains, or will contain, less than 1,000 lots, only paragraphs (b)(3)(iii) and (iv) of this section need be completed.)

1. Estimated date for full completion of amenities
2. Projected date for complete sell out of subdivision
3. Cost and expense recap for lots included in this Statement of Record:
   (i) Land acquisition cost or current fair market value of land.
   (ii) Development and improvement costs (include the estimated cost of such items as roads, utilities, and amenities which the developer will incur).
   (iii) Estimated marketing and advertising costs.
   (iv) Estimated sales commission.
   (v) Interest (include cost in financing the land purchase, improvements, or other borrowings).
   (vi) Estimated other expenses (include general costs, administrative costs, profit, etc.).
   (vii) Total.
4. Total land sales revenue:
   (i) Estimated total land sales income.
   (ii) Estimated other income.
   (iii) Total income.
(c) Financial statements. (1) Submit a copy of the developer's financial statements for the last full fiscal year. These statements shall be prepared in accordance with generally accepted accounting principles as prescribed by the Financial Accounting Standards Board and generally accepted auditing
standards as prescribed by the American Institute of Certified Public Accountants, and shall be audited by an independent licensed public accountant. They shall include a balance sheet, a statement of profit and loss, a statement of changes in financial condition and a certified opinion by the accountant. The statements shall be no more than six months old on the date the Statement of Record is submitted.

(2) If the audited statements are more than six months old at the date of submission of the Statement of Record, or if the last full fiscal year has ended within the last 90 days and audited Statements are not yet available, the developer may submit a copy of the audited statements for the previous full fiscal year and supplement them with unaudited, interim statements so that the financial information is no more than six months old on the date that the Statement of Record is submitted. The interim statements may be prepared by company personnel but must contain a balance sheet, a statement of profit and loss and a statement of changes in financial condition and be prepared in accordance with generally accepted accounting principles.

(d) Annual report. (1) Each year after the initial effective date, the developer shall submit a copy of its latest financial statements. These statements must meet the standards set out in §1010.212(c)(1), unless the developer has qualified for an exception under §1010.212(e), and must be submitted within 120 days after the close of the developer’s fiscal year.

(2) If a developer has submitted its latest statements with a consolidated filing since the close of its fiscal year and prior to the end of the 120 day period, a second submission of the statements to comply with this section is not necessary.

(3) If the developer no longer has an active sales program on the date this report is due, the information set forth in §1010.310(c)(7)(iii) may be furnished in lieu of this report.

(e) Exceptions. (1) If the developer does not have audited financial statements and the criteria in one of the following exceptions are met, statements need not be audited and certified but must meet all of the other requirements set forth in paragraphs (c)(1) and (2) of this section.

(2) The term “conveys title free of any mortgage or lien” in these exceptions is not intended to prohibit the taking of an instrument as security for the lot purchase price after title is conveyed. For the purposes of these exceptions, these definitions shall apply:

(i) Deed shall mean a warranty deed, or its equivalent, which conveys title free and clear of liens and encumbrances.

(ii) Assurance of Title Agreement shall mean a legal arrangement whereby the purchaser is guaranteed a deed upon payment of no more than the full purchase price of the lot (e.g., subdivision trust). In addition to a copy of any Assurance of Title Agreement, the Director may require additional documentation such as an attorney’s opinion letter to assure that the purchaser’s title is fully protected.

(iii) Date of contract shall mean the date on which the contract or agreement is signed by the purchaser.

(iv) Escrow or trust account as to down payments and deposits shall mean an account, established in accordance with local real estate laws or regulations, which assures the return to the purchaser of any monies paid in the event title is not delivered to the purchaser in accordance with the terms of the contract.

(3) The exceptions are:

(i) The aggregate sales price of all lots offered pursuant to a common promotional plan equals $500,000.00 or less; or

(ii) Each of the following conditions of paragraphs (e)(3)(ii)(A) and (B) of this section are met, plus the conditions of one of paragraphs (e)(3)(ii)(C), (D), or (E) of this section:

(A) Down payments and deposits are held in an escrow or trust account.

(B) The contract provides for delivery of a deed which conveys title free of any mortgage or lien within 180 days of the signing of the contract. (In lieu of delivery of a deed, the developer may submit to ILSRP an Assurance of Title Agreement.)
Bur. of Consumer Financial Protection § 1010.212

(C) The aggregate sales prices of all lots offered pursuant to a common promotional plan is at least $500,000 but less than $1,500,000.

(D) All facilities, utilities and amenities proposed by the developer in the Property Report or sales contract have been completed so that the lots in the Statement of Record are immediately usable for the purpose for which they are sold.

(E) (1) The developer is contractually obligated to the purchaser to complete all facilities, utilities and amenities proposed by the developer in the Property Report and sales contract so that all lots included in the Statement of Record will be usable for the purpose for which they are sold by the dates set out in the Property Report, and;

(2) The developer has made financial arrangements, such as the posting of surety bonds (corporate bonds or individual notes or bonds are not acceptable), irrevocable letters of credit or the establishment of escrow or trust accounts, which assure completion of all facilities, utilities and amenities proposed by the developer in the Property Report or contract.

(f) Newly-formed entity. If the developer is newly formed or has not had any significant operating experience, an audited or unaudited balance sheet and statements of receipts and disbursements of funds may be submitted.

(g) Use of parent company statements. (1) If the developer is a subsidiary company and does not have audited financial statements, the Director may permit the use of the audited and certified statements of the parent company: Provided, That those statements are accompanied by an unconditional guaranty that the parent shall perform and fulfill the obligations of the subsidiary. If this procedure is adopted, the developer shall submit the following:

(i) The audited and certified financial statements of the parent company, together with interim statements if necessary, which comply with § 1010.212(c).

(ii) A properly executed guaranty in a form acceptable to the Director.

(2) In cases described in paragraph (g)(1) of this section, the disclosure information required in § 1010.112 shall be appropriately amended to reference the parent company and not the developer and must include a statement to the effect that the developer’s parent company (insert name) has entered into an unconditional guaranty to perform and fulfill the obligations of the developer.

(h) Opinions. If the accountant qualifies or disclaims his opinion, the Director may accept the statements and require such additional disclosure as the Director deems necessary in the public interest or for the protection of purchasers.

(i) Copies for prospective purchasers. Copies of the financial statements filed with the Statement of Record shall be made available to prospective purchasers upon request. A supply of the latest submitted statements shall be maintained at whatever place, or places, as is necessary to allow immediate delivery upon request by a prospective purchaser. These statements shall contain financial information only and shall not include any promotional material such as that usually set forth in annual reports.

(j) Change from audited to unaudited statements. (1) Developers who file audited statements must continue with audited statements throughout the duration of the registration unless, at a later date, the developer submits amendments which demonstrate to the satisfaction of the Director that it then qualifies for an exception from audited statements under paragraph (e)(3)(ii) of this section. For purposes of paragraph (e)(3)(ii)(C) of this section, the Director will consider the aggregate sales prices of only the lots yet to be sold, and may consider whether any additions to the subdivisions or reacquisitions of lots already sold would be likely to cause the dollar limits to be exceeded.

(i) The aggregate sales prices of the lots yet to be sold in the subdivision has been reduced to less than $1,500,000.00, and that it will not exceed this amount through further additions to the subdivision, or through the reacquisition of lots already sold, and;

(ii) The sales contract provides for delivery of a deed within 120 days of the date of the contract which conveys title free and clear of any mortgage or lien or the developer files an Assurance of Title Agreement with ILSRP, and;
§ 1010.214 Recreational facilities.

(a) Submit a synopsis of the proposed plans and estimated cost of any proposed or partially constructed recreational facility disclosed in §1010.114. This item should include the general dimensions and a brief description of the facility but it should not include blueprints or similar technical materials.

(b) Submit a copy of any bond or escrow arrangements to assure completion of the recreational facilities disclosed in §1010.114 which are not structurally complete.

(c) Submit a copy of the lease for any leased recreational facility.

§ 1010.215 Subdivision characteristics and climate.

(a) Submit two copies of a current geological survey topographic map, or maps, of the largest scale available from the U.S. Geological Survey with an outline of the entire subdivision and the area included in this Statement of Record clearly indicated. Photo copies made by the developer are not acceptable. Do not shade the areas on the maps which have been outlined.

(b) If drainage facilities are proposed but not yet completed, submit a synopsis of the developer’s proposed plans that includes a description of the system of collecting surface waters; a description of the steps to be taken to control erosion and sedimentation and the estimated cost of the drainage facilities.

(c) Submit copies of any bonds, escrow or trust accounts or other financial assurance of completion of the drainage facilities.

(d) State whether the jurisdiction in which the subdivision is located has a system for rating the land for fire hazards.

§ 1010.216 Additional information.

(a) Property Owners’ Association. (1) If the association has been formed as a legal entity, submit a copy of the articles of association, bylaws or similar documents, and a copy of the charter or certificate of incorporation.

(2) If the developer exercises any control over the association, state whether any contracts have been executed between the association and the developer or any affiliate or principal of the developer. If there have been, briefly summarize the terms of the contracts, their purpose, their duration and the method and rate of payment required by the contract. State whether the association may modify or terminate the contracts after the owners assume control of the association.

(3) State whether there is any agreement which would require the association to reimburse the developer, its affiliates or successors for any attorney’s fees or costs arising from an action brought against them by the association or individual property owners regardless of the outcome of the action.

(4) If the answer to paragraph (a)(2) or (a)(3) of this section is in the affirmative, disclosure may be required in §1010.116(a) at the discretion of the Director.

(5) Submit a copy of any membership agreement or similar document.

(b) Price range, type of sales and marketing. (1) State the price range of lots in the subdivision.

(2) State the type of sales to be made, i.e., contract for deed, cash, deed with security instrument, etc.

(3) Describe the methods of advertising and marketing to be used for the subdivision. The description should include, but need not be limited to, information on such matters as to:

(i) Whether the developer will employ his own sales force or will contract with an outside group;

(ii) Whether wide area telephone solicitation will be employed;
(iii) Whether presentations will be made away from the immediate vicinity of the subdivision and/or if prospective purchasers will be furnished transportation from distant cities to the subdivision;

(iv) Whether mass mailing techniques will be used and gifts offered to those who respond.

(4) For any subdivision that meets any of the criteria in paragraphs (b)(4)(i) through (iii) of this section, submit a copy of any advertising or promotional material that is, or has been, used for the subdivision. Amendments to reflect changes in advertising or promotional material need be filed only when there is a material change related to one of the above factors. Depending upon the content of the material submitted, the Director may require additional warnings in the Property Report portion. This requirement applies to any subdivision that:

(i) Mentions or refers to recreational facilities which are not disclosed in §1010.114, or;

(ii) Promotes the sale of lots based on the investment potential or expected profits, or;

(iii) Contains information which is in conflict with that disclosed in this Statement of Record.

(c) Violations and litigation. (1) Submit a copy of the complaint(s), the answer(s) and the decision(s) for any litigation listed in §1010.116(c).

(2) If it is indicated in §1010.116(c) that the developer or any of the parties involved in the subdivision are, or have been, the subject of any bankruptcy proceedings, furnish a copy of the schedules of liabilities and assets (or a recap of those schedules); the petition number; the date of the filing of the petition; names and addresses of the petitioners, trustee and counsel; the name and location of the court where the proceedings took place and the status or disposition of the petition. Explain, briefly, the cause of the action.

(3) Furnish a copy of any orders issued in connection with any violations listed in §1010.116(c).

(d) Resale or exchange program. (1) If it is stated in §1010.116(d)(3) that there is an exchange program which provides sufficient lots to satisfy all requests for exchange, describe the method used to determine the number of lots required; state whether these lots have been reserved or set aside; whether additional lots will be provided if the lots available for exchange are exhausted and the source of any additional lots.

(e) Unusual situations—(1) Foreign subdivisions. If the subdivision is located outside the several States, the District of Columbia, the Commonwealth of Puerto Rico or the territories or possession of the United States, the Statement of Record shall be submitted in the English language and all supporting documents, including copies of any laws which restrict the ownership of land by aliens, shall be submitted in their original language and shall be accompanied by a translation into English.

§1010.219 Affirmation.

The affirmation set forth in section XXVIII of the appendix to this part: Affirmation of Senior Executive Officer shall be executed by the senior executive officer or a duly authorized agent.

§1010.310 Annual report of activity.

(a) As an integral part of the Statement of Record, the developer shall file with the Director an Annual Report of Activity on any initial or consolidated registration not under suspension. For this purpose, only one Annual Report of Activity will be expected for subdivisions on which developers have filed consolidations. For registrations certified by a state as provided for in §1010.500, a developer need file only one Annual Report of Activity for any registration for which the ILSRP number is the same (alphabetic designators indicate that the registration has been treated as a consolidation).

(b) The report shall be submitted within 30 days of the annual anniversary of the effective date of the initial Statement of Record.

(c) The report shall contain the following information:

(1) Subdivision name and address.

(2) Developer’s name, address and telephone number.

(3) Agent’s name, address and telephone number.

(4) Interstate Land Sales Registration number.
(5) The date on which the initial filing first became effective.
(6) The number of registered lots, parcels or units which are unsold as of the date on which the report is due.
(7) One of the following:
   (i) A statement that the developer is still engaged in land sales activity at the subject subdivision and that there have been no changes in material fact since the last effective date was issued which would require an amendment to the Statement of Record; or
   (ii) A statement that the developer is still engaged in land sales activity at the subject subdivision, that material changes have occurred since the last effective date, and that corrected pages to the Property Report portion or Additional Information and Documentation portion of the Statement accompany the report; or
   (iii) A statement that the developer is no longer engaged in land sales activity at the subject subdivision, together with the reason the developer is no longer selling (e.g., all lots sold to the public or the remaining lots sold to another developer, along with the date of sale and the new developer’s name, address and telephone number). A request may be made that the Statement of Record be voluntarily suspended. The request should be submitted in duplicate and will become effective upon the counter-signature of the Director (or an authorized Designee) with the duplicate being returned to the developer.
(8) The report shall be dated and shall be signed by the senior executive officer of the developer on a signature line above his typed name and title. The senior executive officer’s acknowledgement shall be attested to or certified by a notary public or similar public official authorized to attest or certify acknowledgements in the jurisdiction in which the report is executed.
   (d) If the report indicates that there are 101 or more registered lots, parcels or units remaining for sale, the report shall be accompanied by an amendment fee in the amount and form prescribed in §1010.35.
   (e) Failure to submit the report when due shall be grounds for an action to suspend the effective Statement of Record.

§ 1010.500 Subpart C—Certification of Substantially Equivalent State Law

§ 1010.500 General.

(a) This subpart establishes procedures and criteria for certifying state land sale or lease disclosure programs and State land development standards programs. The purpose of State Certification is to lessen the administrative burden on the individual developer, arising where there are duplicative state and federal federal registration and disclosure requirements, without affecting the level of protection given to the individual purchaser or lessee. If the Director determines that a state has adopted and is effectively administering a program that gives purchasers and lessees the same level of protection given to them by the Interstate Land Sales Registration Program, then the Director shall certify that state. Developers who accomplish an effective registration with a state in which the land is located after the Director has certified the state may satisfy the registration requirements of the Director by filing with the Director materials designated by agreement with certified states in lieu of the federal Federal Statement of Record and Property Report.

(b) A state that is certified by the Director shall be known as the situs certified state for all land located within its borders.

(c) After a developer is effectively registered with the Director through a certified state, the Director has the same authority over that developer as the Director has over developers who file directly with the Director. This includes the authority to subpoena information and to examine, evaluate and suspend a developer’s registration under sections 1407(d) and (e) of the Act and §1010.45(b)(1) and (b)(2) of these regulations.

(d) The prohibitions against the use of the Property Report contained in §1010.29 apply to state disclosure materials and substantive development standards. In addition, for purposes of this paragraph, references made to the Director, ILSRP and the Bureau in §1010.29 will include a reference to the equivalent state officer or agency.
(e) The Purchaser’s Revocation Rights, Sales Practices and Standards rules contained in part 1011 of these regulations apply to developers who register with the Director through certified States. All of the rules in part 1011 apply, excepting the disclaimer statement in §1011.50(a) which is modified to read as follows: “Obtain the Property Report or its equivalent, required by Federal and State law and read it before signing anything. No Federal or State agency has judged the merits or value, if any, of this property.”

(f) Developers are obliged to pay filing fees as set forth in §1010.35 of this part.

§ 1010.504 Cooperation among certified states and between certified states and the Director.

(a) By filing an Application for Certification of State Land Sales Program pursuant to §1010.502, a state agrees that, if it is certified by the Director, it will:

(1) Accept for filing and allow to be distributed as the sole disclosure document, a disclosure document currently in effect in the situs certified state. Only those documents filed with the situs state after certification by the Director must automatically be accepted by other certified states;

(2) Certify copies of all disclosure documents, amendments and consolidations filed with it by developers of land located within its borders for and as needed by developers required to submit certified copies to the Director and all other certified states. The certification shall indicate whether the documents are currently in effect. The certification should be in the format set forth in section XXIX of the appendix to this part: Form for Certification for Disclosure Documents.

(3) Assist and cooperate with the Director and other certified states by requiring that developers of land within its borders amend disclosure documents if any change occurs in any representation of material fact required to be stated in the disclosure documents, including a change resulting from the developer’s compliance with the requirements of the law in another certified state. The state shall require developers to send certified copies of the amended documents to the Director and requesting certified states. All amendments to such materials, which reflect changes in material facts regarding the subdivision, shall be submitted to the situs certified state authorities within 15 days of the date on which the developer knows, or should have known, of such change. Certified copies of the disclosure documents shall be submitted by the developer to the Director and the other certified states within 15 days after it becomes effective under the situs certified state laws.

(4) Continue to effectively operate its Land Sales Program as that Program
§ 1010.505 Withdrawal of State state certification.

(a) The Director shall periodically review the laws, regulations or administration thereof, of a certified state. If the Director finds that, taken as a whole, the laws, regulations or administration thereof, no longer meet the requirements of subpart C, then the Director may issue a notice to withdraw the certification of that state.

(b) The notice of proceedings to withdraw a state's certification will be issued to the state by the Director pursuant to §1012.236. The Director may, after notice and after an opportunity for a hearing, pursuant to §1012.237, issue an order withdrawing certification. In the event that a withdrawal order is issued, the order shall remain in effect until the state has amended its laws, regulations or the administration thereof or has otherwise complied with the requirements of the order. When the state has complied with the requirements of the order, the Director shall so declare and the withdrawal order shall cease to be effective.

(c) Withdrawal orders issued pursuant to this subsection will be effective as of the date the order is received by the state. The withdrawal order shall be published in the FEDERAL REGISTER.

(d) The rules of 12 CFR part 1080, unless otherwise specified in 12 CFR part 1012, subpart D, will generally apply to hearings on withdrawal of a state's certification.

§ 1010.506 State/Federal filing requirements.

(a)(1) If the Director has certified a state under §1010.501, the Director shall accept for filing disclosure materials or other acceptable documents which have been approved by the certified state laws, regulations or the administration thereof within which the subdivision is located. Only those filings made by the developer with the state after the state was certified by the Director shall be automatically accepted by the Director.

(b) After a developer is effectively registered with a certified state through a situs certified state, either or both certified states may exercise full enforcement authorities and powers over that developer according to applicable law and regulations.

(e) The Director shall cooperate with the certified states by offering a forum for nonbinding arbitration of disputes between two or more certified States arising out of the State Certification Program.
§ 1010.508  Effect of suspension of certification granted under § 1010.501(b): Sufficient protection requirement.

(a) If a state certified under §1010.501(b) suspends its own certification or has its certification withdrawn under §1010.505, the effectiveness of the Federal disclosure materials accepted and made effective by the Director pursuant to §1010.506, prior to the suspension or withdrawal shall terminate ninety (90) days after the notice of withdrawal order is published in the Federal Register as provided in §1010.505(c).

(b) At the end of the ninety day period, or during the ninety day period in the event that there is a change in material fact with regard to a subdivision that remains registered under the provisions of paragraph (a) of this section, the developer shall file a new registration with the Director meeting the requirements of the then applicable Federal registration regulations. Modifications of the Federal format may be used as specified by the Director.
§ 1010.552 Previously accepted state filings.

(a) Materials filed with a state and accepted by the HUD Secretary as a Statement of Record prior to January 1, 1981, pursuant to 24 CFR 1010.52 through 1010.59 (as published in the FEDERAL REGISTER on April 10, 1979) may continue in effect. However, developers must comply with the applicable amendments to the Federal Act and the regulations thereunder. In particular, see §§1010.558 and 1010.559, which require that the Property Report and contracts or agreements contain notice of purchaser’s revocation rights. In addition see §1011.15(f), which provides that it is unlawful to make any representations with regard to the developer’s obligation to provide or complete roads, water, sewers, gas, electrical facilities or recreational amenities, unless the developer is obligated to do so in the contract.

(b) If any such filing becomes inactive or suspended under the laws of the state, the registration with the Director shall be ineffective from that time.

(c) Such Statement of Record may be suspended pursuant to §1010.45.

(d) The Director may refuse to accept any particular filing under this section when it is determined that acceptance is not in the public interest.

(e) The Director may require such changes, additional information, documents or certification as the Director determines to be reasonably necessary or appropriate in the public interest.

§ 1010.556 Previously accepted state filings—amendments and consolidations.

(a) Amendments—(1) General requirements. State accepted materials, filed with the Director pursuant to §1010.552, shall be amended to reflect any amendment to such materials made effective by the state or any change of a material fact regarding the subdivision. All amendments to such materials, which reflect changes in material facts regarding the subdivision, shall be submitted to the state authorities within 15 days of the date on which the developer knows, or should have known, of such change and to the Director within 15 days after it becomes effective under the applicable State laws. However, such amendment shall not be effective as a Federal registration until the Director has determined that the amendment meets all applicable requirements of these regulations. Amendments shall include or be accompanied by:

(i) A letter from the developer giving a narrative statement fully explaining the purpose and significance of the amendment and referring to that section and page of the Statement of Record which is being amended, and;

(ii) All amended pages of the state accepted materials filed with the Director. These pages shall be copied together with their amendments. Each such page shall have its date of preparation in the lower right hand corner, and;

(iii) A signed state acceptance certification, and;

(iv) The appropriate fees as indicated in §1010.35.

(b) Consolidations—(1) When consolidations allowed. If lots are to be registered pursuant to §1010.552 which are in the same common promotional plan with other lots already registered with the Director, then new consolidated state accepted materials including such lots may be filed with the Director as a Statement of Record following the format of the previously accepted filing.

(2) Consolidated Statements of Record shall include or be accompanied by:

(i) State accepted consolidation materials which are also acceptable to the Director as a Statement of Record (state property report inclusive). These state accepted consolidation materials shall cover all lots previously registered in the common promotional plan except those deleted pursuant to other provisions in these regulations. These materials shall also include information and items required for state accepted materials filed as an initial registration Statement of Record, except that, supporting documentation in materials previously made effective by the Director for other lots in the subject common promotional plan may be included incorporated by reference into the new consolidation materials submitted as a Statement of Record. However, such documentation may be incorporated by reference included only
if it is applicable to the new consolidated lots as well as to the previously registered lots.

(ii) A signed state acceptance certification.

(iii) The appropriate fees as indicated in §1010.35.

(c) Effective date; state filing. The effective dates of state materials filed as amendments and consolidated Statements of Record shall be determined in accordance with the provisions of §1010.21.

§ 1010.558 Previously accepted state filings—notice of revocation rights on property report cover page.

(a)(1) The cover page on Property Reports for filings made with the Director pursuant to §1010.552 shall be prepared in accordance with §1010.105 and shall include the paragraphs set forth in section XXX of the appendix to this part: Language to be Included on Property Report Cover Page.

(2) If the purchaser is entitled to a longer revocation period by operation of State law, that period becomes the Federal revocation period and the cover page must reflect the longer period, rather than the seven days.

(b)(1) If a deed is not delivered within 180 days of the signing of the contract or agreement of sale or unless certain provisions are included in the contract or agreement, the purchaser is entitled to cancel the contract within two years from the date of signing the contract or agreement.

(2) The deed must be a warranty deed, or where such a deed is not commonly used, a similar deed legally acceptable in the jurisdiction where the lot is located. The deed must be free and clear of liens and encumbrances.

(3) The contract provisions are:

(i) A legally sufficient and recordable lot description, and;

(ii) A provision that the seller will give the purchaser written notification of purchaser's default or breach of contract and the opportunity to remedy the default or breach within 20 days of the notice; and

(iii) A provision that, if the purchaser loses rights and interest in the lot because of the purchaser's default or breach of contract after 15 percent of the purchase price, exclusive of interest, has been paid, the seller shall refund to the purchaser any amount which remains from the payments made after subtracting 15 percent of the purchase price, exclusive of interest, or the amount of the seller's actual damages, whichever is the greater.

(4) If a deed is not delivered within 180 days of the signing of the contract or if the necessary provisions are not included in the contract, the following statement shall be used in place of any other rescission language: "Under Federal law you may cancel your contract or agreement of sale any time within two years from the date of signing."

§ 1010.559 Previously accepted state filings—notice of revocation rights in contracts and agreements.

(a)(1) All contracts or agreements, including promissory notes used in sale of lots for filings made with the Director pursuant to §1010.552, must contain the language set forth in section XXXI of the appendix to this part: Notice of Revocation Rights in boldface type (which must be distinguished from the type used for the rest of the contract) on the face or signature page above all signatures.

(2) If the purchaser is entitled to a longer revocation period by operation of State law or the Act, that period becomes the Federal revocation period and the contract or agreement must reflect the longer period, rather than the seven days. The language shall be consistent with that shown on the Cover Page (see §1010.558).

(b) The above revocation provisions may not be limited or qualified in the contract or other document by requiring a specific type of notice or by requiring that notice be given at a specified place.

APPENDIX A TO PART 1010—STANDARD AND MODEL FORMS AND CLAUSES

I. Forms for Developer’s Affirmation for Land Sale—§1010.13(a)(9)

Developer’s Name 
Developer’s Address 
Purchaser’s Name(s) 
Purchaser’s Address(es) (including county) 
Name of Subdivision 
Legal Description of Lot(s) Purchased

I hereby affirm that all of the requirements of the MSA exemption as set forth in 15 U.S.C. 1702(b)(8) and 12 CFR 1010.13 have
been met in the sale or lease of the lot(s) described above.
I also affirm that I submit to the jurisdiction of the Interstate Land Sales Full Disclosure Act with regard to the sale or lease cited above.

(Date)

(Signature of Developer or Authorized Agent)

II. Language Notifying Buyer of Option to Cancel Contract—§ 1010.15(b)(5)(i)
You have the option to cancel your contract or agreement of sale by notice to the seller until midnight of the seventh day following the date of signing of the contract or agreement.
If you did not receive a Lot Information Statement prepared pursuant to the rules and regulations of the Bureau of Consumer Financial Protection in advance of your signing the contract or agreement, the contract or agreement of sale may be cancelled at your option for two years from the date of signing.

III. Sample Lot Information Statement and Sample Receipt—§ 1010.15(b)(11)

Sample Format
(Use of the following headings and first paragraph are mandatory.)

Lot Information Statement

Important: Read Carefully Before Signing Anything

The developer has obtained a regulatory exemption from registration under the Interstate Land Sales Full Disclosure Act. One requirement of that exemption is that you must receive this Statement prior to the time you sign an agreement (contract) to purchase a lot.

Right To Cancel
(Under this heading the developer is to state the specific rescission rights provided for in the contract pursuant to 1010.15(b)(5)(i)).

Risk of Buying Land
(Under this heading the developer is to list the following information:)
There are certain risks in purchasing real estate that you should be aware of. The following are some of those risks:
The future value of land is uncertain and dependent upon many factors. Do not expect all land to automatically increase in value.
Any value which your lot may have will be affected if roads, utilities and/or amenities cannot be completed or maintained.
Any development will likely have some impact on the surrounding environment. Development which adversely affects the environment may cause governmental agencies to impose restriction on the use of the land.
In the purchase of real estate, many technical requirements must be met to assure that you receive proper title and that you will be able to use the land for its intended purpose. Since this purchase involves a major expenditure of money, it is recommended that you seek professional advice before you obligate yourself.
If adequate provisions have not been made for maintenance of the roads or if the land is not served by publicly maintained roads, you may have to maintain the roads at your expense.
If the land is not served by a central sewage system and/or water system, you should contact the local authorities to determine whether a permit will be given for an on-site sewage disposal system and/or well and whether there is an adequate supply of water. You should also become familiar with the requirements for, and the cost of, obtaining electrical service to the lot.

Developer Information
(Under this heading the developer is to list the following information:)

Developer’s Name:
Address:
Telephone Number:

Lot Information
(Enter a statement disclosing all liens, reservations, taxes, assessments, easements and restrictions applicable to the lot. A copy of the restrictions may be attached in lieu of recitation.)

Suppliers of Utilities and Issuers of Permits
(Under this heading the developer is to list the name, address and phone number of the appropriate governmental agency or agencies, if any, that will provide information on permits or other requirements for water, sewer and electrical installations. The information will also contain the name, address and telephone number of the suppliers of such utilities which can provide information to the purchaser on costs and availability of such services. A chart similar to the one below may be used to supply this information).

Listed below are contact points for determining permit requirements, if any, and to obtain information on approximate costs and availability for the listed services:
If misrepresentations are made in the sale of this lot to you, you may have rights under the Interstate Land Sales Full Disclosure Act. If you have evidence of any scheme, artifice or device used to defraud you, you may wish to contact: Office of Nonbank Supervision, Interstate Land Sales Registration Program, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006.

(The Receipt is to be in the following form:)

Sample Receipt for Lot Information Statement

Purchaser (print or type): ____________________________________________
Date: ____________________________________________________________________
Signature of purchaser: ____________________________________________

Street Address: ____________________________________________
City: ____________________________________________
State: ____________________________________________
Zip: ____________________________________________
Name of salesperson (print or type): ____________________________________________
Signature of salesperson: ____________________________________________

IV. Request for Multiple Site Subdivision Exemption—§ 1010.15(c)(1)

Request for Multiple Site Subdivision Exemption

Developer:
Name: ____________________________________________
Address: ____________________________________________
Telephone No.: ____________________________________________

Agent:
Name: ____________________________________________
Address: ____________________________________________
Telephone No.: ____________________________________________

(Insert a general description of the developer’s method of operation.)

I affirm that I am, or will be, the developer of the property and/or method of operation described above.

I affirm that the lots in said property will be sold in compliance with all of the requirements of 12 CFR 1010.15.

I further affirm that the statements contained in all documents submitted with this request for an Exemption Order are true and complete.

Date: ____________________________________________________________________
Signature: ____________________________________________

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than 5 years or both.

V. Request for Regulatory Exemption Order—§ 1010.16(c)

REQUEST FOR EXEMPTION ORDER

Subdivision
Location (including county) ____________________________________________
Developer ____________________________________________
Address ____________________________________________
Authorized Agent or President of Developer ____________________________________________
Address ____________________________________________
Number of Lots Subject to Exemption Request ____________________________________________
Description of Lots (list lot and block number or other identifying designation) ____________________________________________

I affirm that I am the developer or owner of the property described above. I further affirm that the statements contained in all documents submitted with the request for an exemption order are true and complete.

(Date)

(Signature of Developer, Owner or Authorized Agent)

NOTE: No developer or owner of any real property shall willfully violate any of the provisions of this title or of the rules and regulations or any person who willfully, in a Statement of Record filed under, or in a Property Report issued pursuant to this title, makes any untrue statement of a material fact upon conviction be fined not more than $10,000.00 or imprisoned not more than 5 years, or both.

VI. Developer’s Affirmation for Advisory Opinion—§ 1010.17(b)(3)

Developer’s Affirmation

Name of Subdivision ____________________________________________
Location (Including County and State) ____________________________________________
Name of Developer ____________________________________________
Name of Agent ____________________________________________
Address of Agent ____________________________________________
Number of Lots in Subdivision ____________________________________________
Number of Acres in Subdivision ____________________________________________

I affirm that I am the developer or owner of the property described above or will be the
developer or owner at the time the lots are offered for sale to the public, or that I am the agent authorized by the developer or owner to complete this statement. I further affirm that the statements contained in all documents submitted with the request for an Advisory Opinion are true and complete.

(Date)

(Signature)

(Title);

WARNING: 15 U.S.C. 1717 provides: "Any person who willfully violates any of the provisions of this title or of the rules and regulations or any person who willfully, in a Statement of Record filed under, or in a Property Report issued pursuant to this title, makes any untrue statement of a material fact shall upon conviction be fined not more than $10,000.00 or imprisoned not more than 5 years, or both."

VII. Initial and Consolidated Registration Fee Schedule—§1010.35(b)

<table>
<thead>
<tr>
<th>Number of lots</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>200 or fewer lots</td>
<td>$800</td>
</tr>
<tr>
<td>201 or more lots</td>
<td>$1,000</td>
</tr>
</tbody>
</table>

VIII. Property Report for Statement of Record—§1010.100(b)

<table>
<thead>
<tr>
<th>Property Report Heading and Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cover Sheet .................................. 1010.105</td>
</tr>
<tr>
<td>Table of Contents ........................... 1010.106</td>
</tr>
<tr>
<td>Risks of Buying Land, Warnings .............. 1010.107</td>
</tr>
<tr>
<td>General Information .......................... 1010.108</td>
</tr>
<tr>
<td>Title and Land Use ........................... 1010.109</td>
</tr>
<tr>
<td>(a) General Instructions</td>
</tr>
<tr>
<td>(b) Method of Sale</td>
</tr>
<tr>
<td>(c) Encumbrances, Mortgages and Liens</td>
</tr>
<tr>
<td>(d) Recording the Contract and Deed</td>
</tr>
<tr>
<td>(e) Payments</td>
</tr>
<tr>
<td>(f) Restrictions</td>
</tr>
<tr>
<td>(g) Plats, Zoning, Surveying, Permits, Environment</td>
</tr>
<tr>
<td>Roads ..................................... 1010.110</td>
</tr>
<tr>
<td>Utilities ................................... 1010.111</td>
</tr>
<tr>
<td>(a) Water</td>
</tr>
<tr>
<td>(b) Sewer</td>
</tr>
<tr>
<td>(c) Electricity</td>
</tr>
<tr>
<td>(d) Telephone</td>
</tr>
<tr>
<td>(e) Fuel or other Energy Source</td>
</tr>
<tr>
<td>Financial Information ...................... 1010.112</td>
</tr>
<tr>
<td>Local Services .............................. 1010.113</td>
</tr>
<tr>
<td>Recreational Facilities .................... 1010.114</td>
</tr>
<tr>
<td>Subdivision Characteristics and Climate .... 1010.115</td>
</tr>
<tr>
<td>(a) General Topography</td>
</tr>
<tr>
<td>(b) Water Coverage</td>
</tr>
<tr>
<td>(c) Drainage and Fill</td>
</tr>
<tr>
<td>(d) Flood Plain</td>
</tr>
<tr>
<td>(e) Flooding and Soil Erosion</td>
</tr>
<tr>
<td>(f) Nuisances</td>
</tr>
<tr>
<td>(g) Hazards</td>
</tr>
<tr>
<td>(h) Climate</td>
</tr>
<tr>
<td>(i) Occupancy</td>
</tr>
<tr>
<td>Additional Information .................... 1010.116</td>
</tr>
<tr>
<td>(a) Property Owners’ Association</td>
</tr>
<tr>
<td>(b) Taxes</td>
</tr>
<tr>
<td>(c) Violations and Litigation</td>
</tr>
<tr>
<td>(d) Resale or Exchange Program</td>
</tr>
<tr>
<td>(e) Unusual Situations</td>
</tr>
<tr>
<td>1. Leases</td>
</tr>
<tr>
<td>2. Foreign Subdivision</td>
</tr>
<tr>
<td>3. Time Sharing</td>
</tr>
<tr>
<td>4. Membership</td>
</tr>
<tr>
<td>(f) Equal Opportunity in Lot Sales</td>
</tr>
<tr>
<td>(g) Listing of lots</td>
</tr>
<tr>
<td>Cost Sheet .................................. 1010.117</td>
</tr>
<tr>
<td>Receipt, Agent Certification and Cancellation Page .... 1010.118</td>
</tr>
</tbody>
</table>

ADDITIONAL INFORMATION AND DOCUMENTATION

General Information .......................... 1010.208 |
Title and Land Use ........................... 1010.209 |
Roads ..................................... 1010.210 |
Utilities ................................... 1010.211 |
Financial Information ...................... 1010.212 |
Recreational Facilities .................... 1010.214 |
Subdivision Characteristics .......... 1010.215 |
Additional Information .................... 1010.216 |
Affirmation .................................. 1010.219 |

The Bureau’s OMB control number for this information collection is: 3170-0012.

IX. Sample Page for Statement of Record—1010.100(e)

SAMPLE PAGE

ROADS

Here we discuss the roads that lead to the subdivision, those within the subdivision and the location of nearby communities.

ACCESS TO THE SUBDIVISION.
Bur. of Consumer Financial Protection

County road #43 leads to the subdivision. It has two lanes and the width of the wearing surface is 22 feet. It’s paved with a macadam surface.

This road is maintained by Bottineau County with County funds. No improvements are planned at this time.

**ACCESS WITHIN THE SUBDIVISION.**

The roads within the subdivision will be located on rights of way dedicated to the public.

We are responsible for constructing the interior roads. There will be no additional cost to you for this construction.

**WE HAVE NOT SET ASIDE ANY FUNDS IN AN ESCROW OR TRUST ACCOUNT OR MADE ANY OTHER FINANCIAL ARRANGEMENTS TO ASSURE COMPLETION OF THE ROADS, SO THERE IS NO ASSURANCE WE WILL BE ABLE TO COMPLETE THE ROADS.**

At present, the roads are under construction and do not provide access to the lots in Units 2 and 3 during wet weather. The succeeding chart describes their present condition and estimated completion dates.

<table>
<thead>
<tr>
<th>Unit</th>
<th>Estimated starting date (month and year)</th>
<th>Percentage of construction now complete</th>
<th>Estimated completion date (month and year)</th>
<th>Present surface</th>
<th>Final surface</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>February 2010</td>
<td>50</td>
<td>December 2010</td>
<td>Gravel</td>
<td>Asphalt.</td>
</tr>
<tr>
<td>2</td>
<td>August 2010</td>
<td>0</td>
<td>June 2011</td>
<td>Dirt</td>
<td>Do.</td>
</tr>
<tr>
<td>3</td>
<td>April 2011</td>
<td>0</td>
<td>October 2011</td>
<td>None</td>
<td>Do.</td>
</tr>
</tbody>
</table>

X. **Language for Warning on Cover Page of Property Report—§1010.105(c)**

This Report is prepared and issued by the developer of this subdivision. It is not prepared or issued by the Federal Government. Federal law requires that you receive this Report prior to your signing a contract or agreement to buy or lease a lot in this subdivision. However, NO FEDERAL AGENCY HAS JUDGED THE MERITS OR VALUE, IF ANY, OF THIS PROPERTY.

If you received this Report prior to signing a contract or agreement, you may cancel your contract or agreement by giving notice to the seller any time before midnight of the seventh day following the signing of the contract or agreement.

If you did not receive this Report before you signed a contract or agreement, you may cancel the contract or agreement any time within two years from the date of signing.

Name of Subdivision
Name of Developer
Date of This Report

XI. **Sample Entry in Table of Contents for Statement of Record—§1010.106(a)**

<table>
<thead>
<tr>
<th>Title and Land Use #</th>
<th>Page #</th>
</tr>
</thead>
<tbody>
<tr>
<td>Method of Sale</td>
<td></td>
</tr>
<tr>
<td>Encumbrances, Mortgages and Liens</td>
<td></td>
</tr>
<tr>
<td>Recording the Contract and Deed Payments</td>
<td></td>
</tr>
<tr>
<td>Restrictions on the Use of Your Lot</td>
<td></td>
</tr>
<tr>
<td>Plat Maps, Zoning, Surveying, Permits and Environment</td>
<td></td>
</tr>
</tbody>
</table>

XII. **Required Language for Risks of Buying Land—§1010.107(a)**

1. The future value of any land is uncertain and dependent upon many factors. DO NOT expect all land to increase in value.

2. Any value which your lot may have will be affected if the roads, utilities and all proposed improvements are not completed. This paragraph may be omitted if all improvements have been completed or if no improvements are proposed.

3. Resale of your lot may be difficult or impossible, since you may face the competition of our own sales program and local real estate brokers may not be interested in listing your lot.

4. Any subdivision will have an impact on the surrounding environment. Whether or not the impact is adverse and the degree of impact, will depend on the location, size, planning and extent of development. Subdivisions which adversely affect the environment may cause governmental agencies to impose restrictions on the use of the land. Changes in plant and animal life, air and water quality and noise levels may affect your use and enjoyment of your lot and your ability to sell it.

5. In the purchase of real estate, many technical requirements must be met to assure that you receive proper title. Since this purchase involves a major expenditure of money, it is recommended that you seek professional advice before you obligate yourself.

XIII. **Format for General Information—§1010.108**

"This Report covers lots located in County, (State). See Page ___ for a listing of these lots. It is estimated that this subdivision will eventually contain lots."

"The developer of this subdivision is:

(Developer’s Name)

(Developer’s Address)"

337
(Developer’s telephone number)

''Answers to questions and information about this subdivision may be obtained by telephoning the developer at the number listed above.''

XIV. Paragraphs to be included in the General Report—Title to the Property and Land Use—§1010.109(a)(1)

''A person with legal title to property generally has the right to own, use and enjoy the property. A contract to buy a lot may give you possession but doesn’t give you legal title. You won’t have legal title until you receive a valid deed. A restriction or an encumbrance on your lot, or on the subdivision, could adversely affect your title.’’

''Here we will discuss the sales contract you will sign and the deed you will receive. We will also provide you with information about any land use restrictions and encumbrances, mortgages, or liens affecting your lot and some important facts about payments, recording, and title insurance.’’

XV. Statement on Release Provisions—§1010.109(c)(2)(i)(A)

''The release provisions for the (indicate all or particular lots) have not been recorded. Therefore, they may not be honored by subsequent holders of the mortgage. If they are not honored, you may not be able to obtain clear title to your lot until we have paid the (state type of encumbrance) in full, even though you may have received a deed and paid the full purchase price of the lot. If we should default on the (state type of encumbrance) prior to obtaining a release, you may lose your lot and all monies paid.’’


''The (state type of encumbrance) on (indicate all or particular lots) in this subdivision does not contain any provisions for the release of an individual lot when the full purchase price of the lot has been paid. Therefore, if your lot is subject to this (state type of encumbrance), you may not be able to obtain clear title to your lot until we have paid the (state type of encumbrance) in full, even though you may have received a deed and paid the full purchase price of the lot. If we should default on the (state type of encumbrance) prior to obtaining a release, you may lose your lot and all monies paid.’’

XVII. Method and Purpose of Recording Warning—§1010.109(d)(1)(iv)

''Unless your contract or deed is recorded you may lose your lot through the claims of subsequent purchasers or subsequent creditors of anyone having an interest in the land’’.

XVIII. Escrow Statement—Disclosure—§1010.109(e)(1)

''You may lose your (indicate deposit, down payment and/or installment payments) on your lot if we fail to deliver legal title to you as called for in the contract, because they are (it is) not held in an escrow account which fully protects you.’’

XX. Nearby Communities Chart—§1010.110(b)(6)

<table>
<thead>
<tr>
<th>Nearby Communities</th>
<th>Population</th>
<th>Distance Over Paved Roads</th>
<th>Distance Over Unpaved Roads</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

XXI. Water Chart Form—§1010.111(a)(1)(ii)(B)

<table>
<thead>
<tr>
<th>WATER</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

XXII. Comfort Station Chart—§1010.111(b)(1)(ii)

<table>
<thead>
<tr>
<th>Comfort Stations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

Unit Estimated Starting Date (month-year)
Bur. of Consumer Financial Protection

XXIII. Sewer Chart—§1010.111(b)(1)(iii)(B)

Sewer
Unit Estimated Starting Date (month/year)

<table>
<thead>
<tr>
<th>Unit</th>
<th>Estimated starting date (month and year)</th>
<th>Percentage of construction now complete</th>
<th>Estimated Service Availability Date (month/year)</th>
</tr>
</thead>
</table>

XXIV. Electric Service Chart—§1010.111(c)(2)

ELECTRIC SERVICE

<table>
<thead>
<tr>
<th>Unit</th>
<th>Estimated starting date (month and year)</th>
<th>Percentage of construction now complete</th>
<th>Estimated service availability date (month and year)</th>
</tr>
</thead>
</table>

XXV. Recreational Facility Chart—§1010.114(b)

<table>
<thead>
<tr>
<th>Facility</th>
<th>Percentage of construction now complete</th>
<th>Estimated date of start of construction (month/year)</th>
<th>Estimated date available for use (month/year)</th>
<th>Financial assurance of completion</th>
<th>Buyer’s annual cost or assessments</th>
</tr>
</thead>
</table>

XXVI. Cost Sheet Format—§1010.117(a)

Cost Sheet

In addition to the purchase price of your lot, there are other expenditures which must be made.

Listed below are the major costs. There may be other fees for use of the recreational facilities.

All costs are subject to change.

Sales Price
Cash Price of lot ................... $[Number]
Finance Charge ..................... $[Number]
Total ............................... $[Number]
Estimated one-time charges
1. Water connection fee/installation or private well. $[Number]
2. Sewer connection fee/installation of private on-site sewer system. $[Number]
3. Construction costs to extend electric and/or telephone services. $[Number]
4. Other (Identify) ................... $[Number]

Total of estimated sales price and one-time charges. $[Number]

Estimated monthly/annual charges, exclusive of utility use fees
1. Taxes—Average unimproved lot after sale to purchaser. $[Number]
2. Dues and assessments ....... $[Number]

The information contained in this Property Report is an accurate description of our subdivision and development plans.

Signature of Senior Executive Officer

XXVII. Sample Receipt, Agent Certification and Cancellation Page—§1010.118(a)

Receipt, Agent Certification and Cancellation Page

purchaser receipt Important:

Read Carefully

Name of subdivision
ILSRP number
Date of report

We must give you a copy of this Property Report and give you an opportunity to read it before you sign any contract or agreement. By signing this receipt, you acknowledge that you have received a copy of our Property Report.

Received by
Date
Street address
City
State
Zip

If any representations are made to you which are contrary to those in this Report, please notify the:

Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20006

Agent Certification

I certify that I have made no representations to the person(s) receiving this Property Report which are contrary to the information contained in this Property Report.

Lot
Block

339
Purchase Cancellation

If you are entitled to cancel your purchase contract, and wish to do so, you may cancel by personal notice, or in writing. If you cancel in person or by telephone, it is recommended that you immediately confirm the cancellation by certified mail. You may use the form below.

Name of subdivision

Date of contract

This will confirm that I/we wish to cancel our purchase contract.

Purchaser(s) signature

Date

XXVIII. Affirmation of Senior Executive Officer—§ 1010.219

I hereby affirm that I am the Senior Executive Officer of the developer of the lots herein described or will be the Senior Executive Officer of the developer at the time lots are offered for sale or lease to the public, or that I am the agent authorized by the Senior Executive Officer of such developer to complete this statement (if agent, submit written authorization to act as agent); and,

That the statements contained in this Statement of Record and any supplement hereto, together with any documents submitted herein, are full, true, complete, and correct; and,

That the developer is bound to carry out the promises and obligations set forth in this Statement of Record and Property Report or I have clearly stated who is or will be responsible; and

That the fees accompanying this submission are in the amount required by the rules and regulations of the Bureau of Consumer Financial Protection.

(Date)

(Signature)

(Corporate seal if applicable)

WARNING: 15 U.S.C. 1717 provides: “Any person who willfully violates any of the provisions of this title or of the rules and regulations or any person who willfully, in a Statement of Record filed under, or in a Property Report issued pursuant to this title, makes any untrue statement of a material fact shall upon conviction be fined not more than $10,000.00 or imprisoned not more than 5 years, or both.”

XXIX. Form for Certification for Disclosure Documents—§ 1010.504(a)(2)

The (indicate the State Department of Real Estate or other appropriate entity) has reviewed the attached materials and finds they are true copies of (1) the (indicate Property Report or other similar state accepted document or amendment to such document) for (indicate the name of the subdivision), made effective by the state of (give state) on (give date) and still in effect; and (2) the supporting documentation upon which such (indicate the document or amendment) is based.

Signature

XXX. Language to be Included on Property Report Cover Page—§ 1010.558(a)(1)

“If you received this Report prior to signing a contract or agreement, you may cancel your contract or agreement by giving notice to the seller anytime before midnight of the seventh day following the signing of the contract or agreement. 

“If you did not receive this Report before you signed a contract or agreement, you may cancel the contract or agreement anytime within two years from the date of signing.”

XXXI. Notice of Revocation Rights—§ 1010.559(a)(1)

You have the option to cancel your contract or agreement of sale by notice to the seller until midnight of the seventh day following the signing of the contract or agreement. If you did not receive a Property Report prepared pursuant to the rules and regulations of the Bureau of Consumer Financial Protection, in advance of your signing the contract or agreement, this contract or agreement may be revoked at your option for two years from the date of signing.
§ 1011.15 Unlawful sales practices—statutory provisions.

Damages incurred by the seller or lessor means actual damages resulting from the default or breach, as determined by the law of the jurisdiction governing the contract. However, no damages may be specified in the contract or agreement, except a liquidated damages clause not exceeding 15 percent of the purchase price of the lot, excluding any interest owed.

Purchase price means the cash sales price of the lot shown on the contract.

(c) The contractual requirements of 15 U.S.C. 1703(d) do not apply to the sale of a lot for which, within 180 days after the signing of the sales contract, the purchaser receives a warranty deed or, where warranty deeds are not commonly used, its equivalent under state law.

§ 1011.5 Reimbursement.

If a purchaser exercises rights under 15 U.S.C. 1703(b), (c), or (d), but cannot reconvey the lot in substantially similar condition, the developer may subtract from the amount paid by the purchaser, and otherwise due to the purchaser under 15 U.S.C. 1703, any diminished value in the lot caused by the acts of the purchaser.

Subpart B—Sales Practices and Standards

§ 1011.10 General.

Sales practices means any conduct or advertising by a developer or its agents to induce a person to buy or lease a lot. This subpart describes certain unlawful sales practices and provides standards to illustrate what other sales practices are considered misleading in light of certain circumstances in which they are made and within the context of the overall offer and sale or lease.

§ 1011.15 Unlawful sales practices—statutory provisions.

The statutory prohibitions against fraudulent or misleading sales practices are set forth at 15 U.S.C. 1703(a). With respect to the prohibitions against representing that certain facilities will be provided or completed unless there is a contractual obligation to do so by the developer:
§ 1011.20  Contractual obligations.

(a) The contractual covenant to provide or complete the services or amenities may be conditioned only upon grounds that are legally sufficient to establish impossibility of performance in the jurisdiction where the services or amenities are being provided or completed;

(b) Contingencies such as acts of God, strikes, or material shortages are recognized as permissible to defer completion of services or amenities; and

(c) In creating these contractual obligations developers have the option of incorporating by reference the Property Report in effect at the time of the sale or lease. If a developer chooses to incorporate the Property Report by reference, the effective date of the Property Report being included by reference must be specified in the contract of sale or lease.

§ 1011.20 Unlawful sales practices—regulatory provisions.

In selling, leasing or offering to sell or lease any lot in a subdivision it is an unlawful sales practice for any developer or agent, directly or indirectly, to:

(a) Give the Property Report to a purchaser along with other materials when done in such a manner so as to conceal the Property Report from the purchaser.

(b) Give a contract to a purchaser or encourage him to sign anything before delivery of the Property Report.

(c) Refer to the Property Report or Offering Statement as anything other than a Property Report or Offering Statement.

(d) Use any misleading practice, device or representation which would deny a purchaser any cancellation or refund rights or privileges granted the purchaser by the terms of a contract or any other document used by the developer as a sales inducement.

(e) Refuse to deliver a Property Report to any person who exhibits an interest in buying or leasing a lot in the subdivision and requests a copy of the Property Report.

(f) Use a Property Report, note, contract, deed or other document prepared in a language other than that in which the sales campaign is conducted, unless an accurate translation is attached to the document.

(g) Deliberately fail to maintain a sufficient supply of restrictive covenants and financial statements or to deliver a copy to a purchaser upon request as required by §§1010.109(f), 1010.112(d), 1010.209(g), and 1010.212(l).

(h) Use, as a sales inducement, any representation that any lot has good investment potential or will increase in value unless it can be established, in writing, that:

(1) Comparable lots or parcels in the subdivision have, in fact, been resold by their owners on the open market at a profit, or;

(2) There is a factual basis for the represented future increase in value and the factual basis is certain, and;

(3) The sales price of the offered lot does not already reflect the anticipated increase in value due to any promised facilities or amenities. The burden of establishing the relevancy of any comparable sales and the certainty of the factual basis of the increase in value shall rest upon the developer.

(i) Represent a lot as a homesite or building lot unless:

(1) Potable water is available at a reasonable cost;

(2) The lot is suitable for a septic tank operation or there is reasonable assurance that the lot can be served by a central sewage system;

(3) The lot is legally accessible; and

(4) The lot is free from periodic flooding.

§ 1011.25 Misleading sales practices.

Generally, promotional statements or material will be judged on the basis of the affirmative representations contained therein and the reasonable inferences to be drawn therefrom, unless the contrary is affirmatively stated or appears in promotional material, or unless adequate safeguards have been provided by the seller to reasonably guarantee the occurrence of the thing inferred. For example, when a lot is represented as being sold by a warranty deed, the inference is that the seller can and will convey fee simple title free and clear of all liens, encumbrances, and defects except those which are disclosed in writing to the prospective purchaser prior to conveyance.
The following advertising and promotional practices, while not all inclusive, are considered misleading, and are used to evaluate a developer’s or agent’s representations in determining possible violations of the Act or regulations. In this section “represent” carries its common meaning.

(a) Proposed improvements. References to proposed improvements of any land unless it is clearly indicated that the improvements are only proposed or what the completion date is for the proposed improvement.

(b) Off-premises representations. Representing scenes or proposed improvements other than those in the subdivision unless

1. It is clearly stated that the scenes or improvements are not related to the subdivision offered; or

2. In the case of drawings that the scenes or improvements are artists’ renderings:
3. If the areas or improvements shown are available to purchasers, what the distance in road miles is to the scenes or improvements represented.

(c) Land use representations. Representing uses to which the offered land can be put unless the land can be put to such use without unreasonable cost to the purchaser and unless no fact or circumstance exists which would prohibit the immediate use of the land for its represented use.

(d) Use of “road” and “street.” Using the words “road” or “street” unless the type of road surface is disclosed. All roads and streets shown on subdivision maps are presumed to be of an all-weather graded gravel quality or higher and are presumed to be traversable by conventional automobile under all normal weather conditions unless otherwise shown on the map.

(e) Road access and use. Representing the existence of a road easement or right-of-way unless the easement or right-of-way is dedicated to the public, to property owners or to the appropriate property owners association.

(f) Waterfront property. References to waterfront property, unless the property being offered actually fronts on a body of water. Representations which refer to “canal” or “canals” must state the specific use to which such canal or canals can be put.

(g) Maps and distances. (1) The use of maps to show proximity to other communities, unless the maps are drawn to scale and scale included, or the specific road mileage appears in easily readable print.

2. The use of the terms such as “minutes away,” “short distance,” “only miles,” or “near” or similar terms to indicate distance unless the actual distance in road miles is used in conjunction with such terms. Road miles will be measured from the approximate geographical center of the subdivided lands to the approximate downtown or geographical center of the community.

(h) Lot size. Representation of the size of a lot offered unless the lot size represented is exclusive of all easements to which the lot may be subject, except for those for providing utilities to the lot.

(i) “Free” lots. Representing lots as “free” if the prospective purchaser is required to give any consideration whatsoever, offering lots for “closing costs only” when the closing costs are substantially more than customary, or when an additional lot must be purchased at a higher price.

(j) Pre-development prices. References to pre-development sales at a lower price because the land has not yet been developed unless there are plans for development, and reasonable assurance is available that the plans will be completed.

(k) False reports of lot sales. Repeatedly announcing that lots are being sold or to make repetitive announcements of the same lot being sold when in fact this is not the case.

(l) Guaranteed refund. Use of the word “guarantee” or phrase “guaranteed refund” or similar language implying a money-back guarantee unless the refund is unconditional.

(m) Discount certificates. The use of discount certificates when in fact there is no actual price reduction or when a discount certificate is regularly used.

(n) Lot exchanges. Representations regarding property exchange privileges unless any applicable conditions are clearly stated.
§ 1011.27  
(o) Resale program. Making any representation that implies that the developer or agent will resell or repurchase the property being offered at some future time unless the developer or agent has an ongoing program for doing so.

(p) Symbols for conditions. The use of asterisks or any other reference symbol or oral parenthetical expression as a means of contradicting or substantially changing any previously made statement or as a means of obscuring material facts.

(q) Proposed public facilities. References to a proposed public facility unless money has been budgeted for construction of the facility and is available to the public authority having the responsibility of construction, or unless disclosure of the existing facts concerning the public facility is made.

(r) Non-profit or institutional name use. The use of names or trade styles which imply that the developer is a nonprofit research organization, public bureau, group, etc., when such is not the case.

§ 1011.27  Fair housing.
Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601, et seq., and its implementing regulations and guidelines apply to land sales transactions to the extent warranted by the facts of the transaction.

§ 1011.30  Persons to whom subpart B is inapplicable.
Newspaper or periodical publishers, job printers, broadcasters, or telecasters, or any of the employees thereof, are not subject to this subpart unless the publishers, printers, broadcasters, or telecasters:
(a) Have actual knowledge of the falsity of the advertisement or
(b) Have any interest in the subdivision advertised or
(c) Also serve directly or indirectly as the advertising agent or agency for the developer.

§ 1011.50  Advertising disclaimers; subdivisions registered and effective with the Bureau.
(a) The following disclaimer statement shall be displayed below the text of all printed material and literature used in connection with the sale or lease of lots in a subdivision for which an effective Statement or Record is on file with the Director: ‘‘Obtain the Property Report required by Federal law and read it before signing anything. No Federal agency has judged the merits or value, if any, of this property.’’ If the material or literature consists of more than one page, it shall appear at the bottom of the front page. The disclaimer statement shall be set in type of at least ten point font.
(b) If the advertising is of a classified type; is not more than five inches long and not more than one column in print wide, the disclaimer statement may be set in type of at least six point font.
(c) This disclaimer statement need not appear on billboards, on normal size matchbook folders or business cards which are used in advertising nor in advertising of a classified type which is less than one column in print wide and is less than five inches long.
(d) A developer who is required by any state, or states, to display an advertising disclaimer in the same location, or one of equal prominence, as that of the Federal disclaimer, may combine the wording of the disclaimers. All of the wording of the Federal disclaimer must be included in the resulting combined disclaimer.

PART 1012—SPECIAL RULES OF PRACTICE (REGULATION L)

Subpart A  [Reserved]

Subpart B—Filing Assistance

Sec.
1012.30  Scope of this subpart.
1012.35  Prefiling assistance.
1012.40  Processing of filings.

Subpart C  [Reserved]

Subpart D—Adjudicatory Proceedings

1012.105–1012.200  [Reserved]
Subpart A [Reserved]

Subpart B—Filing Assistance

§ 1012.205 Suspension notice prior to effective date.

1012.205 Suspension notice prior to effective date.

1012.210 Hearings—suspension notice prior to effective date.

1012.215 Notice of proceedings subsequent to effective date.

1012.220 Hearings—notice of proceedings subsequent to effective date.

1012.225 Suspension order for failure to cooperate.

1012.230 Suspension order pending amendments.

1012.235 Hearings—suspension orders for failure to cooperate and pending amendments.

1012.236 Notice of proceedings to withdraw a State's certification.

1012.237 Hearings—notice of proceedings pursuant to withdrawal of state certification.

1012.238 Notices of proceedings to terminate exemptions.

1012.239 Hearings—notice of proceedings pursuant to exemptions.


SOURCE: 76 FR 79524, Dec. 21, 2011, unless otherwise noted.

Subpart C [Reserved]

Subpart D—Adjudicatory Proceedings

§ 1012.205 Suspension notice prior to effective date.

1012.205 Suspension notice prior to effective date.

A suspension pursuant to §1010.45(a) of this chapter shall be effected by service of a suspension notice which shall contain:

(a) An identification of the filing to which the notice applies.

(b) A specification of the deficiencies of form, disclosure, accuracy, documentation or fee tender which constitute the grounds under §1010.45(a) of this chapter, of the suspension, and of the additional or corrective procedure, information, documentation, or tender which will satisfy the Director's requirements.

(c) A notice of the hearing rights of the developer under §1012.230 and of the procedures for invoking those rights.
§ 1012.210

(d) A notice that, unless otherwise ordered, the suspension shall remain in effect until 30 days after the developer cures the specified deficiencies as required by the notice.

§ 1012.210 Hearings—suspension notice prior to effective date.

(a) A developer, upon receipt of a suspension notice issued pursuant to §1010.45(a) of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the suspension notice. Such a request must be filed within 15 days of receipt of the suspension notice and must be accompanied by an answer and 3 copies thereof signed by the respondent or the respondent’s attorney conforming to the requirements of 1081.201(b) and (c).

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 20 days of receipt of the request. The time and place for hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) A request for hearing filed pursuant to paragraph (a) of this section shall not interrupt or annul the effectiveness of the suspension notice, and suspension of the effective date of the Statement or amendment shall continue until vacated by order of the Director or administrative law judge. Except in cases in which the developer shall waive or withdraw the request for such hearing, or shall fail to pursue the same by appropriate appearance at a hearing duly scheduled, noticed and convened, the suspended filing shall be reinstated in the event of failure of the Director to schedule, give notice of or hold a duly-requested hearing within the time specified in paragraph (b) of this section, or in the event of a finding that the Director has failed to support at such hearing the propriety of the suspension with respect to the material issues of law and fact raised by the answer. Such reinstatement shall be effective on the date on which the filing would have become effective had no notice of suspension been issued with respect to it.

(d) If there is an outstanding suspension notice under §1010.45(a) with respect to the same matter for which a suspension order under §1010.45(b)(3) is issued, the notice and order shall be consolidated for the purposes of hearing. In the event that allegations upon which the suspension notice and suspension order are based are identical, only one answer need be filed.

§ 1012.215 Notice of proceedings subsequent to effective date.

A proceeding pursuant to §1010.45(b)(1) of this chapter is commenced by issuance and service of a notice which shall contain:

(a) A clear and accurate identification of the filing or filings to which the notice relates.

(b) A clear and concise statement of material facts, sufficient to inform the respondent with reasonable definiteness of the statements, omissions, conduct, circumstances or practices alleged to constitute the grounds for the proposed suspension order under §1010.45(b)(1) of this chapter.

(c) A notice of hearing rights of the developer under §1012.220 and of the procedures for invoking those rights.

(d) Designation of the administrative law judge appointed to preside over pre-hearing procedures and over the hearings.

(e) A notice that failure to file an answer conforming to the requirements of §1081.201(b) and (c) will result in an order suspending the Statement of Record.

§ 1012.220 Hearings—notice of proceedings subsequent to effective date.

(a) A developer, upon receipt of a notice of proceedings issued pursuant to §1010.45(b)(1) of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the notice of proceedings. Such a request must be filed within 15 days of receipt of the notice of proceedings and must be accompanied by an answer conforming to the requirements of §1081.201(b) and (c).

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 45 days of receipt of the request by the Director unless it is determined that it
§ 1012.225 Suspension order for failure to cooperate.

A suspension pursuant to §1010.45(b)(2) of this chapter shall be effected by service of a suspension order which shall contain:

(a) An identification of the filing to which the order applies.

(b) Bases for issuance of order.

(c) A notice of the hearing rights of the developer under §1012.235 the procedures for invoking those rights.

(d) A statement that the order shall remain in effect until the developer has complied with the Director’s requirements.

§ 1012.230 Suspension order pending amendments.

A suspension pursuant to paragraph (b)(3) of §1010.45 of this chapter shall be effected by service of a suspension order which shall contain:

(a) An identification of the filing to which the order applies.

(b) An identification of the amendment to the filing which generated the order.

(c) A statement that the issuance of the order is necessary or appropriate in the public interest or for the protection of purchasers.

(d) A statement that the order shall remain in effect until the amendment becomes effective.

(e) A notice of the hearing rights of the developer under §1012.235 and of the procedure for invoking those rights.

§ 1012.235 Hearings—suspension orders for failure to cooperate and pending amendments.

(a) A developer, upon receipt of a suspension order issued pursuant to §1010.45(b)(2) or §1010.45(b)(3) of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the suspension order. Such request must be filed within 15 days of receipt of the suspension order and must be accompanied by an answer and 3 copies thereof signed by the respondent or respondent’s attorney conforming to the requirements of §1081.201(b) and (c).

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 20 days of receipt of the request. The time and place for hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) A request for hearing filed pursuant to paragraph (a) of this section shall not interrupt or annul the effectiveness of the suspension order.

§ 1012.236 Notice of proceedings to withdraw a State’s certification.

A proceeding pursuant to §1010.505 of this chapter is commenced by issuance and service of a notice which shall contain:

(a) An identification of the state certification to which the notice applies.

(b) A clear and concise statement of material facts, sufficient to inform the respondent with reasonable definiteness of the basis for the Director’s determination, pursuant to §1010.505, that the State’s laws, regulations and the administration thereof, taken as a whole, no longer meet the requirements of §1010.501.

(c) A notice of hearing rights of the state under §1012.237 and of the procedures for invoking those rights.

(d) A notice that failure to file an answer conforming to the requirements of §1081.201(b) and (c) will result in an order suspending the State’s certification.

§ 1012.237 Hearings—notice of proceedings pursuant to withdrawal of state certification.

(a) A State, upon receipt of a notice of proceedings issued pursuant to §1010.505 of this chapter, may obtain a hearing by filing a written request in
§ 1012.238 Notices of proceedings to terminate exemptions.

A proceeding to terminate a self-determining exemption under §1010.14 or an exemption order under §1010.15 or §1010.16 is commenced by issuance and service of a notice which shall contain:

(a) In the case of an exemption under §1010.14, an identification of the developer and subdivision to which this notice applies. In the case of an exemption under either §1010.15 or §1010.16, an identification of the exemption order to which the notice applies.

(b) A clear and concise statement of material facts, sufficient to inform the respondent with reasonable definiteness of the basis for the Director’s determination that further exemption from the registration and disclosure requirements is not in the public interest or that the sales or leases do not meet the requirements for exemption, or both.

(c) A notice of hearing rights of the respondent under §1012.239 and of the procedures for invoking those rights.

(d) A notice that failure to file an answer conforming to the requirements of §1081.201(b) and (c) will result, in the case of a notice issued under §1010.14, in an order terminating eligibility for the exemption, or, in the case of a notice issued under either §1010.15 or §1010.16, in an order terminating the exemption order.

§ 1012.239 Hearings—notice of proceedings pursuant to exemptions.

(a) A developer, upon receipt of a notice of proceedings issued under §§1010.14, 1010.15, and 1010.16 of this chapter, may obtain a hearing by filing a written request contained in the notice of proceedings. The request must be filed within 15 days of receipt of the notice of proceedings and must be accompanied by an answer conforming to the requirements of §1081.201(b) and (c).

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 45 days of receipt of this request. The time and place for the hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) Failure to answer within the time allowed by paragraph (a) of this section, or failure to appear at a hearing duly scheduled shall result in an appropriate order under §1010.505 of this chapter withdrawing the State’s certification. Such order shall be effective as of the date of service or receipt.

PART 1013—CONSUMER LEASING (REGULATION M)

§ 1013.1 Authority, scope, purpose, and enforcement.

(a) Authority. The regulation in this part, known as Regulation M, is issued by the Bureau of Consumer Financial Protection to implement the consumer leasing provisions of the Truth in Lending Act, which is title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.). Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 et seq. and have been assigned OMB control number 3170–0006.

(b) Scope and purpose. This part applies to all persons that are lessors of personal property under consumer leases as those terms are defined in §1013.2(e)(1) and (h), except persons excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111–203, 124 Stat. 1376. The purpose of this part is:

(1) To ensure that lessees of personal property receive meaningful disclosures that enable them to compare lease terms with other leases and, where appropriate, with credit transactions;

(2) To limit the amount of balloon payments in consumer lease transactions; and

(3) To provide for the accurate disclosure of lease terms in advertising.

(c) Enforcement and liability. Section 108 of the Act contains the administrative enforcement provisions. Sections 112, 130, 131, and 185 of the Act contain the liability provisions for failing to comply with the requirements of the Act and this part.

§ 1013.2 Definitions.

For the purposes of this part the following definitions apply:

(a) Act means the Truth in Lending Act (15 U.S.C. 1601 et seq.) and the Consumer Leasing Act is Chapter 5 of the Truth in Lending Act.

(b) Advertisement means a commercial message in any medium that directly or indirectly promotes a consumer lease transaction.

(c) Bureau refers to the Bureau of Consumer Financial Protection.

(d) Closed-end lease means a consumer lease other than an open-end lease as defined in this section.

(e)(1) Consumer lease means a contract in the form of a bailment or lease for the use of personal property by a natural person primarily for personal, family, or household purposes, for a period exceeding four months and for a total contractual obligation not exceeding the applicable threshold amount, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease. The threshold amount is adjusted annually to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable. See the official commentary to this paragraph (e) for the threshold amount applicable to a specific consumer lease. Unless the context indicates otherwise, in this part “lease” means “consumer lease.”

(2) The term does not include a lease that meets the definition of a credit sale in Regulation Z (12 CFR 226.2(a)). It also does not include a lease for agricultural, business, or commercial purposes or a lease made to an organization.

(3) This part does not apply to a lease transaction of personal property which is incident to the lease of real property and which provides that:

(i) The lessee has no liability for the value of the personal property at the end of the lease term except for abnormal wear and tear; and

(ii) The lessee has no option to purchase the leased property.

(f) Gross capitalized cost means the amount agreed upon by the lessor and the lessee as the value of the leased property and any items that are capitalized or amortized during the lease term, including but not limited to taxes, insurance, service agreements, and any outstanding prior credit or lease balance. Capitalized cost reduction means the total amount of any rebate, cash payment, net trade-in allowance, and noncash credit that reduces the gross capitalized cost. The adjusted capitalized cost equals the gross capitalized cost less the capitalized cost reduction.
and is the amount used by the lessor in calculating the base periodic payment.

(g) Lessee means a natural person who enters into or is offered a consumer lease.

(h) Lessor means a person who regularly leases, offers to lease, or arranges for the lease of personal property under a consumer lease. A person who has leased, offered, or arranged to lease personal property more than five times in the preceding calendar year or more than five times in the current calendar year is subject to the Act and this part.

(i) Open-end lease means a consumer lease in which the lessee’s liability at the end of the lease term is based on the difference between the residual value of the leased property and its realized value.

(j) Organization means a corporation, trust, estate, partnership, cooperative, association, or government entity or instrumentality.

(k) Person means a natural person or an organization.

(l) Personal property means any property that is not real property under the law of the state where the property is located at the time it is offered or made available for lease.

(m) Realized value means:

(1) The price received by the lessor for the leased property at disposition;

(2) The highest offer for disposition of the leased property; or

(3) The fair market value of the leased property at the end of the lease term.

(n) Residual value means the value of the leased property at the end of the lease term, as estimated or assigned at consummation by the lessor, used in calculating the base periodic payment.

(o) Security interest and security mean any interest in property that secures the payment or performance of an obligation.

(p) State means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

§ 1013.3 General disclosure requirements.

(a) General requirements. A lessor shall make the disclosures required by §1013.4, as applicable. The disclosures shall be made clearly and conspicuously in writing in a form the consumer may keep, in accordance with this section. The disclosures required by this part may be provided to the lessee in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.). For an advertisement accessed by the consumer in electronic form, the disclosures required by §1013.7 may be provided to the consumer in electronic form in the advertisement, without regard to the consumer consent or other provisions of the E-Sign Act.

(1) Form of disclosures. The disclosures required by §1013.4 shall be given to the lessee together in a dated statement that identifies the lessor and the lessee; the disclosures may be made either in a separate statement that identifies the consumer lease transaction or in the contract or other document evidencing the lease. Alternatively, the disclosures required to be segregated from other information under paragraph (a)(2) of this section may be provided in a separate dated statement that identifies the lessor and the lessee; the disclosures may be made either in a separate statement that identifies the consumer lease transaction or in the contract or other document evidencing the lease. In a lease of multiple items, the property description required by §1013.4(a) may be given in a separate statement that is included in the disclosure statement required by this paragraph.

(2) Segregation of certain disclosures. The following disclosures shall be segregated from other information and shall contain only directly related information: §§1013.4(b) through (f), (g)(2), (h)(3), (i)(1), (j), and (m)(1). The headings, content, and format for the disclosures referred to in this paragraph (a)(2) shall be provided in a manner substantially similar to the applicable model form in appendix A of this part.

(3) Timing of disclosures. A lessor shall provide the disclosures to the lessee prior to the consummation of a consumer lease.

(4) Language of disclosures. The disclosures required by §1013.4 may be made
in a language other than English provided that they are made available in English upon the lessee's request.

(b) **Additional information; nonsegregated disclosures.** Additional information may be provided with any disclosure not listed in paragraph (a)(2) of this section, but it shall not be stated, used, or placed so as to mislead or confuse the lessee or contradict, obscure, or detract attention from any disclosure required by this part.

(c) **Multiple lessors or lessees.** When a transaction involves more than one lessor, the disclosures required by this part may be made by one lessor on behalf of all the lessors. When a lease involves more than one lessee, the lessor may provide the disclosures to any lessee who is primarily liable on the lease.

(d) **Use of estimates.** If an amount or other item needed to comply with a required disclosure is unknown or unavailable after reasonable efforts have been made to ascertain the information, the lessor may use a reasonable estimate that is based on the best information available to the lessor, is clearly identified as an estimate, and is not used to circumvent or evade any disclosures required by this part.

(e) **Effect of subsequent occurrence.** If a required disclosure becomes inaccurate because of an event occurring after consummation, the inaccuracy is not a violation of this part.

(f) **Minor variations.** A lessor may disregard the effects of the following in making disclosures:

(1) That payments must be collected in whole cents;
(2) That dates of scheduled payments may be different because a scheduled date is not a business day;
(3) That months have different numbers of days; and
(4) That February 29 occurs in a leap year.

§ 1013.4 Content of disclosures.

For any consumer lease subject to this part, the lessor shall disclose the following information, as applicable:

(a) **Description of property.** A brief description of the leased property sufficient to identify the property to the lessee and lessor.

(b) **Amount due at lease signing or delivery.** The total amount to be paid prior to or at consummation or by delivery, if delivery occurs after consummation, using the term “amount due at lease signing or delivery.” The lessor shall itemize each component by type and amount, including any refundable security deposit, advance monthly or other periodic payment, and capitalized cost reduction; and in motor vehicle leases, shall itemize how the amount due will be paid, by type and amount, including any net trade-in allowance, rebates, noncash credits, and cash payments in a format substantially similar to the model forms in appendix A of this part.

(c) **Payment schedule and total amount of periodic payments.** The number, amount, and due dates or periods of payments scheduled under the lease, and the total amount of the periodic payments.

(d) **Other charges.** The total amount of other charges payable to the lessor, itemized by type and amount, that are not included in the periodic payments. Such charges include the amount of any liability the lease imposes upon the lessee at the end of the lease term; the potential difference between the residual and realized values referred to in paragraph (k) of this section is excluded.

(e) **Total of payments.** The total of payments, with a description such as “the amount you will have paid by the end of the lease.” This amount is the sum of the amount due at lease signing (less any refundable amounts), the total amount of periodic payments (less any portion of the periodic payment paid at lease signing), and other charges under paragraphs (b), (c), and (d) of this section. In an open-end lease, a description such as “you will owe an additional amount if the actual value of the vehicle is less than the residual value” shall accompany the disclosure.

(f) **Payment calculation.** In a motor vehicle lease, a mathematical progression of how the scheduled periodic payment is derived, in a format substantially similar to the applicable model form in appendix A of this part, which shall contain the following:

(1) **Gross capitalized cost.** The gross capitalized cost, including a disclosure of the agreed upon value of the vehicle, a description such as “the agreed upon
value of the vehicle [state the amount] and any items you pay for over the lease term (such as service contracts, insurance, and any outstanding prior credit or lease balance),” and a statement of the lessee’s option to receive a separate written itemization of the gross capitalized cost. If requested by the lessee, the itemization shall be provided before consummation.

(2) Capitalized cost reduction. The capitalized cost reduction, with a description such as “the amount of any net trade-in allowance, rebate, noncash credit, or cash you pay that reduces the gross capitalized cost.”

(3) Adjusted capitalized cost. The adjusted capitalized cost, with a description such as “the amount used in calculating your base [periodic] payment.”

(4) Residual value. The residual value, with a description such as “the value of the vehicle at the end of the lease used in calculating your base [periodic] payment.”

(5) Depreciation and any amortized amounts. The depreciation and any amortized amounts, which is the difference between the adjusted capitalized cost and the residual value, with a description such as “the amount charged for the vehicle’s decline in value through normal use and for any other items paid over the lease term.”

(6) Rent charge. The rent charge, with a description such as “the amount charged in addition to the depreciation and any amortized amounts.” This amount is the difference between the total of the base periodic payments over the lease term minus the depreciation and any amortized amounts.

(7) Total of base periodic payments. The total of base periodic payments with a description such as “depreciation and any amortized amounts plus the rent charge.”

(8) Lease payments. The lease payments with a description such as “the number of payments in your lease.”

(9) Base periodic payment. The total of the base periodic payments divided by the number of payment periods in the lease.

(10) Itemization of other charges. An itemization of any other charges that are part of the periodic payment.

(11) Total periodic payment. The sum of the base periodic payment and any other charges that are part of the periodic payment.

(g) Early termination—(1) Conditions and disclosure of charges. A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term; and the amount or a description of the method for determining the amount of any penalty or other charge for early termination, which must be reasonable.

(2) Early termination notice. In a motor vehicle lease, a notice substantially similar to the following: “Early Termination. You may have to pay a substantial charge if you end this lease early. The charge may be up to several thousand dollars. The actual charge will depend on when the lease is terminated. The earlier you end the lease, the greater this charge is likely to be.”

(h) Maintenance responsibilities. The following provisions are required:

(1) Statement of responsibilities. A statement specifying whether the lessor or the lessee is responsible for maintaining or servicing the leased property, together with a brief description of the responsibility;

(2) Wear and use standard. A statement of the lessor’s standards for wear and use (if any), which must be reasonable; and

(3) Notice of wear and use standard. In a motor vehicle lease, a notice regarding wear and use substantially similar to the following: “Excessive Wear and Use. You may be charged for excessive wear based on our standards for normal use.” The notice shall also specify the amount or method for determining any charge for excess mileage.

(1) Purchase option. A statement of whether or not the lessee has the option to purchase the leased property, and:

(1) End of lease term. If at the end of the lease term, the purchase price; and

(2) During lease term. If prior to the end of the lease term, the purchase price or the method for determining the price and when the lessee may exercise this option.

(j) Statement referencing nonsegregated disclosures. A statement that the lessee should refer to the lease documents for
additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interests, if applicable.

(k) Liability between residual and realized values. A statement of the lessee’s liability, if any, at early termination or at the end of the lease term for the difference between the residual value of the leased property and its realized value.

(l) Right of appraisal. If the lessee’s liability at early termination or at the end of the lease term is based on the realized value of the leased property, a statement that the lessee may obtain, at the lessee’s expense, a professional appraisal by an independent third party (agreed to by the lessee and the lessor) of the value that could be realized at sale of the leased property. The appraisal shall be final and binding on the parties.

(m) Liability at end of lease term based on residual value. If the lessee is liable at the end of the lease term for the difference between the residual value of the leased property and its realized value:

(1) Rent and other charges. The rent and other charges, paid by the lessee and required by the lessor as an incident to the lease transaction, with a description such as “the total amount of rent and other charges imposed in connection with your lease [state the amount].”

(2) Excess liability. A statement about a rebuttable presumption that, at the end of the lease term, the residual value of the leased property is unreasonable and not in good faith to the extent that the residual value exceeds the realized value by more than three times the base monthly payment (or more than three times the average payment allocable to a monthly period, if the lease calls for periodic payments other than monthly); and that the lessor cannot collect the excess amount unless the lessor brings a successful court action and pays the lessee’s reasonable attorney’s fees, or unless the excess of the residual value over the realized value is due to unreasonable or excessive wear or use of the leased property (in which case the rebuttable presumption does not apply).

(3) Mutually agreeable final adjustment. A statement that the lessee and lessor are permitted, after termination of the lease, to make any mutually agreeable final adjustment regarding excess liability.

(n) Fees and taxes. The total dollar amount for all official and license fees, registration, title, or taxes required to be paid in connection with the lease.

(o) Insurance. A brief identification of insurance in connection with the lease including:

(1) Through the lessor. If the insurance is provided by or paid through the lessor, the types and amounts of coverage and the cost to the lessee; or

(2) Through a third party. If the lessee must obtain the insurance, the types and amounts of coverage required of the lessee.

(p) Warranties or guarantees. A statement identifying all express warranties and guarantees from the manufacturer or lessor with respect to the leased property that apply to the lessee.

(q) Penalties and other charges for delinquency. The amount or the method of determining the amount of any penalty or other charge for delinquency, default, or late payments, which must be reasonable.

(r) Security interest. A description of any security interest, other than a security deposit disclosed under paragraph (b) of this section, held or to be retained by the lessor; and a clear identification of the property to which the security interest relates.

(s) Limitations on rate information. If a lessor provides a percentage rate in an advertisement or in documents evidencing the lease transaction, a notice stating that “this percentage may not measure the overall cost of financing this lease” shall accompany the rate disclosure. The lessor shall not use the term “annual percentage rate,” “annual lease rate,” or any equivalent term.

(t) Non-motor vehicle open-end leases. Non-motor vehicle open-end leases remain subject to section 182(10) of the Act regarding end of term liability.

§ 1013.5 Renegotiations, extensions, and assumptions.

(a) Renegotiation. A renegotiation occurs when a consumer lease subject to
this part is satisfied and replaced by a new lease undertaken by the same consumer. A renegotiation requires new disclosures, except as provided in paragraph (d) of this section.

(b) Extension. An extension is a continuation, agreed to by the lessor and the lessee, of an existing consumer lease beyond the originally scheduled end of the lease term, except when the continuation is the result of a renegotiation. An extension that exceeds six months requires new disclosures, except as provided in paragraph (d) of this section.

(c) Assumption. New disclosures are not required when a consumer lease is assumed by another person, whether or not the lessor charges an assumption fee.

(d) Exceptions. New disclosures are not required for the following, even if they meet the definition of a renegotiation or an extension:

(1) A reduction in the rent charge;
(2) The deferment of one or more payments, whether or not a fee is charged;
(3) The extension of a lease for not more than six months on a month-to-month basis or otherwise;
(4) A substitution of leased property with property that has a substantially equivalent or greater economic value, provided no other lease terms are changed;
(5) The addition, deletion, or substitution of leased property in a multiple-item lease, provided the average periodic payment does not change by more than 25 percent; or
(6) An agreement resulting from a court proceeding.

§ 1013.6 [Reserved]

§ 1013.7 Advertising.

(a) General rule. An advertisement for a consumer lease may state that a specific lease of property at specific amounts or terms is available only if the lessor usually and customarily leases or will lease the property at those amounts or terms.

(b) Clear and conspicuous standard. Disclosures required by this section shall be made clearly and conspicuously.

(1) Amount due at lease signing or delivery. Except for the statement of a periodic payment, any affirmative or negative reference to a charge that is a part of the disclosure required under paragraph (d)(2)(ii) of this section shall not be more prominent than that disclosure.

(2) Advertisement of a lease rate. If a lessor provides a percentage rate in an advertisement, the rate shall not be more prominent than any of the disclosures in §1013.4, with the exception of the notice in §1013.4(s) required to accompany the rate; and the lessor shall not use the term “annual percentage rate,” “annual lease rate,” or equivalent term.

(c) Catalogs or other multipage advertisements; electronic advertisements. A catalog or other multipage advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), that provides a table or schedule of the required disclosures shall be considered a single advertisement if, for lease terms that appear without all the required disclosures, the advertisement refers to the page or pages on which the table or schedule appears.

(d) Advertisement of terms that require additional disclosure—(1) Triggering terms. An advertisement that states any of the following items shall contain the disclosures required by paragraph (d)(2) of this section, except as provided in paragraphs (e) and (f) of this section:

(i) The amount of any payment; or
(ii) A statement of any capitalized cost reduction or other payment (or that no payment is required) prior to or at consummation or by delivery, if delivery occurs after consummation.

(2) Additional terms. An advertisement stating any item listed in paragraph (d)(1) of this section shall also state the following items:

(i) That the transaction advertised is a lease;
(ii) The total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;
(iii) The number, amounts, and due dates or periods of scheduled payments under the lease;
(iv) A statement of whether or not a security deposit is required; and
(v) A statement that an extra charge may be imposed at the end of the lease
term where the lessee’s liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

(e) Alternative disclosures—merchandise tags. A merchandise tag stating any item listed in paragraph (d)(1) of this section may comply with paragraph (d)(2) of this section by referring to a sign or display prominently posted in the lessor’s place of business that contains a table or schedule of the required disclosures.

(f) Alternative disclosures—television or radio advertisements—(1) Toll-free number or print advertisement. An advertisement made through television or radio stating any item listed in paragraph (d)(1) of this section complies with paragraph (d)(2) of this section if the advertisement states the items listed in paragraphs (d)(2)(i) through (iii) of this section, and:

(i) Lists a toll-free telephone number along with a reference that such number may be used by consumers to obtain the information required by paragraph (d)(2) of this section; or

(ii) Directs the consumer to a written advertisement in a publication of general circulation in the community served by the media station, including the name and the date of the publication, with a statement that information required by paragraph (d)(2) of this section is included in the advertisement. The written advertisement shall be published beginning at least three days before and ending at least ten days after the broadcast.

(2) Establishment of toll-free number. (i) The toll-free telephone number shall be available for no fewer than ten days, beginning on the date of the broadcast.

(ii) The lessor shall provide the information required by paragraph (d)(2) of this section orally, or in writing upon request.

§ 1013.8 Record retention.

A lessor shall retain evidence of compliance with the requirements imposed by this part, other than the advertising requirements under §1013.7, for a period of not less than two years after the date the disclosures are required to be made or an action is required to be taken.

§ 1013.9 Relation to state laws.

(a) Inconsistent state law. A state law that is inconsistent with the requirements of the Act and this part is preempted to the extent of the inconsistency. If a lessor cannot comply with a state law without violating a provision of this part, the state law is inconsistent within the meaning of section 186(a) of the Act and is preempted, unless the state law gives greater protection and benefit to the consumer. A state, through an official having primary enforcement or interpretative responsibilities for the state consumer leasing law, may apply to the Bureau for a preemption determination.

(b) Exemptions—(1) Application. A state may apply to the Bureau for an exemption from the requirements of the Act and this part for any class of lease transactions within the state. The Bureau will grant such an exemption if the Bureau determines that:

(i) The class of leasing transactions is subject to state law requirements substantially similar to the Act and this part or that lessees are afforded greater protection under state law; and

(ii) There is adequate provision for state enforcement.

(2) Enforcement and liability. After an exemption has been granted, the requirements of the applicable state law (except for additional requirements not imposed by Federal law) will constitute the requirements of the Act and this part. No exemption will extend to the civil liability provisions of sections 130, 131, and 185 of the Act.

APPENDIX A TO PART 1013—MODEL FORMS

A-1—Model Open-End or Finance Vehicle Lease Disclosures
A-2—Model Closed-End or Net Vehicle Lease Disclosures
A-3—Model Furniture Lease Disclosures
## Federal Consumer Leasing Act Disclosures

### Amount Due at Lease Signing or Delivery

<table>
<thead>
<tr>
<th>Monthly Payments</th>
<th>Other Charges (not part of your monthly payment)</th>
<th>Total of Payments (The amount you will have paid by the end of the lease)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Your first monthly payment of $ ________ is due on the ________ of each month. The total of your monthly payments is $ ________ .</td>
<td>Disposition fee (if you do not purchase the vehicle) $ ________ .</td>
<td>$ ________ .</td>
</tr>
</tbody>
</table>

### Itemization of Amount Due at Lease Signing or Delivery

<table>
<thead>
<tr>
<th>Amount Due at Lease Signing or Delivery</th>
<th>How the Amount Due at Lease Signing or Delivery will be paid:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capitalized cost reduction $ ________</td>
<td>Net trade-in allowance $ ________ .</td>
</tr>
<tr>
<td>First monthly payment</td>
<td>Rebates and noncash credits</td>
</tr>
<tr>
<td>Refundable security deposit</td>
<td>Amount to be paid in cash $ ________ .</td>
</tr>
<tr>
<td>Title fees</td>
<td></td>
</tr>
<tr>
<td>Registration fees</td>
<td></td>
</tr>
<tr>
<td>Total $ ________</td>
<td>Total $ ________ .</td>
</tr>
</tbody>
</table>

### Your monthly payment is determined as shown below:

- Gross capitalized cost. The agreed upon value of the vehicle ($ ________ ) and any items you pay over the lease term (such as service contracts, insurance, and any outstanding prior credit or lease balance) $ ________ .

If you want an itemization of this amount, please check this box.

- Capitalized cost reduction. The amount of any net trade-in allowance, rebate, noncash credit, or cash you pay that reduces the gross capitalized cost $ ________ .

- Adjusted capitalized cost. The amount used in calculating your base monthly payment $ ________ .

- Residual value. The value of the vehicle at the end of the lease $ ________ .

- Depreciation and any amortized amounts. The amount charged for the vehicle’s decline in value through normal use and for other items paid over the lease term $ ________ .

- Rent charge. The amount charged in addition to the depreciation and any amortized amounts $ ________ .

- Total of base monthly payments. The depreciation and any amortized amounts plus the rent charge $ ________ .

- Lease payments. The number of payments in your lease $ ________ .

- Base monthly payment $ ________ .

- Monthly sales/use tax $ ________ .

- Total monthly payment $ ________ .

### Early Termination

You may have to pay a substantial charge if you end this lease early. The charge may be up to several thousand dollars. The actual charge will depend on when the lease is terminated. The earlier you end the lease, the greater this charge is likely to be.

### Excessive Wear and Use

You may be charged for excessive wear based on our standards for normal use (and for mileage in excess of ________ miles per year at the rate of ________ per mile).

### Purchase Option at End of Lease Term

You have an option to purchase the vehicle at the end of the lease term for $ ________ .

### Other Important Terms

See your lease documents for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interest, if applicable.
Figure 1

[The following provisions are the nonsegregated disclosures required under Regulation M.]

<table>
<thead>
<tr>
<th>Description of Leased Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year</td>
</tr>
<tr>
<td>1</td>
</tr>
</tbody>
</table>

Official Fees and Taxes. The total amount you will pay for official and license fees, registration, title, and taxes over the term of your lease, whether included with your monthly payments or assessed otherwise: $ ____________:

Insurance. The following types and amounts of insurance will be acquired in connection with this lease:

$ ____________ up to $ ____________:

You (lessee) agree to provide insurance coverage in the amount and types indicated above.

End of Term Liability. (a) The residual value ($ ____________) of the vehicle is based on a reasonable, good faith estimate of the value of the vehicle at the end of the lease term. If the actual value of the vehicle at that time is greater than the residual value, you will have no further liability under this lease, except for other charges already incurred [and are entitled to a credit or refund of any surplus]. If the actual value of the vehicle is less than the residual value, you will be liable for any difference up to $ ____________ (2 times the monthly payment). For any difference in excess of that amount, you will be liable only if:

1. Excessive use or damage [as described in paragraph ___ (representing more than normal wear and use) resulted in an unusually low value at the end of the term.
2. The matter is not otherwise resolved and we win a lawsuit against you seeking a higher payment.
3. You voluntarily agree with us after the end of the lease term to make a higher payment.

Should we bring a lawsuit against you, we must prove that our original estimate of the value of the leased property at the end of the lease term was reasonable and was made in good faith. For example, we might prove that the actual value was less than the original estimated value, although the original estimate was reasonable, because of an unanticipated decline in value for that type of vehicle. We must also pay your attorney’s fees.

(b) If you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the ____________ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

Standards for Wear and Use. The following standards are applicable for determining unreasonable or excess wear and use of the leased vehicle:

Maintenance.

[You are responsible for the following maintenance and servicing of the leased vehicle:]

[We are responsible for the following maintenance and servicing of the leased vehicle:]

Warranties. The leased vehicle is subject to the following express warranties:

Early Termination and Default. (a) You may terminate this lease before the end of the lease term under the following conditions:

The charge for such early termination is:

(b) We may terminate this lease before the end of the lease term under the following conditions:

Upon such termination we shall be entitled to the following charge(s) for:

(c) To the extent these charges have been accounted for the value of the vehicle at termination, if you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the ____________ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

Security Interest. We reserve a security interest in the following type(s) in the property listed below to secure performance of your obligations under this lease:

Late Payments. The charge for late payments is: $

Option to Purchase Leased Property Prior to the End of the Lease. [You have an option to purchase the leased vehicle prior to the end of the term. The price will be $ ____________ (the method of determining the price).] [You do not have an option to purchase the leased vehicle.]
### Federal Consumer Leasing Act Disclosures

**Date:**

<table>
<thead>
<tr>
<th>Lessor(s)</th>
<th>Lessee(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Amount Due at Lease Signing or Delivery (as listed below):</strong></td>
<td><strong>Monthly Payments</strong></td>
</tr>
<tr>
<td></td>
<td>Your first monthly payment of $ , followed by $ payments of $ due on the $ of each month. The total of your monthly payments is $ .</td>
</tr>
<tr>
<td><strong>Other Charges (not part of your monthly payment):</strong></td>
<td><strong>Total of Payments</strong></td>
</tr>
<tr>
<td>Disposition fee (if you do not purchase the vehicle): $</td>
<td>(The amount you will have paid by the end of the lease): $</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Amount Due At Lease Signing or Delivery:</strong></th>
<th><strong>How the Amount Due at Lease Signing or Delivery will be paid:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Capitalized cost reduction $</td>
<td>Net trade-in allowance $</td>
</tr>
<tr>
<td>First monthly payment</td>
<td>Rebates and noncash credits $</td>
</tr>
<tr>
<td>Refundable security deposit</td>
<td>Amount to be paid in cash $</td>
</tr>
<tr>
<td>Title fees</td>
<td>$</td>
</tr>
<tr>
<td>Registration fees</td>
<td>$</td>
</tr>
<tr>
<td><strong>Total</strong> $</td>
<td><strong>Total</strong> $</td>
</tr>
</tbody>
</table>

**Your monthly payment is determined as shown below:**

Gross capitalized cost. The agreed upon value of the vehicle ($ ) and any items you pay over the lease term (such as service contracts, insurance, and any outstanding prior credit or lease balance) $ .

If you want an itemization of this amount, please check this box. ☐

Capitalized cost reduction. The amount of any non-trade-in allowance, rebate, noncash credit, or cash you pay that reduces the gross capitalized cost $ .

Adjusted capitalized cost. The amount used in calculating your base monthly payment $ .

Residual value. The value of the vehicle at the end of the lease used in calculating your base monthly payment $ .

Depreciation and any amortized amounts. The amount charged for the vehicle’s decline in value through normal use and for other items paid over the lease term $ .

Rent charge. The amount charged in addition to the depreciation and any amortized amounts $ .

Total of base monthly payments. The depreciation and any amortized amounts plus the rent charge $ .

Lease payments. The number of payments in your lease $ .

Base monthly payment $ .

Monthly sales/use tax $ .

**Total monthly payment** $ .

**Early Termination.** You may have to pay a substantial charge if you end this lease early. The charge may be up to several thousand dollars. The actual charge will depend on when the lease is terminated. The earlier you end the lease, the greater this charge is likely to be.

**Excessive Wear and Use.** You may be charged for excessive wear based on our standards for normal use [and for mileage in excess of _____ miles per year at the rate of ______ per mile].

**Purchase Option at End of Lease Term.** [You have an option to purchase the vehicle at the end of the lease term for $] [and a purchase option fee of $] [You do not have an option to purchase the vehicle at the end of the lease term.]

**Other Important Terms.** See your lease documents for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interest, if applicable.
[The following provisions are the nonsegregated disclosures required under Regulation M.]

<table>
<thead>
<tr>
<th>Year</th>
<th>Make</th>
<th>Model</th>
<th>Body Style</th>
<th>Vehicle ID #</th>
</tr>
</thead>
</table>

**Official Fees and Taxes.** The total amount you will pay for official and license fees, registration, title, and taxes over the term of your lease, whether included with your monthly payments or assessed otherwise: $ ____________.

**Insurance.** The following types and amounts of insurance will be acquired in connection with this lease:

We (lessor) will provide the insurance coverage quoted above for a total premium cost of $ ____________.

You (lessee) agree to provide insurance coverage in the amount and types indicated above.

**Standards for Wear and Use.** The following standards are applicable for determining unreasonable or excess wear and use of the leased vehicle:

**Maintenance.**

You are responsible for the following maintenance and servicing of the leased vehicle:

We are responsible for the following maintenance and servicing of the leased vehicle:

**Warranties.** The leased vehicle is subject to the following express warranties:

**Early Termination and Default.** (a) You may terminate this lease before the end of the lease term under the following conditions:

The charge for such early termination is:

(b) We may terminate this lease before the end of the lease term under the following conditions:

Upon such termination we shall be entitled to the following charge(s) for:

(c) To the extent these charges take into account the value of the vehicle at termination, if you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party acceptable to both of us, a professional appraisal of the value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

**Security Interest.** We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease:

**Late Payments.** The charge for late payments is:

**Option to Purchase Leased Property Prior to the End of the Lease.** (You have an option to purchase the leased vehicle prior to the end of the term. The price will be $ ____________.[the method of determining the price].) [You do not have an option to purchase the leased vehicle.]
Federal Consumer Leasing Act Disclosures

Date ____________________________
Lessor(s) ___________________ Lessee(s) ___________________

<table>
<thead>
<tr>
<th>Item</th>
<th>Color</th>
<th>Description of Leased Property</th>
<th>Stock #</th>
<th>Mfg.</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

**Amount Due at Lease Signing or Delivery**

- First monthly payment $ __________
- Refundable security deposit $ __________
- Delivery/installation fee $ __________

**Total:** $ __________

**Monthly Payments**

- Your first monthly payment of $ __________ is due on __________, followed by
  - payments of $ __________ due on
  - the __________ of each month. The total of your monthly payments is $ __________

**Other Charges (not part of your monthly payment)**

- Pick-up fee $ __________

**Total:** $ __________

**Total of Payments**

- (The amount you will have paid by the end of the lease)

**Purchase Option at End of Lease Term.** [You have an option to purchase the leased property at the end of the lease term for $ __________ (and a purchase option fee of $ __________).] [You do not have an option to purchase the leased property at the end of the lease term.]

**Other Important Terms.** See your lease documents for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interest, if applicable.

---

*The following provisions are the nonsegregated disclosures required under Regulation M.*

**Official Fees and Taxes.** The total amount you will pay for official fees, and taxes over the term of your lease, whether included with your monthly payments or assessed otherwise: $ __________.

**Insurance.** The following types and amounts of insurance will be acquired in connection with this lease:________________________.

- We (lessee) will provide the insurance coverage quoted above for a total premium cost of $ __________.
- You (lessor) agree to provide insurance coverage in the amount and types indicated above.

**Standards for Wear and Use.** The following standards are applicable for determining unreasonable or excess wear and use of the leased property:

**Maintenance.**

- [You are responsible for the following maintenance and servicing of the leased property:________________________]________________________.
- [We are responsible for the following maintenance and servicing of the leased property:________________________]________________________.

**Warranties.** The leased property is subject to the following express warranties:

**Early Termination and Default.**

(a) You may terminate this lease before the end of the lease term under the following conditions:

The charge for such early termination is:________________________.

(b) We may terminate this lease before the end of the lease term under the following conditions:

Upon such termination we shall be entitled to the following charge(s) for:________________________.
Early Termination and Default. (continued)

(c) To the extent these charges take into account the value of the leased property at termination, if you disagree with the value we assign to the property, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the value of the property which could be realized at sale. The appraised value shall then be used as the actual value.

Security Interest. We reserve a security interest in the following type in the property listed below to secure performance of your obligations under this lease:

Late Payments. The charge for late payments is:

Purchase Option Prior to the End of the Lease Term.

[You have an option to purchase the leased property prior to the end of the term. The price will be [ $ ] (the method of determining the price).]

[You do not have an option to purchase the leased property.]
APPENDIX B TO PART 1013 [RESERVED]

APPENDIX C TO PART 1013—ISSUANCE OF OFFICIAL INTERPRETATIONS

Interpretations of this part issued by officials of the Bureau provide the formal protection afforded under section 130(f) of the Act. Except in unusual circumstances, interpretations will not be issued separately but will be incorporated in an official commentary to Regulation M (Supplement I of this part), which will be amended periodically. No official interpretations will be issued approving a lessor’s forms, statements, or calculation tools or methods.

SUPPLEMENT I TO PART 1013—OFFICIAL INTERPRETATIONS

Introduction

1. Official status. The commentary in Supplement I is the vehicle by which the Bureau of Consumer Financial Protection issues official interpretations of Regulation M (12 CFR part 1013). Good faith compliance with this commentary affords protection from liability under section 130(f) of the Truth in Lending Act (15 U.S.C. 1640(f)). Section 130(f) protects lessors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by the Bureau.

2. Procedures for requesting interpretations. Under appendix C of Regulation M, anyone may request an official interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the Federal Register. No official interpretations are expected to be issued other than by means of this commentary.

3. Comment designations. Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to § 1013.4(f) are further divided by subparagraph, such as comment 4(f)(1)-1 and comment 4(f)(2)-1. In other cases, comments have more general application and are designated, for example, as comment 4(a)-1. This introduction may be cited as comments I-1 through I-4. An appendix may be cited as comment app. A-1.

4. Illustrations. Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. Illustrative lists are introduced by phrases such as “including,” “such as,” “to illustrate,” and “for example.”

Section 1013.1—Authority, Scope, Purpose, and Enforcement

1. Foreign applicability. Regulation M applies to all persons (including branches of foreign banks or leasing companies located in the United States) that offer consumer leases to residents of any state (including foreign nationals) as defined in §1013.2(p), except persons excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1586. The regulation does not apply to a foreign branch of a U.S. bank or to a leasing company leasing to a U.S. citizen residing or visiting abroad or to a foreign national abroad.

Section 1013.2—Definitions

2(b) Advertisement

1. Coverage. The term advertisement includes messages inviting, offering, or otherwise generally announcing to prospective customers the availability of consumer leases, whether in visual, oral, print or electronic media. Examples include:

i. Messages in newspapers, magazines, leaflets, catalogs, and fliers.

ii. Messages on radio, television, and public address systems.

iii. Direct mail literature.

iv. Printed material on any interior or exterior sign or display, in any window display, in any point-of-transaction literature or price tag that is delivered or made available to a lessee or prospective lessee in any manner whatsoever.

v. Telephone solicitations.

vi. Online messages, such as those on the Internet.

2. Exclusions. The term does not apply to the following:

i. Direct personal contacts, including follow-up letters, cost estimates for individual lessees, or oral or written communications relating to the negotiation of a specific transaction.

ii. Informational material distributed only to businesses.

iii. Notices required by Federal or state law, if the law mandates that specific information be displayed and only the mandated information is included in the notice.

iv. News articles controlled by the news medium.

v. Market research or educational materials that do not solicit business.

3. Persons covered. See the commentary to §1013.7(a).

2(d) Closed-End Lease

1. General. In closed-end leases, sometimes referred to as “walk-away” leases, the lessee is not responsible for the residual value of
the leased property at the end of the lease term.

2(e) Consumer Lease

1. Primary purposes. A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If a question exists as to the primary purpose for a lease, the fact that a lessor gives disclosures is not controlling on the question of whether the transaction is covered. The primary purpose of a lease is determined before or at consummation and a lessor need not provide Regulation M disclosures where there is a subsequent change in the primary use.

2. Period of time. To be a consumer lease, the initial term of the lease must be more than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond four months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. However, a lease that imposes a penalty for not continuing the lease beyond four months is considered to have a term of more than four months. To illustrate:

i. A three-month lease extended on a month-to-month basis and terminated after one year is not subject to the regulation.

ii. A month-to-month lease with a penalty, such as the forfeiture of a security deposit for terminating before one year, is subject to the regulation.

3. Total contractual obligation. The total contractual obligation is not necessarily the same as the total of payments disclosed under §1013.4(e). The total contractual obligation includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor, but excludes items such as:

i. Residual value amounts or purchase-option prices;

ii. Amounts collected by the lessor but paid to a third party, such as taxes, licenses, and registration fees.

4. Credit sale. The regulation does not cover a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(18), which is defined, in part, as a bailment or sale in Regulation Z, 12 CFR 226.2(a)(16), a lease that meets the definition of a credit sale, and rental of personal property incidental to a service.

5. Agricultural purpose. Agricultural purpose means a purpose related to the production, harvesting, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propogates, or nurtures those agricultural products, including but not limited to the acquisition of personal property and services used primarily in farming. Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

6. Organization or other entity. A consumer lease does not include a lease made to an organization such as a corporation or a government agency or instrumentality. Such a lease is not covered by the regulation even if the leased property is used (by an employee, for example) primarily for personal, family, or household purposes, or is guaranteed by or subsequently assigned to a natural person.

7. Leases of personal property incidental to a service. The following leases of personal property are deemed incidental to a service and thus are not subject to the regulation:

i. Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.

ii. Security alarm systems requiring the installation of leased equipment intended to monitor unlawful entries into a home and in some cases to provide fire protection.

iii. Propane gas service where the consumer must lease a propane tank to receive the service.

8. Safe deposit boxes. The lease of a safe deposit box is not a consumer lease under §1013.2(e).

9. Threshold amount. A consumer lease is exempt from the requirements of this part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. The threshold amount in effect during a particular time period is the amount stated below for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. This comment will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $850 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $989 increase in the threshold amount, the threshold amount will be increased by
12 CFR Ch. X (1–1–14 Edition)

2(j) Organization
1. Coverage. The term "organization" includes joint ventures and persons operating under a business name.

2(l) Personal Property
1. Coverage. Whether property is personal property depends on state or other applicable law. For example, a mobile home or houseboat may be considered personal property in one state but real property in another.

2(m) Realized Value
1. General. Realized value refers to either the retail or wholesale value of the leased property at early termination or at the end of the lease term. It is not a required disclosure. Realized value is relevant only to leases in which the lessee's liability at early termination or at the end of the lease term typically is based on the difference between the residual value (or the adjusted lease balance) of the leased property and its realized value.

2. Options. Subject to the contract and to state or other applicable law, the lessor may calculate the realized value in determining the lessee's liability at the end of the lease term or at early termination in one of the three ways stated in § 1013.2(m). If the lessor sells the property prior to making the determination about liability, the price received for the property (or the fair market value) is the realized value. If the lessor does not sell the property prior to making that determination, the highest offer or the fair market value is the realized value.

3. Determination of realized value. Disposition charges are not subtracted in determining the realized value but amounts attributable to taxes may be subtracted.

4. Offers. In determining the highest offer for disposition, the lessor may disregard offers that an offeror has withdrawn or is unable or unwilling to perform.

5. Lessor's appraisal. See commentary to §1013.4(l).

2(o) Security Interest and Security
1. Disclosable interests. For purposes of disclosure, a security interest is an interest taken by the lessor to secure performance of the lessee’s obligation. For example, if a bank that is not a lessor makes a loan to a leasing company and takes assignments of consumer leases generated by that company to secure the loan, the bank’s security interest in the lessee’s receivables is not a security interest for purposes of this part.

2. General coverage. An interest the lessor may have in leased property must be disclosed only if it is considered a security interest under state or other applicable law. The term includes, but is not limited to, security interests under the Uniform Commercial Code; real property mortgages, deeds of

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§ 1013.3(c).

1. Prior to July 21, 2011, the threshold amount is $25,000.

2. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

3. From January 1, 2012 through December 31, 2012, the threshold amount is $51,800.

4. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

5. From January 1, 2014 through December 31, 2014, the threshold amount is $53,500.

1. Guarantors. Guarantors are not lessees for purposes of the regulation.

2(h) Lessor
1. Arranger of a lease. To "arrange" for the lease of personal property means to provide or offer to provide a lease that is or will be extended by another person under a business or other relationship pursuant to which the person arranging the lease (a) receives or will receive a fee, compensation, or other consideration for the service or (b) has knowledge of the lease terms and participates in the preparation of the contract documents required in connection with the lease. To illustrate:

1. An entity that, pursuant to a business relationship, completes the necessary lease agreement before forwarding it for execution to the leasing company (to whom the obligation is payable on its face) is "arranging" for the lease.

2. An entity that, without receiving a fee for the service, refers a customer to a leasing company that will prepare all relevant contract documents is not "arranging" for the lease.

2. Consideration. The term "other consideration" as used in comment 2(h)-1 refers to an actual payment corresponding to a fee or similar compensation and not to intangible benefits, such as the advantage of increased business, which may flow from the relationship between the parties.

3. Assignees. An assignee may be a lessor for purposes of the regulation in circumstances where the assignee has substantial involvement in the lease transaction. See, e.g., Ford Motor Credit Co. v. Cenance, 452 U.S. 155 (1981) (held that an assignee was a creditor for purposes of the pre-1980 Truth in Lending Act and Regulation Z because of its substantial involvement in the credit transaction).

4. Multiple lessors. See the commentary to §1013.3(c).

See commentary to §1013.3(c).
Bureau of Consumer Financial Protection

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poses of this part.

premiums is not a security interest for pur-

when used to secure payment or performance

of law; and any interest in a lease

property; liens on property arising by oper-

liens; vendor's liens in both real and personal

materialman's, artisan's, and other similar

liens whether or not recorded; mechanic's,

trust, and other consensual or confessed

liens whether or not recorded; mechanic's,

materialman's, artisan's, and other similar

liens; vendor's liens in both real and personal

property; liens on property arising by oper-

ation of law; and any interest in a lease

when used to secure payment or performance

of an obligation.

3. Insurance exception. The lessor's right to

insurance proceeds or unearned insurance

premiums is not a security interest for pur-

poses of this part.

Section 1013.3—General Disclosure Requirements

3(a) General Requirements

1. Basis of disclosures. Disclosures must re-

fect the terms of the legal obligation be-

tween the parties. For example:

1. In a three-year lease with no penalty for

termination after a one-year minimum term,

disclosures are based on the full three-year

term of the lease. The one-year minimum

term is only relevant to the early termi-

nation provisions of §§1013.4 (g)(1), (k) and

(1).

2. Clear and conspicuous standard. The clear

and conspicuous standard requires that dis-

closures be reasonably understandable. For

example, the disclosures must be presented

in a way that does not obscure the relation-

ship of the terms to each other; appendix A

of this part contains model forms that meet

this standard. In addition, although no min-

imum typesize is required, the disclosures

must be legible, whether typewritten, hand-

written, or printed by computer.

3. Multipurpose disclosure forms. A lessor

may use a multipurpose disclosure form pro-

vided the lessor is able to designate the spe-

cific disclosures applicable to a given trans-

action, consistent with the requirement that

disclosures be clearly and conspicuously pro-

vided.

4. Number of transactions. Lessors have

flexibility in handling lease transactions

that may be viewed as multiple transactions.

For example:

1. When a lessor leases two items to the

same lessee on the same day, the lessor may

disclose the leases as either one or two lease

transactions.

2. When a lessor sells insurance or other

incidental services in connection with a

lease, the lessor may disclose in one of two

two ways: As a single lease transaction (in

case Regulation M, not Regulation Z, dis-

closures are required) or as a lease transac-

tion and a credit transaction.

3. When a lessor includes an outstanding

lease or credit balance in a lease transac-

tion, the lessor may disclose the outstanding

balance as part of a single lease transaction (in

case Regulation M, not Regulation Z, dis-
closures are required) or as a lease trans-

action and a credit transaction.

3(a)(1) Form of Disclosures

1. Cross-references. Lessors may include in

the nonsegregated disclosures a cross-ref-

erence to items in the segregated disclosures

rather than repeat those items. A lessor may

include in the segregated disclosures nu-

meric or alphabetic designations as cross-

references to related information so long as

such references do not obscure or detract

from the segregated disclosures.

2. Identification of parties. While disclosures

must be made clearly and conspicuously, les-

sees are not required to use the word “les-

see” and “lessor” to identify the parties to

the lease transaction.

3. Lessor’s address. The lessor must be iden-
tified by name; an address (and telephone

number) may be provided.

4. Multiple lessors and lessees. In trans-

actions involving multiple lessors and mul-
tiple lessees, a single lessor may make all

the disclosures to a single lessee as long as

the disclosure statement identifies all the

lessors and lessees.

5. Lessee’s signature. The regulation does

not require that the lessee sign the disclo-
sure statement, whether disclosures are sep-

arately provided or are part of the lease con-

tract. Nevertheless, to provide evidence that

disclosures are given before a lessee becomes

obligated on the lease transaction, the lessor

may, for example, ask the lessee to sign the

disclosure statement or an acknowledgement

of receipt, may place disclosures that are in-

cluded in the lease documents above the les-

see’s signature, or include instructions alert-

ing a lessee to read the disclosures prior to

signing the lease.

3(a)(2) Segregation of Certain Disclosures

1. Location. The segregated disclosures re-

ferred to in §1013.3(a)(2) may be provided on

a separate document and the other required

disclosures may be provided in the lease con-

tract, so long as all disclosures are given at

the same time. Alternatively, all disclosures

may be provided in a separate document or

in the lease contract.

2. Additional information among segregated

disclosures. The disclosures required to be

segregated may contain only the informa-

tion required or permitted to be included

among the segregated disclosures.

3. Substantially similar. See commentary to

appendix A of this part.

3(a)(3) Timing of Disclosures

1. Consummation. When a contractual rela-

tionship is created between the lessor and

the lessee it is a matter to be determined under

state or other applicable law.

3(b) Additional Information; Nonsegregated

Disclosures

1. State law disclosures. A lessor may in-

clude in the nonsegregated disclosures any
state law disclosures that are not inconsistent with the Act and regulation under §1013.9 as long as, in accordance with the standard set forth in §1013.3(b) for additional information, the state law disclosures are not used or placed to mislead or confuse or detract from any disclosure required by the regulation.

3(c) Multiple Lessors or Lessees

1. Multiple lessors. If a single lessor provides disclosures to a lessee on behalf of several lessors, all disclosures for the transaction must be given, even if the lessor making the disclosures would not otherwise have been obligated to make a particular disclosure.

3(d) Use of Estimates

1. Time of estimated disclosure. The lessor may, after making a reasonable effort to obtain information, use estimates to make disclosures if necessary information is unknown or unavailable at the time the disclosures are made.

2. Basis of estimates. Estimates must be made on the basis of the best information reasonably available at the time disclosures are made. The “reasonably available” standard requires that the lessor, acting in good faith, exercise due diligence in obtaining information. The lessor may rely on the representations of other parties. For example, the lessor might look to the consumer to determine the purpose for which leased property will be used, to insurance companies for the cost of insurance, or to an automobile manufacturer or dealer for the date of delivery. See commentary to §1013.4(n) for estimating official fees and taxes.

3. Residual value of leased property at termination. In an open-end lease where the lessor’s liability at the end of the lease term is based on the residual value of the leased property as determined at consummation, the estimate of the residual value must be reasonable and based on the best information reasonably available to the lessor (see §1013.4(m)). A lessor should generally use an accepted trade publication listing estimated current or future market prices for the leased property unless other information or a reasonable belief based on its experience provides the better information. For example:

i. An automobile lessor offering a three-year open-end lease assigns a wholesale value to the vehicle at the end of the lease term. The lessor may disclose as an estimate a wholesale value derived from a generally accepted trade publication listing current wholesale values.

ii. Same facts as above, except that the lessor discloses an estimated value derived by adjusting the residual value quoted in the trade publication because, in its experience, the trade publication values either under-
a downpayment on the leased property that reduces the amount to be capitalized over the term of the lease. This amount does not include any amounts included in a periodic payment paid at lease signing or delivery.

3. “Negative” equity trade-in allowance. If an amount owed on a prior lease or credit balance exceeds the agreed upon value of a trade-in, the difference is not reflected as a negative trade-in allowance under §1013.4(b). The lessor may disclose the trade-in allowance as zero or not applicable, or may leave a blank line.

4. Rebates. Only rebates applied toward an amount due at lease signing or delivery are required to be disclosed under §1013.4(b).

5. Balance sheet approach. In motor vehicle leases, the total for the column labeled “total amount due at lease signing or delivery” must equal the total for the column labeled “how the amount due at lease signing or delivery will be paid.”

6. Amounts to be paid in cash. The term cash is intended to include payments by check or other payment methods in addition to currency; however, a lessor may add a line item under the column “how the amount due at lease signing or delivery will be paid” for non-currency payments such as credit cards.

4(c) Payment Schedule and Total Amount of Periodic Payments

1. Periodic payments. The phrase “number, amount, and due dates or periods of payments” requires the disclosure of all payments that are made at regular or irregular intervals and generally derived from rent, capitalized or amortized amounts such as depreciation, and other amounts that are collected by the lessor at the same interval(s), including, for example, taxes, maintenance, and insurance charges. Other periodic payments may, but need not, be disclosed under §1013.4(c).

4(d) Other Charges

1. Coverage. Section 1013.4(d) requires the disclosure of charges that are anticipated by the parties incident to the normal operation of the lease agreement. If a lessor is unsure whether a particular fee is an “other charge,” the lessor may disclose the fee as such without violating §1013.4(d) or the segregation rule under §1013.4(a)(2).

2. Excluded charges. This section does not require disclosure of charges that are imposed when the lessee terminates early, fails to abide by, or modifies the terms of the existing lease agreement, such as charges for:
   i. Late payment.
   ii. Default.
   iii. Early termination.
   iv. Deferral of payments.
   v. Extension of the lease.

3. Third-party fees and charges. Third-party fees or charges collected by the lessor on behalf of third parties, such as taxes, are not disclosed under §1013.4(d).

4. Relationship to other provisions. The other charges mentioned in this paragraph are charges that are not required to be disclosed under some other provision of §1013.4. To illustrate:

1. The price of a mechanical breakdown protection (MBP) contract is sometimes disclosed as an “other charge.” Nevertheless, the price of MBP is sometimes reflected in the periodic payment disclosure under §1013.4(c) or in states where MBP is regarded as insurance, the cost is to be disclosed in accordance with §1013.4(o).

2. Lessee’s liabilities at the end of the lease term. Liabilities that the lessor imposes upon the lessee at the end of the scheduled lease term and that must be disclosed under §1013.4(d) include disposition and “pick-up” charges.

3. Optional “disposition” charges. Disposition and similar charges that are anticipated by the parties as an incident to the normal operation of the lease agreement must be disclosed under §1013.4(d). If, under a lease agreement, a lessee may return leased property to various locations, and the lessor charges a disposition fee depending upon the location chosen, under §1013.4(d), the lessor must disclose the highest amount charged. In such circumstances, the lessor may also include a brief explanation of the fee structure in the segregated disclosure. For example, if no fee or a lower fee is imposed for returning a leased vehicle to the originating dealer as opposed to another location, that fact may be disclosed. By contrast, if the terms of the lease treat the return of the leased property to a location outside the lessor’s service area as a default, the fee imposed is not disclosed as an “other charge,” although it may be required to be disclosed under §1013.4(q).

4(e) Total of Payments

1. Open-end lease. The additional statement is required under §1013.4(e) for open-end leases because, with some limitations, a lessee is liable at the end of the lease term for the difference between the residual and realized values of the leased property.

4(f) Payment Calculation

1. Motor vehicle lease. Whether leased property is a motor vehicle is determined by state or other applicable law.

2. Multiple items. If a lease transaction involves multiple items of leased property, one of which is not a motor vehicle under state law, at their option, lessors may include all items in the disclosure required under §1013.4(d). See comment 3(a)-4 regarding disclosure of multiple transactions.

4(f)(1) Gross Capitalized Cost  
1. Agreed upon value of the vehicle. The agreed upon value of a motor vehicle includes the amount of capitalized items such as charges for vehicle accessories and options, and delivery or destination charges. The lessor may also include taxes and fees for title, licenses, and registration that are capitalized. Charges for service or maintenance contracts, insurance products, guaranteed automobile protection, or an outstanding balance on a prior lease or credit transaction are not included in the agreed upon value.  
2. Itemization of the gross capitalized cost. The lessor may choose to provide the itemization of the gross capitalized cost only on request or may provide the itemization as a matter of course. In the latter case, the lessor need not provide a statement of the lessee’s option to receive an itemization. The gross capitalized cost must be itemized by type and amount. The lessor may include in the itemization an identification of the items and amounts of some or all of the items contained in the agreed upon value of the vehicle. The itemization must be provided at the same time as the other disclosures required by §1013.4, but it may not be included among the segregated disclosures.  

4(f)(7) Total of Base Periodic Payments  
1. Accuracy of disclosure. If the periodic payment calculation under §1013.4(f) has been calculated correctly, the amount disclosed under §1013.4(f)(7)—the total of base periodic payments—is correct for disclosure purposes even if that amount differs from the base periodic payment disclosed under §1013.4(f)(9) multiplied by the number of lease payments disclosed under §1013.4(f)(8), when the difference is due to rounding.  

4(f)(8) Lease Payments  
1. Lease Term. The lease term may be disclosed among the segregated disclosures.  

4(g) Early Termination  
4(g)(1) Conditions and Disclosure of Charges  
1. Reasonableness of charges. See the commentary to §1013.4(g).  
2. Description of the method. Section 1013.4(g)(1) requires a full description of the method of determining an early termination charge. The lessor should attempt to provide consumers with clear and understandable descriptions of its early termination charges. Descriptions that are full, accurate, and not intended to be misleading will comply with §1013.4(g)(1), even if the descriptions are complex. In providing a full description of an early termination method, a lessor may use the name of a generally accepted method of computing the unamortized cost portion (also known as the “adjusted lease balance”) of its early termination charges. For example, a lessor may state that the “constant yield” method will be utilized in obtaining the adjusted lease balance, but must specify how that figure, and any other term or figure, is used in computing the total early termination charge imposed upon the consumer. Additionally, if a lessor refers to a named method in this manner, the lessor must provide a written explanation of that method if requested by the consumer. The lessor has the option of providing the explanation as a matter of course in the lease documents or on a separate document.  
3. Timing of written explanation of a named method. While a lessor may provide an address or telephone number for the consumer to request a written explanation of the named method used to calculate the adjusted leased balance, if at consummation a consumer requests such an explanation, the lessor must provide a written explanation at that time. If a consumer requests an explanation after consummation, the lessor must provide a written explanation within a reasonable time after the request is made.  
4. Default. When default is a condition for early termination of a lease, default charges must be disclosed under §1013.4(g)(1). See the commentary to §1013.4(q).  
5. Lessee’s liability at early termination. When the lessee is liable for the difference between the unamortized cost and the realized value at early termination, the method of determining the amount of the difference must be disclosed under §1013.4(g)(1).  

4(h) Maintenance Responsibilities  
1. Standards for wear and use. No disclosure is required if a lessor does not set standards or impose charges for wear and use (such as excess mileage).  

4(i) Purchase Option  
1. Mandatory disclosure of no purchase option. Generally the lessor need only make the specific required disclosures that apply to a transaction. In the case of a purchase option disclosure, however, a lessor must disclose affirmatively that the lessee has no option to purchase the leased property if the purchase option is inapplicable.  
2. Existence of purchase option. Whether a purchase option exists under the lease is determined by state or other applicable law. The lessee’s right to submit a bid to purchase property at termination of the lease is not an option to purchase under §1013.4(i) if the lessor is not required to accept the lessee’s bid and the lessee does not receive preferential treatment.  
3. Purchase-option fee. A purchase-option fee is disclosed under §1013.4(i), not §1013.4(d). The fee may be separately itemized or disclosed as part of the purchase-option price.
4(m) Liability at End of Lease Term Based on Residual Value

1. Open-end leases. Section 1013.4(m) applies only to open-end leases.

2. Lessor’s payment of attorney’s fees. Section 183(a) of the Act requires that the lessor pay the lessee’s attorney’s fees in all actions under §1013.4(m), whether successful or not.

4(m)(1) Rent and Other Charges

1. General. This disclosure is intended to represent the cost of financing an open-end lease based on charges and fees that the lessor requires the lessee to pay. Examples of disclosable charges, in addition to the rent charge, include acquisition, disposition, or assignment fees. Charges imposed by a third party whose services are not required by the lessor (such as official fees and voluntary insurance) are not included in the §1013.4(m)(1) disclosure.

4(m)(2) Excess Liability

1. Coverage. The disclosure limiting the lessee’s liability for the value of the leased property does not apply in the case of early termination.

2. Leases with a minimum term. If a lease has an alternative minimum term, the disclosures governing the liability limitation are not applicable for the minimum term.

3. Charges not subject to rebuttable presumption. The limitation on liability applies only to liability at the end of the lease term that is based on the difference between the residual value of the leased property and its realized value. The regulation does not preclude a lessor from recovering other charges from the lessee at the end of the lease term. Examples of such charges include:
   i. Disposition charges.
   ii. Excess mileage charges.
   iii. Late payment and default charges.
   iv. In simple-interest accounting leases, amount by which the unamortized cost exceeds the residual value because the lessee has not made timely payments.

4(n) Fees and Taxes

1. Treatment of certain taxes. Taxes paid in connection with the lease are generally disclosed under §1013.4(n), but there are exceptions. To illustrate:
   i. Taxes paid by lease signing or delivery are disclosed under §1013.4(b) and §1013.4(n).
   ii. Taxes that are part of the scheduled payments are reflected in the disclosure under §1013.4(c), (f), and (n).
   iii. A tax payable by the lessor that is passed on to the consumer and is reflected in the lease documentation must be disclosed under §1013.4(n). A tax payable by the lessor and absorbed as a cost of doing business need not be disclosed.
iv. Taxes charged in connection with the exercise of a purchase option are disclosed under §1013.4(i), not §1013.4(n).

2. Estimates. In disclosing the total amount of fees and taxes under §1013.4(n), lessors may need to base the disclosure on estimated tax rates or amounts and are afforded great flexibility in doing so. Where a rate is applied to the future value of leased property, lessors have flexibility in estimating that value, including, but not limited to, using the mathematical average of the agreed upon value and the residual value or published valuation guides; or a lessee could prepare estimates using the agreed upon value and disclose a reasonable estimate of the total fees and taxes. Lessors may include a statement that the actual total of fees and taxes may be higher or lower depending on the tax rates in effect or the value of the leased property at the time a fee or tax is assessed.

4(o) Insurance

1. Coverage. If insurance is obtained through the lessor, information on the type and amount of insurance coverage (whether voluntary or required) as well as the cost, must be disclosed.

2. Lessor’s insurance. Insurance purchased by the lessor primarily for its own benefit, and absorbed as a business expense and not separately charged to the lessee, need not be disclosed under §1013.4(o) even if it provides an incidental benefit to the lessee.

3. Mechanical breakdown protection and other products. Whether products purchased in conjunction with a lease, such as mechanical breakdown protection (MBP) or guaranteed automobile protection (GAP), should be treated as insurance is determined by state or other applicable law. In states that do not treat MBP or GAP as insurance, §1013.4(o) disclosures are not required. In such cases the lessor may, however, disclose this information in accordance with the additional information provision in §1013.3(b). For MBP insurance contracts not capped by a dollar amount, lessors may describe coverage by referring to a limitation by mileage or time period, for example, by indicating that the mechanical breakdown contract insures parts of the automobile for up to 100,000 miles.

4(p) Warranties or Guarantees

1. Brief identification. The statement identifying warranties may be brief and need not describe or list all warranties applicable to specific parts such as for air conditioning, radio, or tires in an automobile. For example, a manufacturer’s warranties may be identified simply by a reference to the standard manufacturer’s warranty. If a lessor provides a comprehensive list of warranties that may not all apply, to comply with §1013.4(p) the lessor must indicate which warranties apply or, alternatively, which warranties do not apply.

2. Warranty disclaimers. Although a disclaimer of warranties is not required by the regulation, the lessor may give a disclaimer as additional information in accordance with §1013.3(b).

3. State law. Whether an express warranty or guaranty exists is determined by state or other law.

4(q) Penalties and Other Charges for Delinquency

1. Collection costs. The automatic imposition of collection costs or attorney fees upon default must be disclosed under §1013.4(q). Collection costs or attorney fees that are not imposed automatically, but are contingent upon expenditures in conjunction with a collection proceeding or upon the employment of an attorney to effect collection, need not be disclosed.

2. Charges for early termination. When default is a condition for early termination of a lease, default charges must also be disclosed under §1013.4(g)(1). The §1013.4(q) and (g)(1) disclosures may, but need not, be combined. Examples of combined disclosures are provided in the model lease disclosure forms in appendix A.

3. Simple-interest leases. In a simple-interest accounting lease, the additional rent charge that accrues on the lease balance when a periodic payment is made after the due date does not constitute a penalty or other charge for late payment. Similarly, continued accrual of the rent charge after termination of the lease because the lessee fails to return the leased property does not constitute a default charge. But in either case, if the additional charge accrues at a rate higher than the normal rent charge, the lessor must disclose the amount of or the method of determining the additional charge under §1013.4(q).

4. Extension charges. Extension charges that exceed the rent charge in a simple-interest accounting lease or that are added separately are disclosed under §1013.4(q).

5. Reasonableness of charges. Pursuant to section 183(b) of the Act, penalties or other charges for delinquency, default, or early termination may be specified in the lease but only in an amount that is reasonable in view of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

4(r) Security Interest

1. Disclosable security interests. See §1013.2(o) and accompanying commentary to determine what security interests must be disclosed.
4(c) Limitations on Rate Information

1. Segregated disclosures. A lease rate may not be included among the segregated disclosures referenced in §1013.3(a)(2).

Section 1013.5—Renegotiations, Extensions, and Assumptions

1. Coverage. Section 1013.5 applies only to existing leases that are covered by the regulation. It does not apply to the renegotiation or extension of leases with an initial term of four months or less, because such leases are not covered by the definition of consumer lease in §1013.2(e). Whether and when a lease is satisfied and replaced by a new lease is determined by state or other applicable law.

5(a) Renegotiation

1. Basis of disclosures. Lessors have flexibility in making disclosures so long as they reflect the legal obligation under the renegotiated lease. For example, assume that a 24-month lease is replaced by a 36-month lease. The initial lease began on January 1, 1998, and was renegotiated and replaced on July 1, 1998, so that the new lease term ends on January 1, 2001.

i. If the renegotiated lease covers the 36-month period beginning January 1, 1998, the new disclosures would reflect all payments made by the lessee on the initial lease and all payments on the renegotiated lease. In this example, since the renegotiated lease covers a 36-month period beginning January 1, 1998, the disclosures must reflect payments made since that date. On the model form, the "total of base periodic payments" disclosed under §1013.6(c)(7) should reflect periodic payments to be made over the entire 36-month term. Payments received since January 1, 1998, are added as a new line item disclosed as "total of payments received" and are subtracted from the "total of base periodic payments" in calculating a new item disclosed as the "total of base periodic payments remaining." For example, if 6 monthly payments of $300 were received since January 1, 1998, the disclosure form should include a "total of base periodic payments" line from which $1,800 is subtracted to arrive at the "total of base periodic payments remaining." The remainder of the disclosures would not change.

ii. If the renegotiated lease covers only the remaining 30 months, from July 1, 1998, to January 1, 2001, the disclosures would reflect only the charges incurred in connection with the renegotiation and the payments for the remaining period.

5(b) Extension

1. Time of extension disclosures. If a consumer lease is extended for a specified term greater than six months, new disclosures are required at the time the extension is agreed upon. If the lease is extended on a month-to-month basis and the cumulative extensions exceed six months, new disclosures are required at the commencement of the seventh month and at the commencement of each seventh month thereafter for as long as the extensions continue. If a consumer lease is extended for terms of varying durations, one of which will exceed six months beyond the originally scheduled termination date of the lease, new disclosures are required at the commencement of the term that will exceed six months beyond the originally scheduled termination date.

2. Content of disclosures for month-to-month extensions. The disclosures for a lease extended on a month-to-month basis for more than six months should reflect the month-to-month nature of the transaction.

3. Basis of disclosures. The disclosures should be based on the extension period, including any upfront costs paid in connection with the extension. For example, assume that initially a lease ends on March 1, 1999. In January 1999, agreement is reached to extend the lease until October 1, 1999. The disclosure would include any extension fee paid in January and the periodic payments for the seven-month extension period beginning in March.

Section 1013.6 [Reserved]

Section 1013.7—Advertising

7(a) General Rule

1. Persons covered. All "persons" must comply with the advertising provisions in this section, not just those that meet the definition of a lessor in §1013.2(h). Thus, automobile dealers (to the extent they are not excluded from the Bureau’s rulemaking authority by section 1029 of the Dodd-Frank Act), merchants, and others who are not themselves lessors must comply with the advertising provisions of the regulation if they advertise consumer lease transactions. Pursuant to section 184(b) of the Act, however, owners and personnel of the media in which an advertisement appears or through which it is disseminated are not subject to civil liability for violations under section 184(b) of the Act.

2. "Usually and customarily." Section 1013.7(a) does not prohibit the advertising of a single item or the promotion of a new leasing program, but prohibits the advertising of terms that are not and will not be available. Thus, an advertisement may state terms that will be offered for only a limited period or terms that will become available at a future date.

3. Total contractual obligation of advertised lease. Section 1013.7 applies to advertisements for consumer leases, as defined in §1013.2(e). Under §1013.2(e), a consumer lease is exempt from the requirements of this part if the total contractual obligation exceeds
the threshold amount in effect at the time of consummation. See comment 2(e)–9. Accordingly, §1013.7 does not apply to an advertisement for a specific consumer lease if the total contractual obligation for that lease exceeds the threshold amount in effect when the advertisement is made. If a lessor promotes multiple consumer leases in a single advertisement, the entire advertisement must comply with §1013.7 unless all of the advertised leases are exempt under §1013.2(e).

For example:

1. Assume that, in an advertisement, a lessor states that certain terms apply to a consumer lease for a specific automobile. The total contractual obligation of the advertised lease exceeds the threshold amount in effect when the advertisement is made. Although the advertisement does not refer to any other lease, some or all of the advertised terms for the exempt lease also apply to other leases offered by the lessor with total contractual obligations that do not exceed the applicable threshold amount. The advertisement is not required to comply with §1013.7 because it refers only to an exempt lease.

2. Assume that, in an advertisement, a lessor states that certain terms (such as the amount due at lease signing) that will apply to consumer leases for automobiles of a particular brand. However, the advertisement does not refer to a specific lease. The total contractual obligations of the leases for some of the automobiles will exceed the threshold amount in effect when the advertisement is made, but the total contractual obligations of the leases for other automobiles will not exceed the threshold. The entire advertisement must comply with §1013.7 because it refers to terms for consumer leases that are not exempt.

3. Assume that, in a single advertisement, a lessor states that certain terms apply to consumer leases for two different automobiles. The total contractual obligation of the lease for the first automobile exceeds the threshold amount in effect when the advertisement is made, but the total contractual obligation of the lease for the second automobile does not exceed the threshold. The entire advertisement must comply with §1013.7 because it refers to a consumer lease that is not exempt.

7(b) Clear and Conspicuous Standard

1. Standard. The disclosures in an advertisement in any media must be reasonably understandable. For example, very fine print in a television advertisement or detailed and very rapidly stated information in a radio advertisement does not meet the clear and conspicuous standard if consumers cannot see and read or hear, and cannot comprehend, the information required to be disclosed.

1. Itemization not required. Only a total of amounts due at lease signing or delivery is required to be disclosed, not an itemization of its component parts. Such an itemization is provided in any transaction-specific disclosures provided under §1013.4.

2. Prominence rule. Except for a periodic payment, oral or written references to components of the total due at lease signing or delivery (for example, a reference to a capitalized cost reduction, where permitted) may not be more prominent than the disclosure of the total amount due at lease signing or delivery.

7(b)(2) Advertisement of a Lease Rate

1. Location of statement. The notice required to accompany a percentage rate stated in an advertisement must be placed in close proximity to the rate without any other intervening language or symbols. For example, a lessor may not place an asterisk next to the rate and place the notice elsewhere in the advertisement. In addition, with the exception of the notice required by §1013.4(e), the rate cannot be more prominent than any other §1013.4 disclosure stated in the advertisement.

7(c) Catalogs or Other Multi-Page Advertisements; Electronic Advertisements

1. General rule. The multiple-page advertisements referred to in §1013.7(c) are advertisements consisting of a series of numbered pages—for example, a supplement to a newspaper. A mailing comprising several separate flyers or pieces of promotional material in a single envelope is not a single multiple-page advertisement.

2. Cross references. A catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site) is a single advertisement (requiring only one set of lease disclosures) if it contains a table, chart, or schedule with the disclosures required under §1013.7(d)(2)(i) through (v). If one of the triggering terms listed in §1013.7(d)(1) appears in a catalog, or in a multiple-page or electronic advertisement, it must clearly direct the consumer to the page or location where the table, chart, or schedule begins. For example, in an electronic advertisement, a term triggering additional disclosures may be accompanied by a link that directly connects the consumer to the additional information.

7(d) Triggering Terms

1. Typical example. When any triggering term appears in a lease advertisement, the additional terms enumerated in §1013.7(d)(2)(i) through (v) must also appear. In a multi-lease advertisement, an example
of one or more typical leases with a statement of all the terms applicable to each may be used. The examples must be labeled as such and must reflect representative lease terms that are made available by the lessor to consumers.

7(d)(2) Additional Terms
1. Third-party fees that vary by state or locality. The disclosure of a periodic payment or total amount due at lease signing or delivery may:
   1. Exclude third-party fees, such as taxes, licenses, and registration fees and disclose that fact; or
   2. Provide a periodic payment or total that includes third-party fees based on a particular state or locality as long as that fact and the fact that fees may vary by state or locality are disclosed.

7(e) Alternative Disclosures—Merchandise Tags
1. Multiple-item leases. Multiple-item leases that utilize merchandise tags requiring additional disclosures may use the alternate disclosure rule.

7(f) Alternative Disclosures—Television or Radio Advertisements
7(f)(1) Toll-Free Number or Print Advertisement
1. Publication in general circulation. A reference to a written advertisement appearing in a newspaper circulated nationally, for example, USA Today or the Wall Street Journal, may satisfy the general circulation requirement in §1013.7(f)(1)(ii).
   2. Toll-free number, local or collect calls. In complying with the disclosure requirements of §1013.7(f)(1)(i), a lessor must provide a toll-free number for nonlocal calls made from an area code other than the one used in the lessor’s dialing area. Alternatively, a lessor may provide any telephone number that allows a consumer to reverse the phone charges when calling for information.
   3. Multi-purpose number. When an advertised toll-free number responds with a recording, lease disclosures must be provided early in the sequence to ensure that the consumer receives the required disclosures. For example, in providing several dialing options—such as providing directions to the lessor’s place of business—the option allowing the consumer to request lease disclosures should be provided early in the telephone message to ensure that the option to request disclosures is not obscured by other information.
   4. Statement accompanying toll-free number. Language must accompany a telephone and television number indicating that disclosures are available by calling the toll-free number, such as “call 1-(800) 000-0000 for details about costs and terms.”

Section 1013.8—Record Retention
1. Manner of retaining evidence. A lessor must retain evidence of having performed required actions and of having made required disclosures. Such records may be retained in paper form, on microfilm, microfiche, or computer, or by any other method designed to reproduce records accurately. The lessor need retain only enough information to reconstruct the required disclosures or other records.

Section 1013.9—Relation to State Laws
1. Exemptions granted. The Bureau recognizes exemptions granted by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. Effective October 1, 1982, the Board of Governors of the Federal Reserve System granted the following exemptions from portions of the Consumer Leasing Act:
   1. Maine. Lease transactions subject to the Maine Consumer Credit Code and its implementing regulations are exempt from Chapters 2, 4, and 5 of the Federal act. (The exemption does not apply to transactions in which a federally chartered institution is a lessor.)
   2. Oklahoma. Lease transactions subject to the Oklahoma Consumer Credit Code are exempt from Chapters 2 and 5 of the Federal act. (The exemption does not apply to sections 132 through 135 of the Federal act, nor does it apply to transactions in which a federally chartered institution is a lessor.)

Appendix A—Model Forms
1. Permissible changes. Although use of the model forms is not required, lessors using them properly will be deemed to be in compliance with the regulation. Generally, lessors may make certain changes in the format or content of the forms and may delete any disclosures that are inapplicable to a transaction without losing the Act’s protection from liability. For example, the model form based on monthly periodic payments may be modified for single-payment lease transactions or for quarterly or other regular or irregular periodic payments. The model form may also be modified to reflect that a transaction is an extension. The content, format, and headings for the segregated disclosures must be substantially similar to those contained in the model forms; therefore, any changes should be minimal. The changes to the model forms should not be so extensive as to affect the substance and the clarity of the disclosures.

2. Examples of acceptable changes.
   i. Using the first person, instead of the second person, in referring to the lessee.
   ii. Using “lessee,” “lessor,” or names instead of pronouns.
iii. Rearranging the sequence of the non-segregated disclosures.
iv. Incorporating certain state “plain English” requirements.
v. Deleting or blocking out inapplicable disclosures, filling in “N/A” (not applicable) or “0,” crossing out, leaving blanks, checking a box for applicable items, or circling applicable items (this should facilitate use of multipurpose standard forms).
vi. Adding language or symbols to indicate estimates.
vii. Adding numeric or alphabetic designations.
viii. Rearranging the disclosures into vertical columns, except for § 1013.4(b) through (e) disclosures.
ix. Using icons and other graphics.

3. Model closed-end or net vehicle lease disclosure.

Model A–2 is designed for a closed-end or net vehicle lease. Under the “Early Termination and Default” provision a reference to the lessee’s right to an independent appraisal of the leased vehicle under §1013.4(l) is included for those closed-end leases in which the lessee’s liability at early termination is based on the vehicle’s realized value.

4. Model furniture lease disclosures.

Model A–3 is a closed-end lease disclosure statement designed for a typical furniture lease. It does not include a disclosure of the appraisal right at early termination required under §1013.4(l) because few closed-end furniture leases base the lessee’s liability at early termination on the realized value of the leased property. The disclosure should be added if it is applicable.

§ 1014.2 Definitions.

For the purposes of this part:

Commercial communication means any written or oral statement, illustration, or depiction, whether in English or any other language, that is designed to effect a sale or create interest in purchasing goods or services, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, on-hold script, upsell script, training materials provided to telemarketing firms, program-length commercial (“infomercial”), the internet, cellular network, or any other medium. Promotional materials and items and Web pages are included in the term commercial communication.

Consumer means a natural person to whom a mortgage credit product is offered or extended.

Credit means the right to defer payment of debt or to incur debt and defer its payment.

Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes any of the following if used as a residence: an individual condominium unit, cooperative unit, mobile home, manufactured home, or trailer.

Mortgage credit product means any form of credit that is secured by real
property or a dwelling and that is offered or extended to a consumer primarily for personal, family, or household purposes.

Person means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

Term means any of the fees, costs, obligations, or characteristics of or associated with the product. It also includes any of the conditions on or related to the availability of the product.

§ 1014.3 Prohibited representations.

It is a violation of this part for any person to make any material misrepresentation, expressly or by implication, in any commercial communication, regarding any term of any mortgage credit product, including but not limited to misrepresentations about:

(a) The interest charged for the mortgage credit product, including but not limited to misrepresentations concerning:
   (1) The amount of interest that the consumer owes each month that is included in the consumer's payments, loan amount, or total amount due, or
   (2) Whether the difference between the interest owed and the interest paid is added to the total amount due from the consumer;

(b) The annual percentage rate, simple annual rate, periodic rate, or any other rate;

(c) The existence, nature, or amount of fees or costs to the consumer associated with the mortgage credit product, including but not limited to misrepresentations that no fees are charged;

(d) The existence, cost, payment terms, or other terms associated with any additional product or feature that is or may be sold in conjunction with the mortgage credit product, including but not limited to credit insurance or credit disability insurance;

(e) The terms, amounts, payments, or other requirements relating to taxes or insurance associated with the mortgage credit product, including but not limited to misrepresentations about:
   (1) Whether separate payment of taxes or insurance is required; or
   (2) The extent to which payment for taxes or insurance is included in the loan payments, loan amount, or total amount due from the consumer;

(f) Any prepayment penalty associated with the mortgage credit product, including but not limited to misrepresentations concerning the existence, nature, amount, or terms of such penalty;

(g) The variability of interest, payments, or other terms of the mortgage credit product, including but not limited to misrepresentations using the word "fixed";

(h) Any comparison between:
   (1) Any rate or payment that will be available for a period less than the full length of the mortgage credit product; and
   (2) Any actual or hypothetical rate or payment;

(i) The type of mortgage credit product, including but not limited to misrepresentations that the product is or involves a fully amortizing mortgage;

(j) The amount of the obligation, or the existence, nature, or amount of cash or credit available to the consumer in connection with the mortgage credit product, including but not limited to misrepresentations that the consumer will receive a certain amount of cash or credit as part of a mortgage credit transaction;

(k) The existence, number, amount, or timing of any minimum or required payments, including but not limited to misrepresentations about any payments or that no payments are required in a reverse mortgage or other mortgage credit product;

(l) The potential for default under the mortgage credit product, including but not limited to misrepresentations concerning the circumstances under which the consumer could default for nonpayment of taxes, insurance, or maintenance, or for failure to meet other obligations;

(m) The effectiveness of the mortgage credit product in helping the consumer resolve difficulties in paying debts, including but not limited to misrepresentations that any mortgage credit product can reduce, eliminate, or restructure debt or result in a waiver or forgiveness, in whole or in part, of the consumer's existing obligation with any person;
§ 1014.4 Waiver not permitted.

It is a violation of this part for any person to obtain, or attempt to obtain, a waiver from any consumer of any restriction provided by or any right of the consumer under this part.

§ 1014.5 Recordkeeping requirements.

(a) Any person subject to this part shall keep, for a period of twenty-four months from the last date the person made or disseminated the applicable commercial communication regarding any term of any mortgage credit product, the following evidence of compliance with this part:

(1) Copies of all materially different commercial communications as well as sales scripts, training materials, and marketing materials, regarding any term of any mortgage credit product, that the person made or disseminated during the relevant time period;

(2) Documents describing or evidencing all mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such mortgage credit product available to consumers; and

(3) Documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such additional product or service available to consumers.

(b) Any person subject to this part may keep the records required by paragraph (a) of this section in any legible form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required under paragraph (a) of this section shall be a violation of this part.

§ 1014.6 Actions by states.

Any attorney general or other officer of a state authorized by the state to bring an action under this part may do so pursuant to section 626(b) of the 2009 Omnibus Appropriations Act, Public Law 111–8, section 626, 123 Stat. 524 (Mar. 11, 2009), as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law
§ 1015.2 Definitions.
For the purposes of this part:

Clear and prominent means:
(1) In textual communications, the required disclosures shall be easily readable; in a high degree of contrast from the immediate background on which it appears; in the same languages that are substantially used in the commercial communication; in a format so that the disclosure is distinct from other text, such as inside a border; in a distinct type style, such as bold; parallel to the base of the commercial communication, and, except as otherwise provided in this rule, each letter of the disclosure shall be, at a minimum, the larger of 12-point type or one-half the size of the largest letter or numeral used in the name of the advertised Web site or telephone number to which consumers are referred to receive information relating to any mortgage assistance relief service. Textual communications include any communications in a written or printed form such as print publications or words displayed on the screen of a computer;
(2) In communications disseminated orally or through audible means, such as radio or streaming audio, the required disclosures shall be delivered in a slow and deliberate manner and in a reasonably understandable volume and pitch;
(3) In communications disseminated through video means, such as television or streaming video, the required disclosures shall appear simultaneously in the audio and visual parts of the commercial communication and be delivered in a manner consistent with paragraphs (1) and (2) of this definition. The visual disclosure shall be at least four percent of the vertical picture or screen height and appear for the duration of the oral disclosure;
(4) In communications made through interactive media, such as the internet, online services, and software, the required disclosures shall:
(i) Be consistent with paragraphs (1) through (3) of this definition;
(ii) Be made on, or immediately prior to, the page on which the consumer takes any action to incur any financial obligation;
(iii) Be unavoidable, i.e., visible to consumers without requiring them to scroll down a Web page; and


§ 1014.7 Severability.
The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Bureau of Consumer Financial Protection’s intention that the remaining provisions shall continue in effect.

PART 1015—MORTGAGE ASSISTANCE RELIEF SERVICES (REGULATION O)

Sec.
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SOURCE: 76 FR 78133, Dec. 16, 2011, unless otherwise noted.

§ 1015.1 Scope of regulations in this part.

§ 1015.2 Definitions.
For the purposes of this part:
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(iv) Appear in type at least the same size as the largest character of the advertisement;

(5) In all instances, the required disclosures shall be presented in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them; and

(6) For program-length television, radio, or internet-based multimedia commercial communications, the required disclosures shall be made at the beginning, near the middle, and at the end of the commercial communication.

Client trust account means a separate account created by a licensed attorney for the purpose of holding client funds, which is:

(1) Maintained in compliance with all applicable state laws and regulations, including licensing regulations; and

(2) Located in the state where the attorney's office is located, or elsewhere in the United States with the consent of the consumer on whose behalf the funds are held.

Commercial communication means any written or oral statement, illustration, or depiction, whether in English or any other language, that is designed to effect a sale or create interest in purchasing any service, plan, or program, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, onhold script, upsell script, training materials provided to telemarketing firms, program-length commercial (“infomercial”), the internet, cellular network, or any other medium. Promotional materials and items and Web pages are included in the term “commercial communication.”

(1) General Commercial Communication means a commercial communication that occurs prior to the consumer agreeing to permit the provider to seek offers of mortgage assistance relief on behalf of the consumer, or otherwise agreeing to use the mortgage assistance relief service, and that is not directed at a specific consumer.

(2) Consumer-Specific Commercial Communication means a commercial communication that occurs prior to the consumer agreeing to permit the provider to seek offers of mortgage assistance relief on behalf of the consumer, or otherwise agreeing to use the mortgage assistance relief service, and that is directed at a specific consumer.

Consumer means any natural person who is obligated under any loan secured by a dwelling.

Dwelling means a residential structure containing four or fewer units, whether or not that structure is attached to real property, that is primarily for personal, family, or household purposes. The term includes any of the following if used as a residence: An individual condominium unit, cooperative unit, mobile home, manufactured home, or trailer.

Dwelling loan means any loan secured by a dwelling, and any associated deed of trust or mortgage.

Dwelling Loan Holder means any individual or entity who holds the dwelling loan that is the subject of the offer to provide mortgage assistance relief services.

Material means likely to affect a consumer's choice of, or conduct regarding, any mortgage assistance relief service.

Mortgage Assistance Relief Service means any service, plan, or program, offered or provided to the consumer in exchange for consideration, that is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:

(1) Stopping, preventing, or postponing any mortgage or deed of trust foreclosure sale for the consumer’s dwelling, any repossession of the consumer’s dwelling, or otherwise saving the consumer’s dwelling from foreclosure or repossession;

(2) Negotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees;

(3) Obtaining any forbearance or modification in the timing of payments from any dwelling loan holder or servicer on any dwelling loan;

(4) Obtaining any delay in the enforcement of any remedy for nonpayment of a dwelling loan, that is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:

(a) Stopping, preventing, or postponing any foreclosure or repossession of the consumer’s dwelling;

(b) Reducing the amount of the consumer’s obligations on a dwelling loan.

(5) In all instances, the required disclosures shall be presented in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them; and

(6) For program-length television, radio, or internet-based multimedia commercial communications, the required disclosures shall be made at the beginning, near the middle, and at the end of the commercial communication.
§ 1015.3 Prohibited representations.

It is a violation of this rule for any mortgage assistance relief service provider to engage in the following conduct:

(a) Representing, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief service, that a consumer cannot or should not contact or communicate with his or her lender or servicer.

(b) Misrepresenting, expressly or by implication, any material aspect of any mortgage assistance relief service, including but not limited to:

(1) The likelihood of negotiating, obtaining, or arranging any represented service or result, such as those set forth in the definition of Mortgage Assistance Relief Service in §1015.2;

(2) The amount of time it will take the mortgage assistance relief service provider to accomplish any represented service or result, such as those set forth in the definition of Mortgage Assistance Relief Service in §1015.2;

(3) That a mortgage assistance relief service is affiliated with, endorsed or approved by, or otherwise associated with:

(i) The United States government,

(ii) Any governmental homeowner assistance plan,

(iii) Any Federal, State, or local government agency, unit, or department,

(iv) Any nonprofit housing counselor agency or program,

(v) The maker, holder, or servicer of the consumer’s dwelling loan, or

(vi) Any other individual, entity, or program;

(4) The consumer’s obligation to make scheduled periodic payments or any other payments pursuant to the terms of the consumer’s dwelling loan;

(5) The terms or conditions of the consumer’s dwelling loan, including but not limited to the amount of debt owed;

(6) Negotiating, obtaining or arranging:

(i) A short sale of a dwelling,

(ii) A deed-in-lieu of foreclosure, or

(iii) Any other disposition of a dwelling other than a sale to a third party who is not the dwelling loan holder.

Mortgage Assistance Relief Service Provider or Provider means any person that provides, offers to provide, or arranges for others to provide, any mortgage assistance relief service. This term does not include:

(1) The dwelling loan holder, or any agent or contractor of such individual or entity.

(2) The servicer of a dwelling loan, or any agent or contractor of such individual or entity.

Person means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity, except to the extent that any person is specifically excluded from the Federal Trade Commission’s jurisdiction pursuant to 15 U.S.C. 44 and 45(a)(2).

Servicer means the individual or entity responsible for:

(1) Receiving any scheduled periodic payments from a consumer pursuant to the terms of the dwelling loan that is the subject of the offer to provide mortgage assistance relief services, including amounts for escrow accounts under section 10 of the Real Estate Settlement Procedures Act (12 U.S.C. 2609); and

(2) Making the payments of principal and interest and such other payments with respect to the amounts received from the consumer as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract.

Telemarketing means a plan, program, or campaign which is conducted to induce the purchase of any service, by use of one or more telephones and which involves more than one interstate telephone call.
§ 1015.4 Disclosures required in commercial communications.

It is a violation of this rule for any mortgage assistance relief service provider to engage in the following conduct:

(a) Disclosures in All General Commercial Communications—Failing to place the following statements in every general commercial communication for any mortgage assistance relief service:

(1) “(Name of company) is not associated with the government, and our service is not approved by the government or your lender.”

(2) In cases where the mortgage assistance relief service provider has represented, expressly or by implication, that consumers will receive any service or result set forth in paragraphs (2) through (6) of the definition of Mortgage Assistance Relief Service in §1015.2, “Even if you accept this offer and use our service, your lender may not agree to change your loan.”

(b) Disclosures in All Consumer-Specific Commercial Communications—Failing to disclose the following information in every consumer-specific commercial communication for any mortgage assistance relief service:

(1) “You may stop doing business with us at any time. You may accept or reject the offer of mortgage assistance we obtain from your lender [or servicer]. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us (insert amount or method for calculating the amount) for our services.” For the purposes of this paragraph (b)(1), the amount “you will have to pay” shall...
§ 1015.5 Prohibition on collection of advance payments and related disclosures.

It is a violation of this rule for any mortgage assistance relief service provider to:

(a) Request or receive payment of any fee or other consideration until the consumer has executed a written agreement between the consumer and the consumer’s dwelling loan holder or servicer incorporating the offer of mortgage assistance relief the provider obtained from the consumer’s dwelling loan holder or servicer;

(b) Fail to disclose, at the time the mortgage assistance relief service provider furnishes the consumer with the written agreement specified in paragraph (a) of this section, the following information: ‘‘This is an offer of mortgage assistance we obtained from your lender [or servicer]. You may accept or reject the offer. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [same amount as disclosed pursuant to §1015.4(b)(1)] for our services.’’ The disclosure required by this paragraph must be made in a clear and prominent manner, on a separate written page, and preceded by the heading: ‘‘IMPORTANT NOTICE: Before buying this service, consider the following information.’’ The heading must be in bold face font that is two point-type larger than the font size of the required disclosure; or

(c)(1) Fail to provide, at the time the mortgage assistance relief service provider furnishes the consumer with the written agreement specified in paragraph (a) of this section, a notice from the consumer’s dwelling loan holder or servicer that describes all material differences between the terms, conditions, and limitations associated with the consumer’s current mortgage loan and the terms, conditions, and limitations associated with the consumer’s mortgage loan if he or she accepts the dwelling loan holder’s or servicer’s offer, including but not limited to differences in the loan’s:

(i) Principal balance;

(ii) Contract interest rate, including the maximum rate and any adjustable rates, if applicable;

(c)(2) ‘‘[Name of company] is not associated with the government, and our service is not approved by the government or your lender.’’

(c)(3) In cases where the mortgage assistance relief service provider has represented, expressly or by implication, that consumers will receive any service or result set forth in paragraphs (2) through (6) of the definition of Mortgage Assistance Relief Service in §1015.2, ‘‘Even if you accept this offer and use our service, your lender may not agree to change your loan.’’

(c) Disclosures in All General Commercial Communications, Consumer-Specific Commercial Communications, and Other Communications—In cases where the mortgage assistance relief service provider has represented, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief service, that the consumer should temporarily or permanently discontinue payments, in whole or in part, on a dwelling loan, failing to disclose, clearly and prominently, and in close proximity to any such representation that ‘‘If you stop paying your mortgage, you could lose your home and damage your credit rating.’’
§ 1015.6 Assisting and facilitating.

(3) Complies with state laws and regulations that cover the same type of conduct the rule requires.

(b) An attorney who is exempt pursuant to paragraph (a) of this section is also exempt from §1015.5 if the attorney:

(1) Deposits any funds received from the consumer prior to performing legal services in a client trust account; and

(2) Complies with all state laws and regulations, including licensing regulations, applicable to client trust accounts.

§ 1015.8 Waiver not permitted.

It is a violation of this rule for any person to obtain, or attempt to obtain, a waiver from any consumer of any protection provided by or any right of the consumer under this rule.

§ 1015.9 Recordkeeping and compliance requirements.

(a) Any mortgage assistance relief provider must keep, for a period of twenty-four (24) months from the date the record is created, the following records:

(1) All contracts or other agreements between the provider and any consumer for any mortgage assistance relief service; and

(2) All consumer files containing the names, phone numbers, dollar amounts paid, and descriptions of mortgage assistance relief services purchased, to the extent the mortgage assistance relief service provider keeps such information in the ordinary course of business;

(3) All consumer files containing the names, phone numbers, dollar amounts paid, and descriptions of mortgage assistance relief services purchased, to the extent the mortgage assistance relief service provider keeps such information in the ordinary course of business;

(4) All consumer files containing the names, phone numbers, dollar amounts paid, and descriptions of mortgage assistance relief services purchased, to the extent the mortgage assistance relief service provider keeps such information in the ordinary course of business;

(5) All consumer files containing the names, phone numbers, dollar amounts paid, and descriptions of mortgage assistance relief services purchased, to the extent the mortgage assistance relief service provider keeps such information in the ordinary course of business; and
(6) Copies of the documentation provided to the consumer as specified in §1015.5 of this rule;
(b) A mortgage assistance relief service provider also must:
(1) Take reasonable steps sufficient to monitor and ensure that all employees and independent contractors comply with this rule. Such steps shall include the monitoring of communications directed at specific consumers, and shall also include, at a minimum, the following:
(i) If the mortgage assistance relief service provider is engaged in the tele-marketing of mortgage assistance relief services, performing random, blind recording and testing of the oral representations made by individuals engaged in sales or other customer service functions;
(ii) Establishing a procedure for receiving and responding to all consumer complaints; and
(iii) Ascertaining the number and nature of consumer complaints regarding transactions in which all employees and independent contractors are involved;
(2) Investigate promptly and fully each consumer complaint received;
(3) Take corrective action with respect to any employee or contractor whom the mortgage assistance relief service provider determines is not complying with this rule, which may include training, disciplining, or terminating such individual; and
(4) Maintain any information and material necessary to demonstrate its compliance with paragraphs (b)(1) through (3) of this section.
(c) A mortgage assistance relief provider may keep the records required by paragraphs (a) and (b) of this section in any form, and in the same manner, format, or place as it keeps such records in the ordinary course of business.
(d) It is a violation of this rule for a mortgage assistance relief service provider not to comply with this section.

§1015.10 Actions by states.
Any attorney general or other officer of a state authorized by the state to bring an action under this part may do so pursuant to section 626(b) of the 2009 Omnibus Appropriations Act, Public Law 111–8, section 626, 123 Stat. 524 (Mar. 11, 2009), as amended by Public Law 111–24, section 1097, 124 Stat. 2102 (July 21, 2010).

§1015.11 Severability.
The provisions of this rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Bureau of Consumer Financial Protection’s intention that the remaining provisions shall continue in effect.

PART 1016—PRIVACY OF CONSUMER FINANCIAL INFORMATION (REGULATION P)

Sec.
1016.1 Purpose and scope.
1016.2 Model privacy form and examples.
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Subpart A—Privacy and Opt Out Notices
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1016.5 Annual privacy notice to customers required.
1016.6 Information to be included in privacy notices.
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Subpart B—Limits on Disclosures
1016.10 Limits on disclosure of nonpublic personal information to nonaffiliated third parties.
1016.11 Limits on redisclosure and reuse of information.
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Subpart C—Exceptions
1016.13 Exception to opt out requirements for service providers and joint marketing.
1016.14 Exceptions to notice and opt out requirements for processing and servicing transactions.
1016.15 Other exceptions to notice and opt out requirements.

Subpart D—Relation to Other Laws
1016.16 Protection of Fair Credit Reporting Act.
1016.17 Relation to state laws.
§ 1016.1 Purpose and scope.

(a) Purpose. This part governs the treatment of nonpublic personal information about consumers by the financial institutions listed in paragraph (b) of this section. This part:

(1) Requires a financial institution to provide notice to customers about its privacy policies and practices;

(2) Describes the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by "opting out" of that disclosure, subject to the exceptions in §§1016.13, 1016.14, and 1016.15.

(b) Scope. (1) This part applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes from the institutions listed below. This part does not apply to information about companies or about individuals who obtain financial products or services for business, commercial, or agricultural purposes. This part applies to those financial institutions and other persons for which the Bureau of Consumer Financial Protection (Bureau) has rulemaking authority pursuant to section 504(a)(1)(A) of the GLB Act (12 U.S.C. 6804(a)(1)(A)-(B)). Except as otherwise specifically provided herein, entities to which this part applies are referred to in this part as "you."

(2)(i) Nothing in this part modifies, limits, or supersedes the standards governing individually identifiable health information promulgated by the Secretary of Health and Human Services under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–1320d–8).

(ii) Any institution of higher education that complies with the Federal Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations, 34 CFR part 99, and that is also a financial institution described in §1016.3(l)(3) of this part, shall be deemed to be in compliance with this part if it is in compliance with FERPA.

(3) Nothing in this part shall apply to:

(i) A financial institution that is a person described in section 1029(a) of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111–203, 124 Stat. 1376 (12 U.S.C. 5519(a));

(ii) A financial institution or other person subject to the jurisdiction on the Commodity Futures Trading Commission under 7 U.S.C. 7b–2;

(iii) A broker or dealer that is registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.,);

(iv) A registered investment adviser, properly registered by or on behalf of either the Securities Exchange Commission or any state, with respect to its investment advisory activities and its activities incidental to those investment advisory activities;

(v) An investment company that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.,) or

(vi) An insurance company, with respect to its insurance activities and its activities incidental to those insurance activities, that is subject to supervision by a state insurance regulator.
§ 1016.2 Model privacy form and examples.

(a) Model privacy form. Use of the model privacy form in the appendix to this part, consistent with the instructions in the appendix constitutes compliance with the notice content requirements of §§1016.6 and 1016.7 of this part, although use of the model privacy form is not required.

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

§ 1016.3 Definitions.

As used in this part, unless the context requires otherwise:

(a)(1) Affiliate means any company that controls, is controlled by, or is under common control with another company.

(2) Examples in the case of a credit union. (i) An affiliate of a Federal credit union is a credit union service organization (CUSO), as provided in 12 CFR part 712, that is controlled by the Federal credit union.

(ii) An affiliate of a federally-insured, state-chartered credit union is a company that is controlled by the credit union.

(b)(1) Clear and conspicuous means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) Examples. (i) Reasonably understandable. You make your notice reasonably understandable if you:

(A) Present the information in the notice in clear, concise sentences, paragraphs, and sections;

(B) Use short explanatory sentences or bullet lists whenever possible;

(C) Use definite, concrete, everyday words and active voice whenever possible;

(D) Avoid multiple negatives;

(E) Avoid legal and highly technical business terminology whenever possible; and

(F) Avoid explanations that are imprecise and readily subject to different interpretations.

(ii) Designed to call attention. You design your notice to call attention to the nature and significance of the information in it if you:

(A) Use a plain-language heading to call attention to the notice;

(B) Use a typeface and type size that are easy to read;

(C) Provide wide margins and ample line spacing;

(D) Use boldface or italics for key words; and

(E) In a form that combines your notice with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, when you combine your notice with other information.

(iii) Notices on Web sites. If you provide a notice on a Web site, you design your notice to call attention to the nature and significance of the information in it if you use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the Web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice, and you either:

(A) Place the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

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

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

(d) Company means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e)(1) Consumer means an individual who obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes, or that individual’s legal representative.

(2) Examples in the case of a financial institution other than a credit union. For purposes of this paragraph (e)(2), “you”
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is limited to financial institutions other than credit unions.

(i) An individual who applies to you for credit for personal, family, or household purposes is a consumer of a financial service, regardless of whether the credit is extended.

(ii) An individual who provides non-public personal information to you in order to obtain a determination about whether he or she may qualify for a loan to be used primarily for personal, family, or household purposes is a consumer of a financial service, regardless of whether the loan is extended.

(iii) An individual who provides non-public personal information to you in connection with obtaining or seeking to obtain financial, investment, or economic advisory services is a consumer regardless of whether you establish a continuing advisory relationship.

(iv) If you hold ownership or servicing rights to an individual’s loan that is used primarily for personal, family, or household purposes, the individual is your consumer, even if you hold those rights in conjunction with one or more other institutions. (The individual is also a consumer with respect to the other financial institutions involved.)

(v) An individual who is a consumer of another financial institution is not your consumer solely because you act as agent for, or provide processing or other services to, that financial institution.

(vi) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

(f) Consumer reporting agency has the same meaning as in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(g) Control of a company means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company as determined by the applicable prudential regulator (as defined in 12 U.S.C. 5481(24)), if any.

(4) Example in the case of credit unions. A credit union is presumed to have a
controlling influence over the management or policies of a CUSO, if the CUSO is 67% owned by credit unions.

(h) Credit union means a Federal or state-chartered credit union that the National Credit Union Share Insurance Fund insures.

(i) Customer means a consumer who has a customer relationship with you.

(j)(1) Customer relationship means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes. As noted in the examples, and for purposes of this part only, in the case of a credit union, a customer relationship will exist between a credit union and certain consumers that are not the credit union's members.

(j)(2) Examples in the case of financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction. For purposes of this paragraph (j)(2), “you” is limited to financial institutions other than credit unions and described in paragraph (l)(3) of this section.

(1) Continuing relationship. A consumer has a continuing relationship with you if the consumer:
   (A) Has a deposit or investment account with you;
   (B) Obtains a loan from you;
   (C) Has a loan for which you own the servicing rights;
   (D) Purchases an insurance product from you;
   (E) Holds an investment product through you, such as when you act as a custodian for securities or for assets in an Individual Retirement Arrangement;
   (F) Enters into an agreement or understanding with you whereby you undertake to arrange or broker a home mortgage loan, or credit to purchase a vehicle, for the consumer;
   (G) Enters into a lease of personal property with you;
   (H) Obtains financial, investment, or economic advisory services from you for a fee.

(ii) No continuing relationship. A consumer does not, however, have a continuing relationship with you if:
   (A) The consumer obtains a financial product or service only in isolated transactions, such as using your ATM to withdraw cash from an account at another financial institution or purchasing a cashier’s check or money order;
   (B) You sell the consumer’s loan and do not retain the rights to service that loan; or
   (C) You sell the consumer airline tickets, travel insurance, or traveler’s checks in isolated transactions.

(j)(3) Examples in the case of covered entities subject to FTC enforcement jurisdiction. For purposes of this paragraph (j)(3), “you” is limited to financial institutions described in paragraph (l)(3) of this section.

(i) Continuing relationship. A consumer has a continuing relationship with you if the consumer:
   (A) Has a credit or investment account with you;
   (B) Obtains a loan from you;
   (C) Purchases an insurance product from you;
   (D) Holds an investment product through you, such as when you act as a custodian for securities or for assets in an Individual Retirement Arrangement;
   (E) Enters into an agreement or understanding with you whereby you undertake to arrange or broker a home mortgage loan, or credit to purchase a vehicle, for the consumer;
   (F) Enters into a lease of personal property on a non-operating basis with you;
   (G) Obtains financial, investment, or economic advisory services from you for a fee;
   (H) Becomes your client for the purpose of obtaining tax preparation or credit counseling services from you;
   (I) Obtains career counseling while seeking employment with a financial institution or the finance, accounting, or audit department of any company (or while employed by such a financial institution or department of any company);
   (J) Is obligated on an account that you purchase from another financial institution, regardless of whether the account is in default when purchased, unless you do not locate the consumer.
or attempt to collect any amount from the consumer on the account;
(K) Obtains real estate settlement services from you; or
(L) Has a loan for which you own the servicing rights.
(ii) No continuing relationship. A consumer does not, however, have a continuing relationship with you if:
(A) The consumer obtains a financial product or service from you only in isolated transactions, such as using your ATM to withdraw cash from an account at another financial institution; purchasing a money order from you; cashing a check with you; or making a wire transfer through you;
(B) You sell the consumer’s loan and do not retain the rights to service that loan;
(C) You sell the consumer airline tickets, travel insurance, or traveler’s checks in isolated transactions;
(D) The consumer obtains one-time personal or real property appraisal services from you; or
(E) The consumer purchases checks for a personal checking account from you.
(4) Examples in the case of a credit union. (i) Continuing relationship. A consumer has a continuing relationship with a credit union if the consumer:
(A) Is a member as defined in the credit union’s bylaws;
(B) Is a nonmember who has a share, share draft, or credit card account with the credit union jointly with a member;
(C) Is a nonmember who has a loan that the credit union services;
(D) Is a nonmember who has an account with a credit union that has been designated as a low-income credit union; or
(E) Is a nonmember who has an account in a federally-insured, state-chartered credit union pursuant to state law.
(ii) No continuing relationship. A consumer does not, however, have a continuing relationship with a credit union if the consumer is a nonmember and:
(A) The consumer only obtains a financial product or service in isolated transactions, such as using the credit union’s ATM to withdraw cash from an account maintained at another financial institution or purchasing travelers checks; or
(B) The credit union sells the consumer’s loan and does not retain the rights to service that loan.
(k) Federal functional regulator means:
(1) The Board of Governors of the Federal Reserve System;
(2) The Office of the Comptroller of the Currency;
(3) The Board of Directors of the Federal Deposit Insurance Corporation;
(4) The National Credit Union Administration Board; and
(l)(1) Except for entities described in paragraph (l)(3) of this section, financial institution means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).
(2) For purposes of paragraph (l)(1) of this section, financial institution does not include:
(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);
(ii) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or
(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights), or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer non-public personal information to a non-affiliated third party.
(3)(i) Special definition for entities subject to the Federal Trade Commission’s enforcement jurisdiction. In the case of an entity described in section 566(a)(7) of the GLB Act (other than such an entity described in section 566(a)(1)(C) of that Act), financial institution means any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C.
For purposes of this paragraph (l)(3), an institution that is significantly engaged in financial activities is a financial institution.

(ii) Examples of financial institution.

For purposes of this paragraph (l)(3):

(A) A retailer that extends credit by issuing its own credit card directly to consumers is a financial institution because extending credit is a financial activity listed in 12 CFR 225.28(b)(1) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act and issuing that extension of credit through a proprietary credit card demonstrates that a retailer is significantly engaged in extending credit.

(B) A personal property or real estate appraiser is a financial institution because real and personal property appraisal is a financial activity listed in 12 CFR 225.28(b)(2)(i) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(C) An automobile dealership that leases automobiles on a nonoperating basis for longer than 90 days is a financial institution because leasing personal property on a nonoperating basis where the initial term of the lease is at least 90 days is a financial activity listed in 12 CFR 225.28(b)(3) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(D) A career counselor that specializes in providing career counseling services to individuals currently employed by or recently displaced from a financial organization, individuals who are seeking employment with a financial organization, or individuals who are currently employed by or seeking placement with the finance, accounting or audit departments of any company is a financial institution because providing career counseling activities are financial activities listed in 12 CFR 225.28(b)(9)(iii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(E) A business that prints and sells checks for consumers, either as its sole business or as one of its product lines, is a financial institution because printing and selling checks is a financial activity that is listed in 12 CFR 225.28(b)(10)(ii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(F) A business that regularly wires money to and from consumers is a financial institution because transferring money is a financial activity referenced in section 4(k)(4)(A) of the Bank Holding Company Act and regularly providing that service demonstrates that the business is significantly engaged in that activity.

(G) A check cashing business is a financial institution because cashing a check is exchanging money, which is a financial activity listed in section 4(k)(4)(A) of the Bank Holding Company Act.

(H) An accountant or other tax preparation service that is in the business of completing income tax returns is a financial institution because tax preparation services is a financial activity listed in 12 CFR 225.28(b)(6)(vi) and referenced in section 4(k)(4)(G) of the Bank Holding Company Act.

(I) A business that operates a travel agency in connection with financial services is a financial institution because operating a travel agency in connection with financial services is a financial activity listed in 12 CFR 211.5(d)(15) and referenced in section 4(k)(4)(G) of the Bank Holding Company Act.

(J) An entity that provides real estate settlement services is a financial institution because providing real estate settlement services is a financial activity listed in 12 CFR 225.28(b)(2)(viii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(K) A mortgage broker is a financial institution because brokering loans is a financial activity listed in 12 CFR 225.28(b)(1) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(L) An investment advisory company and a credit counseling service are each financial institutions because providing financial and investment advisory services are financial activities referenced in section 4(k)(4)(C) of the Bank Holding Company Act.
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(iii) For purposes of this paragraph (l)(3), financial institution does not include:
(A) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);
(B) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.);
(C) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer non-public personal information to a non-affiliated third party other than as permitted by §§1016.14 and 1016.15 of this part.
(D) Entities that engage in financial activities but that are not significantly engaged in those financial activities.
(iv) Examples of entities that are not significantly engaged in financial activities. (A) A retailer is not a financial institution if its only means of extending credit are occasional “lay away” and deferred payment plans or accepting payment by means of credit cards issued by others.
(B) A retailer is not a financial institution merely because it accepts payment in the form of cash, checks, or credit cards that it did not issue.
(C) A merchant is not a financial institution merely because it allows an individual to “run a tab.”
(D) A grocery store is not a financial institution merely because it allows individuals to whom it sells groceries to cash a check, or write a check for a higher amount than the grocery purchase and obtain cash in return.
(m)(1) Financial product or service means any product or service that a financial holding company could offer by engaging in a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).
(2) Special definition for entities subject to the Federal Trade Commission’s enforcement jurisdiction. In the case of an entity described in section 506(a)(7) of the GLB Act (other than such an entity described in section 504(a)(1)(C) of that Act), financial product or service means any product or service that a financial holding company could offer by engaging in a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).
(3) Financial service includes your evaluation or brokerage of information that you collect in connection with a request or an application from a consumer for a financial product or service.
(n) Member means a consumer who is a member of a credit union, as defined in the credit union’s bylaws.
(o)(1) Nonaffiliated third party means any person except:
(i) Your affiliate; or
(ii) A person employed jointly by you and any company that is not your affiliate (but nonaffiliated third party includes the other company that jointly employs the person).
(2) Nonaffiliated third party includes, for financial institutions other than credit unions, any company that is an affiliate solely by virtue of your or your affiliate’s direct or indirect ownership or control of the company in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(4)(H) and (I)).
(p)(1) Nonpublic personal information means:
(i) Personally identifiable financial information; and
(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.
(2) Nonpublic personal information does not include:
(i) Publicly available information, except as included on a list described in paragraph (p)(1)(ii) of this section; or
(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using
any personally identifiable financial information that is not publicly available.

(3) Examples of lists. (i) Nonpublic personal information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(ii) Nonpublic personal information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(q)(1) Personally identifiable financial information means any information:

(i) A consumer provides to you to obtain a financial product or service from you;

(ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or

(iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.

(2) Examples. (i) Information included. Personally identifiable financial information includes:

(A) Information a consumer provides to you on an application to obtain a loan, a credit card, a credit union membership, or other financial product or service;

(B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(C) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you;

(D) Any information about your consumer if it is disclosed in a manner that indicates that the individual is or has been your consumer;

(E) Any information that a consumer provides to you or that you or your agent otherwise obtain in connection with collecting on, or servicing, a loan or a credit account;

(F) Any information you collect through an internet "cookie" (an information collecting device from a Web server); and

(G) Information from a consumer report.

(ii) Information not included. Personally identifiable financial information does not include:

(A) A list of names and addresses of customers of an entity that is not a financial institution; and

(B) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(r)(1) Publicly available information means any information that you have a reasonable basis to believe is lawfully made available to the general public from:

(i) Federal, state, or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by Federal, state, or local law.

(2) Reasonable basis. You have a reasonable basis to believe that information is lawfully made available to the general public if you have taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that your consumer has not done so.

(3) Examples. (i) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper, or a Web site that is available to the general public on an unrestricted basis. A Web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.
(iii) **Reasonable basis.** (A) You have a reasonable basis to believe that mortgage information is lawfully made available to the general public if you have determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) You have a reasonable basis to believe that an individual’s telephone number is lawfully made available to the general public if you have located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

(s)(1) You means a financial institution or other person for which the Bureau has rulemaking authority under section 504(a)(1)(A) of the GLB Act (15 U.S.C. 6804(a)(1)(A)).

(2) You does not include:

(i) A financial institution that is a person described in section 1029(a) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5519(a));

(ii) A financial institution or other person subject to the jurisdiction of the Commodity Futures Trading Commission under 7 U.S.C. 7b–2;

(iii) A broker or dealer that is registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(iv) A registered investment adviser, properly registered by or on behalf of either the Securities Exchange Commission or any State, with respect to its investment advisory activities and its activities incidental to those investment advisory activities;

(v) An investment company that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.); or

(vi) An insurance company, with respect to its insurance activities and its activities incidental to those insurance activities, that is subject to supervision by a State insurance regulator.

**Subpart A—Privacy and Opt Out Notices**

§ 1016.4 Initial privacy notice to consumers required.

(a) **Initial notice requirement.** You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices to:

1. **Customer.** An individual who becomes your customer, not later than when you establish a customer relationship, except as provided in paragraph (e) of this section; and

2. **Consumer.** A consumer, before you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by §§1016.14 and 1016.15 of this part.

(b) **When initial notice to a consumer is not required.** You are not required to provide an initial notice to a consumer under paragraph (a) of this section if:

1. You do not disclose any nonpublic personal information about the consumer to any nonaffiliated third party, other than as authorized by §§1016.14 and 1016.15; and

2. You do not have a customer relationship with the consumer.

(c) **When you establish a customer relationship—(1) General rule.** You establish a customer relationship when you and the consumer enter into a continuing relationship.

(2) **Special rule for loans.** You establish a customer relationship with a consumer when you originate or acquire the servicing rights to a loan to the consumer for personal, family, or household purposes. If you subsequently transfer the servicing rights to that loan to another financial institution, the customer relationship transfers with the servicing rights.

(3) **Examples.** (i) **Examples of establishing customer relationship by financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.** For purposes of this paragraph (c)(3)(i), “you” is limited to financial institutions other than credit unions and financial institutions described in §1016.3(1)(3). You establish a customer relationship when the consumer:

(A) Opens a credit card account with you;

(B) Executes the contract to open a deposit account with you, obtains credit from you, or purchases insurance from you;

(C) Agrees to obtain financial, economic, or investment advisory services from you for a fee; or
(D) Becomes your client for the purpose of your providing credit counseling or tax preparation services.

(ii) Examples of establishing customer relationship by covered entities subject to FTC enforcement jurisdiction. For purposes of this paragraph (c)(3)(ii), “you” is limited to financial institutions described in §1016.3(1)(3) of this part. You establish a customer relationship when the consumer:

(A) Opens a credit card account with you;

(B) Executes the contract to obtain credit from you or purchases insurance from you;

(C) Agrees to obtain financial, economic, or investment advisory services from you for a fee;

(D) Becomes your client for the purpose of your providing credit counseling or tax preparation services or to obtain career counseling while seeking employment with a financial institution or the finance, accounting, or audit department of any company (or while employed by such a company or financial institution);

(E) Provides any personally identifiable financial information to you in an effort to obtain a mortgage loan through you;

(F) Executes the lease for personal property with you;

(G) Is an obligor on an account that you purchased from another financial institution and whom you have located and begun attempting to collect amounts owed on the account; or

(H) Provides you with the information necessary for you to compile and provide access to all of the consumer’s online financial accounts at your Web site.

(iii) Examples of establishing customer relationship by credit unions. For purposes of this paragraph (c)(3)(iii), “you” is limited to a credit union. You establish a customer relationship when the consumer:

(A) Becomes your member under your bylaws;

(B) Is a nonmember and opens a credit card account with you jointly with a member under your procedures;

(C) Is a nonmember and executes the contract to open a share or share draft account with you or obtains credit from you jointly with a member, including an individual acting as a guarantor;

(D) Is a nonmember and opens an account with you and you are a credit union designated as a low-income credit union;

(E) Is a nonmember and opens an account with you pursuant to State law and you are a State-chartered credit union.

(iv) Examples of loan rule. You establish a customer relationship with a consumer who obtains a loan for personal, family, or household purposes when you:

(A) Originate the loan to the consumer; or

(B) Purchase the servicing rights to the consumer’s loan.

(d) Existing customers. When an existing customer obtains a new financial product or service from you that is to be used primarily for personal, family, or household purposes, you satisfy the initial notice requirements of paragraph (a) of this section as follows:

(1) You may provide a revised privacy notice, under §1016.8 of this part, that covers the customer’s new financial product or service; or

(2) If the initial, revised, or annual notice that you most recently provided to that customer was accurate with respect to the new financial product or service, you do not need to provide a new privacy notice under paragraph (a) of this section.

(e) Exceptions to allow subsequent delivery of notice. (1) You may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a customer relationship if:

(i) Establishing the customer relationship is not at the customer’s election; or

(ii) Providing notice not later than when you establish a customer relationship would substantially delay the customer’s transaction and the customer agrees to receive the notice at a later time.

(2) Examples of exceptions. (i) Not at customer’s election. (A) In the case of financial institutions other than credit unions and financial institutions described in §1016.3(1)(3), establishing a
customer relationship is not at the customer’s election if you acquire a customer’s deposit liability or the servicing rights to a customer’s loan from another financial institution and the customer does not have a choice about your acquisition.

(B) In the case of financial institutions described in §1016.3(l)(3), establishing a customer relationship is not at the customer’s election if you acquire a customer’s loan or the servicing rights from another financial institution and the customer does not have a choice about your acquisition.

(C) In the case of credit unions, establishing a customer relationship is not at the customer’s election if you acquire a customer’s deposit liability from another financial institution and the customer does not have a choice about your acquisition.

(ii) **Substantial delay of customer’s transaction.** Providing notice not later than when you establish a customer relationship would substantially delay the customer’s transaction when:

(A) You and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service; or

(B) You establish a customer relationship with an individual under a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) or similar student loan programs where loan proceeds are disbursed promptly without prior communication between you and the customer.

(iii) **No substantial delay of customer’s transaction.** Providing notice not later than when you establish a customer relationship would not substantially delay the customer’s transaction when the relationship is initiated in person at your office or through other means by which the customer may view the notice, such as on a Web site.

(f) **Delivery.** When you are required to deliver an initial privacy notice by this section, you must deliver it according to §1016.9 of this part. If you use a short-form initial notice for non-customers according to §1016.6(d) of this part, you may deliver your privacy notice according to §1016.6(d)(3).

§ 1016.5 Annual privacy notice to customers required.

(a)(1) **General rule.** You must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the continuation of the customer relationship. **Annually** means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the customer on a consistent basis.

(2) **Example.** You provide a notice annually if you define the 12-consecutive-month period as a calendar year and provide the annual notice to the customer once in each calendar year following the calendar year in which you provided the initial notice. For example, if a customer opens an account on any day of year 1, you must provide an annual notice to that customer by December 31 of year 2.

(b)(1) **Termination of customer relationship.** You are not required to provide an annual notice to a former customer.

(2) **Examples in the case of financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.** For purposes of this paragraph (b)(2), “you” is limited to financial institutions other than credit unions and financial institutions described in §1016.3(l)(3). Your customer becomes a former customer when:

(i) In the case of a deposit account, the account is inactive under your policies; or

(ii) In the case of a closed-end loan, the customer pays the loan in full, you charge off the loan, or you sell the loan without retaining servicing rights; or

(iii) In the case of a credit card relationship or other open-end credit relationship, you no longer provide any statements or notices to the customer concerning that relationship or you sell the credit card receivables without retaining servicing rights; or

(iv) You have not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(3) **Examples in the case of covered entities subject to FTC enforcement jurisdiction.** For purposes of this paragraph
§ 1016.6 Information to be included in privacy notices.

(a) General rule. The initial, annual, and revised privacy notices that you provide under §§1016.4, 1016.5, and 1016.8 of this part must include each of the following items of information, in addition to any other information you wish to provide, that applies to you and to the consumers to whom you send your privacy notice:

1. The categories of nonpublic personal information that you collect;
2. The categories of nonpublic personal information that you disclose;
3. The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under §§1016.14 and 1016.15 of this part;
4. The categories of nonpublic personal information about your former customer that applies to you and to the consumers to whom you send your privacy notice;
5. The categories of nonpublic personal information about your former customer that applies to you and to the consumers to whom you send your privacy notice;
6. The categories of nonpublic personal information about your former customer that applies to you and to the consumers to whom you send your privacy notice;
7. The categories of nonpublic personal information about your former customer that applies to you and to the consumers to whom you send your privacy notice.

(b)(3), "you" is limited to financial institutions described in §1016.3(l)(3) of this part. Your customer becomes a former customer when:

1. In the case of a closed-end loan, the customer pays the loan in full, you charge off the loan, or you sell the loan without retaining servicing rights;
2. In the case of a credit card relationship or other open-end credit relationship, you sell the receivables without retaining servicing rights;
3. In the case of credit counseling services, the customer has failed to make required payments under a debt management plan, has been notified that the plan is terminated, and you no longer provide any statements or notices to the customer concerning that relationship;
4. In the case of mortgage or vehicle loan brokering services, your customer has obtained a loan through you (and you no longer provide any statements or notices to the customer concerning that relationship), or has ceased using your services for such purposes;
5. In the case of tax preparation services, you have provided and received payment for the service and no longer provide any statements or notices to the customer concerning that relationship;
6. In the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, you have received payment, or you have completed all of your responsibilities with respect to the settlement, including filing documents on the public record, whichever is later; or
7. In cases where there is no definitive time at which the customer relationship has terminated, you have not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(c) Special rule for loans in the case of a financial institution other than a credit union. If a financial institution other than a credit union does not have a customer relationship with a consumer under the special rule for loans in §1016.4(c)(2) of this part, then it need not provide an annual notice to that consumer under this section.

(d) Delivery. When you are required to deliver an annual privacy notice by this section, you must deliver it according to §1016.9 of this part.
customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your former customers, other than those parties to whom you disclose information under §§1016.14 and 1016.15;

(5) If you disclose nonpublic personal information to a nonaffiliated third party under §1016.13 (and no other exception in §1016.14 or §1016.15 applies to that disclosure), a separate statement of the categories of information you disclose and the categories of third parties with whom you have contracted;

(6) An explanation of the consumer’s right under §1016.10(a) of this part to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right at that time;

(7) Any disclosures that you make under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclos-ures of information among affiliates);

(8) Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosure that you make under paragraph (b) of this section.

(b) Description of nonaffiliated third parties subject to exceptions. If you disclose nonpublic personal information to third parties as authorized under §§1016.14 and 1016.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§1016.4 and 1016.5. When describing the categories with respect to those parties, it is sufficient to state that you make disclosures to other nonaffiliated companies:

(1) For your everyday business purposes, such as [include all that apply] to process transactions, maintain account(s), respond to court orders and legal investigations, or report to credit bureaus; or

(2) As permitted by law.

(c) Examples—(1) Categories of nonpublic personal information that you collect. You satisfy the requirement to categorize the nonpublic personal information that you collect if you list the following categories, as applicable:

(i) Information from the consumer;

(ii) Information about the consumer’s transactions with you or your affiliates;

(iii) Information about the consumer’s transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

(2) Categories of nonpublic personal information you disclose. (i) You satisfy the requirement to categorize the nonpublic personal information that you disclose if you list the categories described in paragraph (c)(1) of this section, as applicable, and a few examples to illustrate the types of information in each category.

(ii) If you reserve the right to disclose all of the nonpublic personal information about consumers that you collect, you may simply state that fact without describing the categories or examples of the nonpublic personal information you disclose.

(3) Categories of affiliates and nonaffiliated third parties to whom you disclose. You satisfy the requirement to categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information if you list the following categories, as applicable, and a few examples to illustrate the types of third parties in each category.

(i) Financial service providers, followed by illustrative examples such as mortgage bankers, securities brokers-dealers, and insurance agents;

(ii) Non-financial companies, followed by illustrative examples such as retailers, magazine publishers, airlines, and direct marketers; and

(iii) Others, followed by examples such as nonprofit organizations.

(4) Disclosures under exception for service providers and joint marketers. If you disclose nonpublic personal information under the exception in §1016.13 of this part to a nonaffiliated third party to market products or services that you offer alone or jointly with another financial institution, you satisfy the disclosure requirement of paragraph (a)(5) of this section if you:

(i) List the categories of nonpublic personal information you disclose,
using the same categories and examples you used to meet the requirements of paragraph (a)(2) of this section, as applicable; and

(ii) State whether the third party is:
(A) A service provider that performs marketing services on your behalf or on behalf of you and another financial institution; or
(B) A financial institution with whom you have a joint marketing agreement.

(5) **Simplified notices.** If you do not disclose, and do not wish to reserve the right to disclose, nonpublic personal information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under §§1016.14 and 1016.15, you may simply state that fact, in addition to the information you must provide under paragraphs (a)(1), (a)(8), (a)(9), and (b) of this section.

(6) **Confidentiality and security.** You describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information if you do both of the following:

(i) Describe in general terms who is authorized to have access to the information; and

(ii) State whether you have security practices and procedures in place to ensure the confidentiality of the information in accordance with your policy. You are not required to describe technical information about the safeguards you use.

(d) **Short-form initial notice with opt out notice for non-customers.** (1) You may satisfy the initial notice requirements in §§1016.4(a)(2), 1016.7(b), and 1016.7(c) of this part for a consumer who is not a customer by providing a short-form initial notice at the same time as you deliver an opt out notice as required in §1016.7.

(2) A short-form initial notice must:

(i) Be clear and conspicuous;

(ii) State that your privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(3) You must deliver your short-form initial notice according to §1016.9. You are not required to deliver your privacy notice with your short-form ini-

tial notice. You instead may simply provide the consumer a reasonable means to obtain your privacy notice. If a consumer who receives your short-form notice requests your privacy notice, you must deliver your privacy notice according to §1016.9.

(4) **Examples of obtaining privacy notice.** You provide a reasonable means by which a consumer may obtain a copy of your privacy notice if you:

(i) Provide a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at your office, maintain copies of the notice on hand that you provide to the consumer immediately upon request.

(e) **Future disclosures.** Your notice may include:

(1) Categories of nonpublic personal information that you reserve the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal information.

(f) **Model privacy form.** Pursuant to §1016.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in the appendix to this part.

§ 1016.7 **Form of opt out notice to consumers; opt out methods.**

(a)(1) **Form of opt out notice.** If you are required to provide an opt out notice under §1016.10(a), you must provide a clear and conspicuous notice to each of your consumers that accurately explains the right to opt out under that section. The notice must state:

(i) That you disclose or reserve the right to disclose nonpublic personal information about your consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(2) **Examples.** (1) **Adequate opt out notice.** You provide adequate notice that
the consumer can opt out of the disclosure of nonpublic personal information to a nonaffiliated third party if you:

(A) Identify all of the categories of nonpublic personal information that you disclose or reserve the right to disclose, and all of the categories of nonaffiliated third parties to which you disclose the information, as described in §1016.6(a)(2) and (3) of this part, and state that the consumer can opt out of the disclosure of that information;

(B) Identify the financial products or services that the consumer obtains from you, either singly or jointly, to which the opt out direction would apply.

(ii) Reasonable opt out means. You provide a reasonable means to exercise an opt out right if you:

(A) Designate check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Include a reply form together with the opt out notice that, in the case of financial institutions described in §1016.3(l)(3) of this part, includes the address to which the form should be mailed;

(C) Provide an electronic means to opt out, such as a form that can be sent via electronic mail or a process at your Web site, if the consumer agrees to the electronic delivery of information; or

(D) Provide a toll-free telephone number that consumers may call to opt out.

(iii) Unreasonable opt out means. You do not provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that you provided with the initial notice but did not include with the subsequent notice.

(iv) Specific opt out means. You may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(b) Same form as initial notice permitted. You may provide the opt out notice together with or on the same written or electronic form as the initial notice you provide in accordance with §1016.4.

(c) Initial notice required when opt out notice delivered subsequent to initial notice. If you provide the opt out notice later than required for the initial notice in accordance with §1016.4 of this part, you must also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(d) Joint relationships in the case of financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction. For purposes of this paragraph (d), “you” is limited to financial institutions other than credit unions and financial institutions described in §1016.3(l)(3) of this part.

(1) If two or more consumers jointly obtain a financial product or service from you, you may provide a single opt out notice. Your opt out notice must explain how you will treat an opt out direction by a joint consumer (as explained in paragraph (d)(5) of this section).

(2) Any of the joint consumers may exercise the right to opt out. You may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If you permit each joint consumer to opt out separately, you must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) You may not require all joint consumers to opt out before you implement any opt out direction.

(5) Example. If John and Mary have a joint checking account with you and arrange for you to send statements to John’s address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow:

(i) Send a single opt out notice to John’s address, but you must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If you do so, and John opts out, you may not require Mary to
(iii) Permit John and Mary to make different opt out directions. If you do so:

(A) You must permit John and Mary to opt out for each other;
(B) If both opt out, you must permit both to notify you in a single response (such as on a form or through a telephone call); and
(C) If John opts out and Mary does not, you may only disclose nonpublic personal information about Mary, but not about John and not about John and Mary jointly.

(e) Joint relationships in the case of credit unions. (1) If two or more consumers jointly obtain a financial product or service, other than a loan, from a credit union, the credit union may provide only a single opt out notice. The opt out notice must explain how the credit union will treat an opt out direction by a joint consumer (as explained in the examples in paragraph (e)(5) of this section).
(2) Any of the joint consumers may exercise the right to opt out. A credit union may either:
(i) Treat an opt out direction by a joint consumer to apply to all of the associated joint consumers; or
(ii) Permit each joint consumer to opt out separately.
(3) If a credit union permits each joint consumer to opt out separately, the credit union must permit one of the joint consumers to opt out on behalf of all of the joint consumers.
(4) A credit union may not require all joint consumers to opt out before the credit union implements any opt out direction.

Example. If John and Mary have a joint share account with a credit union and arrange for the credit union to send statements to John’s address, the credit union may do any of the following, but it must explain in its opt out notice which opt out policy it will follow:
(i) Send a single opt out notice to John’s address, but it must accept an opt out direction from either John or Mary.
(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If it does so, and John opts out, it may not require Mary to opt out as well before implementing John’s opt out direction.

(f) Joint relationships in the case of covered entities subject to FTC enforcement jurisdiction. For purposes of this paragraph (f), “you” is limited to the financial institutions described in §1016.3(l)(3).
(1) If two or more consumers jointly obtain a financial product or service from you, you may provide a single opt out notice, unless one or more of those consumers requests a separate opt out notice. Your opt out notice must explain how you will treat an opt out direction by a joint consumer (as explained in paragraph (f)(5) of this section).
(2) Any of the joint consumers may exercise the right to opt out. You may either:
(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or
(ii) Permit each joint consumer to opt out separately.
(3) If you permit each joint consumer to opt out separately, you must permit one of the joint consumers to opt out on behalf of all of the joint consumers.
(4) You may not require all joint consumers to opt out before you implement any opt out direction.

Example. If John and Mary have a joint credit card account with you and arrange for you to send statements to John’s address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow:
§ 1016.8 Revised privacy notices.

(a) General rule. Except as otherwise authorized in this part, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that you provided to that consumer under §1016.4 of this part, unless:

(1) You have provided to the consumer a clear and conspicuous revised notice that accurately describes your policies and practices;
(2) You have provided to the consumer a new opt out notice;
(3) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and
(4) The consumer does not opt out.

(b) Examples. (i) Except as otherwise permitted by §§1016.13, 1016.14, and 1016.15 of this part, you must provide a revised notice before you:

(1) Disclose a new category of nonpublic personal information to any nonaffiliated third party;
(2) Disclose nonpublic personal information to a new category of nonaffiliated third party; or
(3) Disclose nonpublic personal information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if you disclose nonpublic personal information to a new nonaffiliated third party that you adequately described in your prior notice.

(c) Delivery. When you are required to deliver a revised privacy notice by this section, you must deliver it according to §1016.9 of this part.

§ 1016.9 Delivering privacy and opt out notices.

(a) How to provide notices. You must provide any privacy notices and opt out notices, including short-form initial notices, that this part requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.
(b)(1) Examples of reasonable expectation of actual notice. You may reasonably expect that a consumer will receive actual notice if you:

(i) Hand-deliver a printed copy of the notice to the consumer;

(ii) Mail a printed copy of the notice to the last known address of the consumer;

(iii) For the consumer who conducts transactions electronically:

(A) In the case of financial institutions other than those described in §1016.3(l)(3) of this part, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service; or

(B) In the case of financial institutions described in §1016.3(l)(3), clearly and conspicuously post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service.

(iv) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2) The customer has requested that you refrain from sending any information regarding the customer relationship, and your current privacy notice remains available to the customer upon request.

(d) Oral description of notice insufficient. You may not provide any notice required by this part solely by orally explaining the notice, either in person or over the telephone.

(e) Retention or accessibility of notices for customers. (1) For customers only, you must provide the initial notice required by §1016.4(a)(1), the annual notice required by §1016.5(a), and the revised notice required by §1016.8 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) Examples of retention or accessibility. You provide a privacy notice to the customer so that the customer can retain it or obtain it later if you:

(i) Hand-deliver a printed copy of the notice to the customer;

(ii) Mail a printed copy of the notice to the last known address of the customer, or, in the case of credit unions, mail a printed copy of the notice to the last known address of the customer upon request of the customer; or

(iii) Make your current privacy notice available on a Web site (or a link to another Web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the Web site.

(f) Joint notice with other financial institutions. You may provide a joint notice from you and one or more of your affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to you and the other institutions.

(g) Joint relationships in the case of financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction. For purposes of this paragraph (g), "you" is limited to financial institutions other than credit unions and the financial institutions described in §1016.3(l)(3). If two or more consumers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of
§ 1016.4(a), 1016.5(a), and 1016.8(a), respectively, by providing one notice to those consumers jointly.

(h) Joint relationships in the case of covered entities subject to FTC enforcement jurisdiction. For purposes of this paragraph (h), “you” is limited to the financial institutions described in §1016.3(l)(3). If two or more consumers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of §§1016.4(a), 1016.5(a), and 1016.8(a) by providing one notice to those consumers jointly, unless one or more of those consumers requests separate notices.

(i) Joint relationships in the case of credit unions. (1) If two or more consumers jointly obtain a financial product or service, other than a loan, from a credit union, the credit union may satisfy the requirements of §1016.4(a) by providing one initial notice to those consumers jointly.

(2) Special rule for loans in the case of credit unions. (i) A credit union is required to provide an initial notice to a borrower or guarantor on a loan if the credit union shares his or her nonpublic personal information with nonaffiliated third parties other than for purposes under §§1016.13, 1016.14, and 1016.15.

(ii) A credit union may satisfy the annual notice requirements of §1016.5 by providing one notice to those borrowers and guarantors jointly.

Subpart B—Limits on Disclosures

§ 1016.10 Limits on disclosure of nonpublic personal information to nonaffiliated third parties.

(a)(1) Conditions for disclosure. Except as otherwise authorized in this part, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

(i) You have provided to the consumer an initial notice as required under §1016.4 of this part;

(ii) You have provided to the consumer an opt out notice as required in §1016.7 of this part;

(iii) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) Opt out definition. Opt out means a direction by the consumer that you not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by §§1016.13, 1016.14, and 1016.15.

(3) Examples of reasonable opportunity to opt out. You provide a consumer with a reasonable opportunity to opt out if:

(i) By mail. You mail the notices required in paragraph (a)(1) of this section to the consumer and allow the consumer to opt out by mailing a form, calling a toll-free telephone number, or any other reasonable means within 30 days from the date you mailed the notices.

(ii) By electronic means. A customer opens an online account with you and agrees to receive the notices required in paragraph (a)(1) of this section electronically, and you allow the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) Isolated transaction with consumer. For an isolated transaction, such as the purchase of a cashier’s check by a consumer, you provide the consumer with a reasonable opportunity to opt out if you provide the notices required in paragraph (a)(1) of this section at the time of the transaction and request that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(b) Application of opt out to all consumers and all nonpublic personal information. (1) You must comply with this section, regardless of whether you and the consumer have established a customer relationship.

(2) Unless you comply with this section, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that you have collected, regardless of whether you collected it before or after receiving the direction to opt out from the consumer.

(c) Partial opt out. You may allow a consumer to select certain nonpublic
§ 1016.11 Limits on redisclosure and reuse of information.

(a)(1) Information you receive under an exception. If you receive nonpublic personal information from a nonaffiliated financial institution under an exception in §1016.14 or §1016.15 of this part, your disclosure and use of that information is limited as follows:

(i) You may disclose the information to the affiliates of the financial institution from which you received the information;

(ii) You may disclose the information to your affiliates, but your affiliates may, in turn, disclose and use the information only to the extent that you may disclose and use the information; and

(iii) You may disclose and use the information pursuant to an exception in §1016.14 or §1016.15 in the ordinary course of business to carry out the activity covered by the exception under which you received the information.

(2) Example. If you obtain a customer list from a nonaffiliated financial institution outside of the exceptions in §§1016.14 and 1016.15:

(i) You may use that list for your own purposes; and

(ii) You may disclose that list to another nonaffiliated third party only if the third party may disclose that list to any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which you received the information.

(c) Information you disclose under an exception. If you disclose nonpublic personal information to a nonaffiliated third party under an exception in §1016.14 or §1016.15 of this part, the third party may disclose and use that information only as follows:

(1) The third party may disclose the information to your affiliates;

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) The third party may disclose and use the information pursuant to an exception in §1016.14 or §1016.15 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(d) Information you disclose outside of an exception. If you disclose nonpublic personal information to a nonaffiliated third party other than under an exception in §1016.14 or §1016.15 of this part, the third party may disclose the information only:

(1) To your affiliates;
§ 1016.12 Limits on sharing account number information for marketing purposes.

(a) General prohibition on disclosure of account numbers. You must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a consumer’s credit card account, deposit account, share account, or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(b) Exceptions. Paragraph (a) of this section does not apply if you disclose an account number or similar form of access number or access code:

(1) To your agent or service provider solely in order to perform marketing for your own products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; or

(2) To a participant in a private label credit card program or an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(c) Examples—(1) Account number. An account number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as you do not provide the recipient with a means to decode the number or code.

(2) Transaction account. A transaction account is an account other than a deposit account, a share account, or a credit card account. A transaction account does not include an account to which third parties cannot initiate charges.

§ 1016.13 Exception to opt out requirements for service providers and joint marketing.

(a) General rule. (1) The opt out requirements in §§ 1016.7 and 1016.10 of this part do not apply when you provide nonpublic personal information to a nonaffiliated third party to perform services for you or functions on your behalf, if you:

(i) Provide the initial notice in accordance with §1016.4; and

(ii) Enter into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which you disclosed the information, including use under an exception in §1016.14 or §1016.15 in the ordinary course of business to carry out those purposes.

(2) Example. If you disclose nonpublic personal information under this section to a financial institution with which you perform joint marketing, your contractual agreement with that institution meets the requirements of paragraph (a)(1)(ii) of this section if it prohibits the institution from disclosing or using the nonpublic personal information except as necessary to carry out the joint marketing or under an exception in §1016.14 or §1016.15 in the ordinary course of business to carry out that joint marketing.

(b) Service may include joint marketing. The services a nonaffiliated third party performs for you under paragraph (a) of this section may include marketing of your own products or services or marketing of financial products or services offered pursuant to joint agreements between you and one or more financial institutions.

(c) Definition of joint agreement. For purposes of this section, joint agreement means a written contract pursuant to which you and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.
§ 1016.14 Exceptions to notice and opt out requirements for processing and servicing transactions.

(a) Exceptions for processing transactions at consumer’s request. The requirements for initial notice in §1016.4(a)(2), for the opt out in §§1016.7 and 1016.10, and for service providers and joint marketing in §1016.13 do not apply if you disclose nonpublic personal information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) Servicing or processing a financial product or service that a consumer requests or authorizes;

(2) Maintaining or servicing the consumer’s account with you, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(3) A proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer.

(b) Necessary to effect, administer, or enforce a transaction means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer’s account in the ordinary course of providing the financial service or financial product;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer’s agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;

(v) To underwrite insurance at the consumer’s request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer’s insurance: account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or state law; or

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or account number, or by other payment means;

(B) The transfer of receivables, accounts, or interests therein; or

(C) The audit of debit, credit, or other payment information.

§ 1016.15 Other exceptions to notice and opt out requirements.

(a) Exceptions to opt out requirements. The requirements for initial notice in §1016.4(a)(2), for the opt out in §§1016.7 and 1016.10, and for service providers and joint marketing in §1016.13 do not apply when you disclose nonpublic personal information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2)(i) To protect the confidentiality or security of your records pertaining to the consumer, service, product, or transaction;

(ii) To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer;

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that
§ 1016.16 Protection of Fair Credit Reporting Act.

Nothing in this part shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under section 603 of that Act.

§ 1016.17 Relation to state laws.

(a) In general. This part shall not be construed to supersede, alter, or affect any statute, regulation, order, or interpretation in effect in any state, except to the extent that such state statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) Greater protection under state law. For purposes of this section, a state statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this part, as determined by the Bureau, on its own motion or upon the petition of any interested party, after consultation with the agency or authority with jurisdiction under section 505(a) of the GLB Act (15 U.S.C. 6805(a)) over either the person that initiated the complaint or that is the subject of the complaint.

APPENDIX TO PART 1016—MODEL PRIVACY FORM

A. THE MODEL PRIVACY FORM
Version 1: Model Form With No Opt-Out.

**FACTS**

**WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**

**Why?**
Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

**What?**
The types of personal information we collect and share depend on the product or service you have with us. This information can include:
- Social Security number and [income]
- [account balances] and [payment history]
- [credit history] and [credit scores]

When you are no longer our customer, we continue to share your information as described in this notice.

**How?**
All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

<table>
<thead>
<tr>
<th>Reasons we can share your personal information</th>
<th>Does [name of financial institution] share?</th>
<th>Can you limit this sharing?</th>
</tr>
</thead>
<tbody>
<tr>
<td>For our everyday business purposes—such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus</td>
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<tr>
<td>For our marketing purposes—to offer our products and services to you</td>
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<td>For joint marketing with other financial companies</td>
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<td>For our affiliates’ everyday business purposes—information about your transactions and experiences</td>
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<td>For our affiliates’ everyday business purposes—information about your creditworthiness</td>
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<td>For our affiliates to market to you</td>
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<td>For nonaffiliates to market to you</td>
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**Questions?** Call [phone number] or go to [website]
<table>
<thead>
<tr>
<th>Who we are</th>
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<td><strong>Who is providing this notice?</strong></td>
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<table>
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<tr>
<th>What we do</th>
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<tr>
<td><strong>How does [name of financial institution] protect my personal information?</strong></td>
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<td><strong>How does [name of financial institution] collect my personal information?</strong></td>
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<td><strong>Why can’t I limit all sharing?</strong></td>
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<th>Definitions</th>
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<td><strong>Affiliates</strong></td>
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<td><strong>Nonaffiliates</strong></td>
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<td><strong>Joint marketing</strong></td>
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<th>Other important information</th>
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<td>[insert other important information]</td>
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</table>
Version 2: Model Form with Opt-Out by Telephone and/or Online.

**FACTS**

**What does [name of financial institution] do with your personal information?**

**Why?**

Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

**What?**

The types of personal information we collect and share depend on the product or service you have with us. This information can include:

- Social Security number and [income]
- [account balances] and [payment history]
- [credit history] and [credit scores]

**How?**

All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

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<td>For nonaffiliates to market to you</td>
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</tbody>
</table>

**To limit our sharing**

- Call [phone number]—our menu will prompt you through your choice(s) or
- Visit us online: [website]

Please note:

If you are a new customer, we can begin sharing your information [30] days from the date we sent this notice. When you are no longer our customer, we continue to share your information as described in this notice.

However, you can contact us at any time to limit our sharing.

**Questions?**

Call [phone number] or go to [website]
<table>
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</table>

<table>
<thead>
<tr>
<th><strong>What we do</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>How does [name of financial institution] protect my personal information?</td>
</tr>
</tbody>
</table>
| How does [name of financial institution] collect my personal information? | We collect your personal information, for example, when you
  - [open an account] or [deposit money]
  - [pay your bills] or [apply for a loan]
  - [use your credit or debit card]
[We also collect your personal information from other companies.]
[OR]
[We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.] |
| Why can’t I limit all sharing? | Federal law gives you the right to limit only
  - sharing for affiliates’ everyday business purposes—information about your creditworthiness
  - affiliates from using your information to market to you
  - sharing for nonaffiliates to market to you
State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.] |
| What happens when I limit sharing for an account I hold jointly with someone else? | [Your choices will apply to everyone on your account.] OR [Your choices will apply to everyone on your account—unless you tell us otherwise.] |

<table>
<thead>
<tr>
<th><strong>Definitions</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Affiliates</strong></td>
</tr>
<tr>
<td>Nonaffiliates</td>
</tr>
<tr>
<td>Joint marketing</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Other important information</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>[insert other important information]</td>
</tr>
</tbody>
</table>
**FACTS**

**WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**

**Why?**
Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

**What?**
The types of personal information we collect and share depend on the product or service you have with us. This information can include:
- Social Security number and [income]
- Account balances and [payment history]
- [credit history] and [credit scores]

**How?**
All financial companies need to share customers’ personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers’ personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

<table>
<thead>
<tr>
<th>Reason we can share your personal information</th>
<th>Does [name of financial institution] share?</th>
<th>Can you limit this sharing?</th>
</tr>
</thead>
<tbody>
<tr>
<td>For our everyday business purposes—such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus</td>
<td></td>
<td></td>
</tr>
<tr>
<td>For our marketing purposes—to offer our products and services to you</td>
<td></td>
<td></td>
</tr>
<tr>
<td>For joint marketing with other financial companies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>For our affiliates’ everyday business purposes—information about your transactions and experiences</td>
<td></td>
<td></td>
</tr>
<tr>
<td>For our affiliates’ everyday business purposes—information about your creditworthiness</td>
<td></td>
<td></td>
</tr>
<tr>
<td>For our affiliates to market to you</td>
<td></td>
<td></td>
</tr>
<tr>
<td>For nonaffiliates to market to you</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**To limit our sharing**
- Call [phone number]—our menu will prompt you through your choice(s)
- Visit us online: [website] or [website] or [website]
- Mail the form below

Please note:
If you are a new customer, we can begin sharing your information [30] days from the date we sent this notice. When you are no longer our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.

**Questions?**
Call [phone number] or go to [website]

---

**Mail-in Form**

Mark any/all you want to limit:
- Do not share information about my creditworthiness with your affiliates for their everyday business purposes.
- Do not allow your affiliates to use my personal information to market to me.
- Do not share my personal information with nonaffiliates to market their products and services to me.

**Leave Blank OR**
If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below.

- [ ] Apply my choices only to me

<table>
<thead>
<tr>
<th>Name</th>
<th>Mail to: [Name of Financial Institution]</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>[Address]</td>
</tr>
<tr>
<td></td>
<td>[City], [ST] [ZIP]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Address</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>City, State, Zip</td>
<td></td>
</tr>
<tr>
<td>Who we are</td>
<td></td>
</tr>
<tr>
<td>Who is providing this notice?</td>
<td>[insert]</td>
</tr>
<tr>
<td>What we do</td>
<td></td>
</tr>
<tr>
<td>How does [name of financial institution] protect my personal information?</td>
<td>To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]</td>
</tr>
<tr>
<td>How does [name of financial institution] collect my personal information?</td>
<td>We collect your personal information, for example, when you ▪ [open an account] or [deposit money] ▪ [pay your bills] or [apply for a loan] ▪ [use your credit or debit card] [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]</td>
</tr>
<tr>
<td>Why can’t I limit all sharing?</td>
<td>Federal law gives you the right to limit only ▪ sharing for affiliates’ everyday business purposes—information about your creditworthiness ▪ affiliates from using your information to market to you ▪ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]</td>
</tr>
<tr>
<td>What happens when I limit sharing for an account I hold jointly with someone else?</td>
<td>[Your choices will apply to everyone on your account.] OR [Your choices will apply to everyone on your account—unless you tell us otherwise.]</td>
</tr>
<tr>
<td>Definitions</td>
<td></td>
</tr>
<tr>
<td>Affiliates</td>
<td>Companies related by common ownership or control. They can be financial and nonfinancial companies. ▪ [affiliate information]</td>
</tr>
<tr>
<td>Nonaffiliates</td>
<td>Companies not related by common ownership or control. They can be financial and nonfinancial companies. ▪ [nonaffiliate information]</td>
</tr>
<tr>
<td>Joint marketing</td>
<td>A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ▪ [joint marketing information]</td>
</tr>
<tr>
<td>Other important information</td>
<td>[insert other important information]</td>
</tr>
</tbody>
</table>
B. GENERAL INSTRUCTIONS

1. How the Model Privacy Form Is Used
   (a) The model form may be used, at the option of a financial institution, including a group of financial institutions that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in §§1016.6 and 1016.7 of this part.
   (b) The model form is a standardized form, including page layout, content, format, style, pagination, and shading. Institutions seeking to obtain the safe harbor through use of the model form may modify it only as described in these Instructions.
   (c) Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681–1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.
   (d) The word “customer” may be replaced by the word “member” whenever it appears in the model form, as appropriate.

2. The Contents of the Model Privacy Form
   The model form consists of two pages, which may be printed on both sides of a single sheet of paper, or may appear on two separate pages. Where an institution provides a long list of institutions at the end of the model form in accordance with Instruction C.3(a)(1), or provides additional information in accordance with Instruction C.3(c), and such list or additional information exceeds the space available on page two of the model form, such list or additional information may extend to a third page.
   (a) Page One. The first page consists of the following components:
      (1) Date last revised (upper right-hand corner).
      (2) Title.
      (3) Key frame (Why?, What?, How?).
      (4) Disclosure table (“Reasons we can share your personal information”).
      (5) “To limit our sharing” box, as needed, for the financial institution’s opt-out information.
      (6) “Questions” box, for customer service contact information.
      (7) Mail-in opt-out form, as needed.
   (b) Page Two. The second page consists of the following components:
      (1) Heading (Page 2).
      (2) Frequently Asked Questions (“Who we are” and “What we do”).
      (3) Definitions.
      (4) “Other important information” box, as needed.

3. The Format of the Model Privacy Form
   The format of the model form may be modified only as described below.
   (a) Easily readable type font. Financial institutions that use the model form must use an easily readable type font. While a number of factors together produce easily readable type font, institutions are required to use a minimum of 10-point font (unless otherwise expressly permitted in these Instructions) and sufficient spacing between the lines of type.
   (b) Logo. A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.
C. Information Required in the Model Privacy Form

The information in the model form may be modified only as described below:

1. Name of the Institution or Group of Affiliated Institutions Providing the Notice

Insert the name of the financial institution providing the notice or a common identity of affiliated institutions jointly providing the notice on the form wherever [name of financial institution] appears.

2. Page One

(a) Last revised date. The financial institution must insert in the upper right-hand corner the date on which the notice was last revised. The information shall appear in minimum 8-point font as "rev. [month/year]" using either the name or number of the month, such as "rev. July 2009" or "rev. 7/09".

(b) General instructions for the "What?" box.

(1) The bulleted list identifies the types of personal information that the institution collects and shares. All institutions must use the term "Social Security number" in the first bullet.

(2) Institutions must use five (5) of the following terms to complete the bulleted list: Income; account balances; payment history; transaction history; transaction or loss history; credit history; credit scores; assets; investment experience; credit-based insurance scores; insurance claim history; medical information; overdraft history; purchase history; account transactions; risk tolerance; medical-related debts; credit card or other debt; mortgage rates and payments; retirement assets; checking account information; employment information; wire transfer instructions.

(c) General instructions for the disclosure table. The left column lists reasons for sharing or using personal information. Each reason correlates to a specific legal provision described in paragraph C.2(d) of this Instruc-

tion. In the middle column, each institution must provide a "Yes" or "No" response that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. In the right column, each institution must provide in each box one of the following three (3) responses, as applicable, that reflects whether a consumer can limit such sharing: "Yes" if it is required to or voluntarily provides an opt-out; "No" if it does not provide an opt-out; or "We don’t share" if it answers "No" in the middle column. Only the sixth row ("For our affiliates to market to you") may be omitted at the option of the institution. See paragraph C.2(d)(6) of this Instruction.

(d) Specific disclosures and corresponding legal provisions.

(1) For our everyday business purposes. This reason incorporates sharing information under §§1016.14 and 1016.15 and with service providers pursuant to §1016.13 of this part other than the purposes specified in paragraphs C.2(d)(2) or C.2(d)(3) of these Instructions.

(2) For our marketing purposes. This reason incorporates sharing information with service providers by an institution for its own marketing pursuant to §1016.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(3) For joint marketing with other financial companies. This reason incorporates sharing information under joint marketing agreements between two or more financial institutions and with any service provider used in connection with such agreements pursuant to §1016.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(4) For our affiliates’ everyday business purposes—information about transactions and experiences. This reason incorporates sharing information specified in sections 603(d)(2)(A)(i) and (ii) of the FCRA. An institution that shares for this reason may choose to provide an opt-out.

(5) For our affiliates’ everyday business purposes—information about creditworthiness. This reason incorporates sharing information pursuant to section 603(d)(2)(A)(iii) of the FCRA. An institution that shares for this reason must provide an opt-out.

(6) For our affiliates to market to you. This reason incorporates sharing information specified in section 624 of the FCRA. This reason may be omitted from the disclosure table when: the institution does not have affiliates (or does not disclose personal information to its affiliates); the institution’s affiliates do not use personal information in a manner that requires an opt-out; or the institution provides the affiliate marketing notice separately. Institutions that include this reason must provide an opt-out of indefinite duration. An institution that is required to provide an affiliate marketing opt-
out, but does not include that opt-out in the model form under this part, must comply with section 624 of the FCRA and 12 CFR part 1022, subpart C, with respect to the initial notice and any subsequent renewal notice and opt-out. An institution not required to provide an opt-out under this subparagraph may elect to include this reason in the opt-out. § 1016.7 (h) For nonaffiliates to market to you. This reason incorporates sharing described in §§ 1016.7 and 1016.10(a) of this part. An institution that shares personal information for this reason must provide an opt-out. 

(c) To limit our sharing: A financial institution must include this section of the model form only if it provides an opt-out. The word "choice" may be written in either the singular or plural, as appropriate. Institutions must select one or more of the applicable opt-out methods described: Telephone, such as by a toll-free number; a Web site; or use of a mail-in opt-out form. Institutions may include the words "toll-free" before telephone, as appropriate. An institution that allows consumers to opt out online must provide either a specific Web address that takes consumers directly to the opt-out page or a general Web address that provides a clear and conspicuous direct link to the opt-out page. The opt-out choices made available to the consumer who contacts the institution through these methods must correspond accurately to the "Yes" responses in the third column of the disclosure table. In the part titled "Please note," institutions may insert a number that is 30 or greater in the space marked "[30]." Instructions on voluntary or state privacy law opt-out information are in paragraph C.2(g)(6) of these Instructions.

(f) Questions box. Customer service contact information must be inserted as appropriate, where [phone number] or [Web site] appear. Institutions may elect to provide either a phone number, such as a toll-free number, or a web address, or both. Institutions may include the words "toll-free" before the telephone number, as appropriate.

(g) Mail-in opt-out form. Financial institutions must include this mail-in form only if they state in the "To limit our sharing" box that consumers can opt out by mail. The mail-in form must provide opt-out options that correspond accurately to the "Yes" responses in the third column in the disclosure table. Institutions that require customers to provide only name and address may omit the section identified as "[account #]." Institutions that require additional or different information, such as a random opt-out number or a truncated account number, to implement an opt-out election should modify the "[account #]" reference accordingly. This includes institutions that require customers with multiple accounts to identify each account to which the opt-out should apply. An institution must enter its opt-out mailing address: in the far right of this form (see version 3); or below the form (see version 4). The reverse side of the mail-in opt-out form must not include any content of the model form. § 1016.10(a) (1) Joint accountholder. Only institutions that provide their joint accountholders the choice to opt out for only one accountholder, in accordance with paragraph C.3(a)(5) of these Instructions, must include in the far left column of the mail-in form the following statement: "If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. Apply my choice(s) only to me." The word "choice" may be written in either the singular or plural, as appropriate. Financial institutions that provide insurance products or services, provide this option, and elect to use the model form may substitute the word "policy" for "account" in this statement. Institutions that do not provide this option may eliminate this left column from the mail-in form.

(f) FCRA section 603(d)(2)(A)(ii) opt-out. If the institution shares personal information pursuant to section 603(d)(2)(A)(ii) of the FCRA, it must include in the mail-in opt-out form the following statement: "Do not share information about my creditworthiness with your affiliates for their everyday business purposes." § 1016.10(a) (2) Additional opt-outs. Financial institutions that use the disclosure table to provide opt-out options beyond those required by Federal law must provide those opt-outs in this section of the model form. A financial institution that chooses to offer an opt-out for its own marketing in the mail-in opt-out form must include one of the two following statements: "Do not share my personal information with nonaffiliates to market their products and services to me." or "Do not use my personal information to market to me." A financial institution that chooses to offer an opt-out for joint marketing must include the following statement: "Do not share my personal information with other financial institutions to jointly market to me." (h) Barcodes. A financial institution may elect to include a barcode and/or "tagline" (an internal identifier) in 6-point font at the bottom of page one, as needed for information internal to the institution, so long as
these do not interfere with the clarity or text of the form.

3. Page Two

(a) General Instructions for the Questions. Certain of the Questions may be customized as follows:

1. “Who is providing this notice?” This question may be omitted where only one financial institution provides the model form and that institution is clearly identified in the title on page one. Two or more financial institutions that jointly provide the model form must use this question to identify themselves as required by §1016.9(f) of this part. Where the list of institutions exceeds four in number, the institution must describe in the response to this question the general types of institutions jointly providing the notice and must separately identify those institutions, in minimum 8-point font, directly following the “Other important information” box, or, if that box is not included in the institution’s form, directly following the “Definitions.” The list may appear in a multi-column format.

2. “How does [name of financial institution] protect my personal information?” The financial institution may only provide additional information pertaining to its safeguards practices following the designated response to this question. Such information may include information about the institution’s use of cookies or other measures it uses to safeguard personal information. Institutions are limited to a maximum of 30 additional words.

3. “How does [name of financial institution] collect my personal information?” The financial institution must use five (5) of the following terms to complete the bulleted list for this question: Open an account; deposit money; pay your bills; apply for a loan; use your credit or debit card; seek financial or tax advice; apply for insurance; pay insurance premiums; file an insurance claim; seek advice about your investments; buy securities from us; sell securities to us; direct us to buy securities; make deposits or withdrawals from your account; enter into an investment advisory contract; give us your income information; provide employment information; give us your employment history; tell us about your investment or retirement portfolio; tell us about your investment or retirement earnings; apply for financing; apply for a lease; provide account information; give us your contact information; pay us by check; give us your wage statements; provide your mortgage information; make a wire transfer; tell us who receives the money; tell us where to send the money; show your government-issued ID; show your driver’s license; order a commodity futures or option trade. Institutions that collect personal information from their affiliates and/or credit bureaus must include after the bulleted list the following statement: “We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.” Institutions that do not collect personal information from their affiliates or credit bureaus but do collect information from other companies must include the following statement instead: “We also collect your personal information from other companies.” Only institutions that do not collect any personal information from affiliates, credit bureaus, or other companies can omit both statements.

4. “Why can’t I limit all sharing?” Institutions that describe state privacy law provisions in the “Other important information” box must use the bracketed sentence: “See below for more on your rights under state law.” Other institutions must omit this sentence.

5. “What happens when I limit sharing for an account I hold jointly with someone else?” Only financial institutions that provide opt-out options must use this question. Other institutions must omit this question. Institutions must choose one of the following two statements to respond to this question: “Your choices will apply to everyone on your account,” or “Your choices will apply to everyone on your account—unless you tell us otherwise.” Financial institutions that provide insurance products or services and elect to use the model form may substitute the word “policy” for “account” in these statements.

(b) General Instructions for the Definitions. The financial institution must customize the space below the responses to the three definitions in this section. This specific information must be in italicized lettering to set off the information from the standardized definitions.

1. Affiliates. As required by §1016.6(a)(3) of this part, where [affiliate information] appears, the financial institution must:

   (i) If it has no affiliates, state: “[name of financial institution] has no affiliates”;

   (ii) If it has affiliates but does not share personal information, state: “[name of financial institution] does not share with our affiliates”; or

   (iii) If it shares with its affiliates, state, as applicable: “Our affiliates include companies with a [common corporate identity of financial institution] name; financial companies such as [insert illustrative list of companies]; nonfinancial companies, such as [insert illustrative list of companies]; and others, such as [insert illustrative list].”

2. Nonaffiliates. As required by §1016.6(c)(3) of this part, where [nonaffiliate information] appears, the financial institution must:

   (i) If it does not share with nonaffiliated third parties, state: “[name of financial institution] does not share with nonaffiliates so they can market to you”; or
(ii) If it shares with nonaffiliated third parties, state, as applicable: “Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations].”

(d) Joint Marketing. As required by §1016.13 of this part, where [joint marketing] appears, the financial institution must:
(i) If it does not engage in joint marketing, state: “[name of financial institution] doesn’t jointly market”; or
(ii) If it shares personal information for joint marketing, state, as applicable: “Our joint marketing partners include [list categories of companies such as credit card companies].”

(c) General instructions for the “Other important information” box. This box is optional. The space provided for information in this box is not limited. Only the following types of information can appear in this box.
1. State and/or international privacy law information; and/or
2. Acknowledgment of receipt form.

PART 1022—FAIR CREDIT REPORTING (REGULATION V)

Subpart A—General Provisions
Sec. 1022.1 Purpose, scope, and model forms and disclosures.
1022.2 Examples.
1022.3 Definitions.

Subpart B [Reserved]

Subpart C—Affiliate Marketing
1022.20 Coverage and definitions.
1022.21 Affiliate marketing opt-out and exceptions.
1022.22 Scope and duration of opt-out.
1022.23 Contents of opt-out notice; consolidated and equivalent notices.
1022.24 Reasonable opportunity to opt out.
1022.25 Reasonable and simple methods of opting out.
1022.26 Delivery of opt-out notices.
1022.27 Renewal of opt-out.

Subpart D—Medical Information
1022.30 Obtaining or using medical information in connection with a determination of eligibility for credit.
1022.31 Limits on redisclosure of information.
1022.32 Sharing medical information with affiliates.

Subpart E—Duties of Furnishers of Information
1022.40 Scope.
1022.41 Definitions.

Subpart F—Duties of Users Regarding Obtaining and Using Consumer Reports
1022.50–1022.53 [Reserved]
1022.54 Duties of users making written firm offers of credit or insurance based on information contained in consumer files.

Subpart G [Reserved]

Subpart H—Duties of Users Regarding Risk-Based Pricing
1022.70 Scope.
1022.71 Definitions.
1022.72 General requirements for risk-based pricing notices.
1022.73 Content, form, and timing of risk-based pricing notices.
1022.74 Exceptions.
1022.75 Rules of construction.

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft
1022.80–1022.81 [Reserved]
1022.82 Duties of users regarding address discrepancies.

Subparts J–L [Reserved]

Subpart M—Duties of Consumer Reporting Agencies Regarding Identity Theft
1022.120 [Reserved]
1022.121 Active duty alerts.
1022.122 [Reserved]
1022.123 Proof of identity.

Subpart N—Duties of Consumer Reporting Agencies Regarding Disclosures to Consumers
1022.130 Definitions
1022.131–1022.135 [Reserved]
1022.136 Centralized source for requesting annual file disclosures from nationwide consumer reporting agencies.
1022.137 Streamlined process for requesting annual file disclosures from nationwide specialty consumer reporting agencies.
1022.138 Prevention of deceptive marketing of free credit reports.

Subpart O—Miscellaneous Duties of Consumer Reporting Agencies
1022.140 Prohibition against circumventing or evading treatment as a consumer reporting agency.

APPENDIX A TO PART 1022 [RESERVED]
APPENDIX B TO PART 1022—MODEL NOTICES OF FURNISHING NEGATIVE INFORMATION
APPENDIX C TO PART 1022—MODEL FORMS FOR OPT-OUT NOTICES
APPENDIX D TO PART 1022—MODEL FORMS FOR FIRM OFFERS OF CREDIT OR INSURANCE
APPENDIX E TO PART 1022—INTERAGENCY GUIDELINES CONCERNING THE ACCURACY AND INTEGRITY OF INFORMATION FURNISHED TO CONSUMER REPORTING AGENCIES
APPENDIXES F–G TO PART 1022 [RESERVED]
APPENDIX H TO PART 1022—MODEL FORMS FOR RISK-BASED PRICING AND CREDIT SCORE DISCLOSURE EXCEPTION NOTICES
APPENDIX I TO PART 1022—SUMMARY OF CONSUMER RIGHTS
APPENDIX J TO PART 1022 [RESERVED]
APPENDIX K TO PART 1022—SUMMARY OF CONSUMER RIGHTS
APPENDIX L TO PART 1022—STANDARDIZED FORM FOR REQUESTING ANNUAL FILE DISCLOSURES
APPENDIX M TO PART 1022—NOTICE OF FURNISHER RESPONSIBILITIES
APPENDIX N TO PART 1022—NOTICE OF USER RESPONSIBILITIES

AUTHORITY: 12 U.S.C. 5512, 5581; 15 U.S.C. 1681a, 1681b, 1681c, 1681c–1, 1681e, 1681g, 1681l, 1681m, 1681s, 1681s–2, 1681s–3, and 1681t; Sec. 214, Public Law 108–159, 117 Stat. 1952.
SOURCE: 76 FR 79312, Dec. 21, 2011, unless otherwise noted.

Subpart A—General Provisions

§ 1022.1 Purpose, scope, and model forms and disclosures.

(a) Purpose. The purpose of this part is to implement the Fair Credit Reporting Act (FCRA). This part generally applies to persons that obtain and use information about consumers to determine the consumer’s eligibility for products, services, or employment, share such information among affiliates, and furnish information to consumer reporting agencies.

(b) Scope. (1) [Reserved]

(2) Institutions covered. (i) Except as otherwise provided in this part, this part applies to any person subject to the FCRA except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376.

(ii) For purposes of appendix B to this part, financial institutions as defined in section 509 of the Gramm-Leach-Bliley Act (12 U.S.C. 6809), may use the model notices in appendix B to this part to comply with the notice requirement in section 623(a)(7) of the FCRA (15 U.S.C. 1681s–2(a)(7)).

(c) Model forms and disclosures—(1) Use. Appendices D, H, I, K, L, M, and N contain model forms and disclosures. These appendices carry out the directive in FCRA that the Bureau prescribe such model forms and disclosures. Use or distribution of these model forms and disclosures, or substantially similar forms and disclosures, will constitute compliance with any section or subsection of the FCRA requiring that such forms and disclosures be used by or supplied to any person.

(2) Definition. Substantially similar means that all information in the Bureau’s prescribed model is included in the document that is distributed, and that the document distributed is formatted in a way consistent with the format prescribed by the Bureau. The document that is distributed shall not include anything that interferes with, detracts from, or otherwise undermines the information contained in the Bureau’s prescribed model. Until January 1, 2013, the model forms in Appendices B, E, F, G, and H to 16 CFR part 698, as those appendices existed as of October 1, 2011, are deemed substantially similar to the corresponding model forms in Appendices H, I, K, M, and N to this part, and the model forms in appendix H to 12 CFR part 222, as that appendix existed as of October 1, 2011, are deemed substantially similar to the corresponding model forms in appendix H to this part.

§ 1022.2 Examples.

The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.

§ 1022.3 Definitions.

For purposes of this part, unless explicitly stated otherwise:

(a) Act means the FCRA (15 U.S.C. 1681 et seq.).
(b) **Affiliate** means any company that is related by common ownership or common corporate control with another company. For example, an affiliate of a Federal credit union is a credit union service corporation, as provided in 12 CFR part 712, that is controlled by the Federal credit union.

(c) [Reserved]

(d) **Common ownership or common corporate control** means a relationship between two companies under which:

(1) One company has, with respect to the other company:

(i) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of a company, directly or indirectly, or acting through one or more other persons;

(ii) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of a company; or

(iii) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a company, as determined by the applicable prudential regulator (as defined in 12 U.S.C. 5461(24)) (a credit union is presumed to have a controlling influence over the management or policies of a credit union service corporation if the credit union service corporation is 67% owned by credit unions) or, where there is no prudential regulator, by the Bureau; or

(2) Any other person has, with respect to both companies, a relationship described in paragraphs (d)(1) through (d)(1)(ii).

(e) **Company** means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(f) **Consumer** means an individual.

(g) **Identifying information** means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any:

(1) Name, social security number, date of birth, official state or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number;

(2) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

(3) Unique electronic identification number, address, or routing code; or

(4) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)).

(h) **Identity theft** means a fraud committed or attempted using the identifying information of another person without authority.

(1) **Identity theft report** means a report:

(i) That alleges identity theft with as much specificity as the consumer can provide;

(ii) That is a copy of an official, valid report filed by the consumer with a Federal, state, or local law enforcement agency, including the United States Postal Inspection Service, the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information, if, in fact, the information in the report is false; and

(iii) That may include additional information or documentation that an information furnisher or consumer reporting agency reasonably requests for the purpose of determining the validity of the alleged identity theft, provided that the information furnisher or consumer reporting agency:

(A) Makes such request not later than fifteen days after the date of receipt of the copy of the report form identified in Paragraph (i)(1)(ii) of this section or the request by the consumer for the particular service, whichever shall be the later;

(B) Makes any supplemental requests for information or documentation and final determination on the acceptance of the identity theft report within another fifteen days after its initial request for information or documentation; and

(C) Shall have five days to make a final determination on the acceptance of the identity theft report, in the event that the consumer reporting agency or information furnisher receives any such additional information or documentation on the eleventh day or later within the fifteen day period.
set forth in Paragraph (i)(1)(iii)(B) of this section.

(2) Examples of the specificity referenced in Paragraph (i)(1)(i) of this section are provided for illustrative purposes only, as follows:

(i) Specific dates relating to the identity theft such as when the loss or theft of personal information occurred or when the fraud(s) using the personal information occurred, and how the consumer discovered or otherwise learned of the theft.

(ii) Identification information or any other information about the perpetrator, if known.

(iii) Name(s) of information furnisher(s), account numbers, or other relevant account information related to the identity theft.

(iv) Any other information known to the consumer about the identity theft.

(3) Examples of when it would or would not be reasonable to request additional information or documentation referenced in Paragraph (i)(1)(iii) of this section are provided for illustrative purposes only, as follows:

(i) A law enforcement report containing detailed information about the identity theft and the signature, badge number or other identification information of the individual law enforcement official taking the report should be sufficient on its face to support a victim’s request. In this case, without an identifiable concern, such as an indication that the report was fraudulent, it would not be reasonable for an information furnisher or consumer reporting agency to request additional information or documentation.

(ii) A consumer might provide a law enforcement report similar to the report in Paragraph (i)(1) of this section but certain important information such as the consumer’s date of birth or Social Security number may be missing because the consumer chose not to provide it. The information furnisher or consumer reporting agency could accept this report, but it would be reasonable to require that the consumer provide the missing information. The Bureau’s Identity Theft Affidavit is available on the Bureau’s Web site (consumerfinance.gov/learnmore). The version of this form developed by the Federal Trade Commission, available on the FTC’s Web site (ftc.gov/idtheft), remains valid and sufficient for this purpose.

(iii) A consumer might provide a law enforcement report generated by an automated system with a simple allegation that an identity theft occurred to support a request for a tradeline block or cessation of information furnishing. In such a case, it would be reasonable for an information furnisher or consumer reporting agency to ask that the consumer fill out and have notarized the Bureau’s Identity Theft Affidavit or a similar form and provide some form of identification documentation.

(iv) A consumer might provide a law enforcement report generated by an automated system with a simple allegation that an identity theft occurred to support a request for an extended fraud alert. In this case, it would not be reasonable for a consumer reporting agency to require additional documentation or information, such as a notarized affidavit.

(j) [Reserved]

(k) Medical information means:

(1) Information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to:

(i) The past, present, or future physical, mental, or behavioral health or condition of an individual;

(ii) The provision of health care to an individual;

(iii) The payment for the provision of health care to an individual; or

(iv) Information that does not identify a specific consumer.

(l) Person means any individual, partnership, corporation, trust, estate cooperative, association, government or governmental subdivision or agency, or other entity.
§ 1022.20 Coverage and definitions.

(a) Coverage. Subpart C of this part applies to any person that uses information from its affiliates for the purpose of marketing solicitations, or provides information to its affiliates for that purpose, other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 137.

(b) Definitions. For purposes of this subpart:

(1) Clear and conspicuous. The term “clear and conspicuous” means reasonably understandable and designed to call attention to the nature and significance of the information presented.

(2) Concise. (i) In general. The term “concise” means a reasonably brief expression or statement.

(ii) Combination with other required disclosures. A notice required by this subpart may be concise even if it is combined with other disclosures required or authorized by Federal or state law.

(3) Eligibility information. The term “eligibility information” means any information the communication of which would be a consumer report if the exclusions from the definition of “consumer report” in section 603(d)(2)(A) of the Act did not apply. Eligibility information does not include aggregate or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(4) Pre-existing business relationship. (i) In general. The term “pre-existing business relationship” means a relationship between a person, or a person’s licensed agent, and a consumer based on:

(A) A financial contract between the person and the consumer which is in force on the date on which the consumer is sent a solicitation covered by this subpart;

(B) The purchase, rental, or lease by the consumer of the person’s goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and the person, during the 18-month period immediately preceding the date on which the consumer is sent a solicitation covered by this subpart; or

(C) An inquiry or application by the consumer regarding a product or service offered by that person during the three-month period immediately preceding the date on which the consumer is sent a solicitation covered by this subpart.

(ii) Examples of pre-existing business relationships. (A) If a consumer has a time deposit account, such as a certificate of deposit, at a financial institution that is currently in force, the financial institution has a pre-existing business relationship with the consumer and can use eligibility information it receives from its affiliates to make solicitations to the consumer about its products or services.

(B) If a consumer obtained a certificate of deposit from a financial institution, but did not renew the certificate at maturity, the financial institution has a pre-existing business relationship with the consumer and can use eligibility information it receives from its affiliates to make solicitations to the consumer about its products or services for 18 months after the date of maturity of the certificate of deposit.

(C) If a consumer obtains a mortgage, the mortgage lender has a pre-existing business relationship with the consumer. If the mortgage lender sells the consumer’s entire loan to an investor, the mortgage lender has a pre-existing business relationship with the consumer and can use eligibility information it receives from its affiliates to make solicitations to the consumer about its products or services for 18 months after the date it sells the loan, and the investor has a pre-existing business relationship with the consumer upon purchasing the loan. If, however, the mortgage lender sells a fractional interest in the consumer’s loan to an investor but also retains an ownership interest in the loan, the mortgage lender continues to have a pre-existing business relationship with the consumer, but the investor does not have a pre-existing business relationship with the consumer. If the
mortgage lender retains ownership of the loan, but sells ownership of the servicing rights to the consumer’s loan, the mortgage lender continues to have a pre-existing business relationship with the consumer. The purchaser of the servicing rights also has a pre-existing business relationship with the consumer as of the date it purchases ownership of the servicing rights, but only if it collects payments from or otherwise deals directly with the consumer on a continuing basis.

(D) If a consumer applies to a financial institution for a product or service that it offers, but does not obtain a product or service from or enter into a financial contract or transaction with the institution, the financial institution has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services for three months after the date of the application.

(E) If a consumer makes a telephone inquiry to a financial institution about its products or services and provides contact information to the institution, but does not obtain a product or service from or enter into a financial contract or transaction with the institution, the financial institution has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services for three months after the date of the inquiry.

(F) If a consumer makes an inquiry to a financial institution by email about its products or services, but does not obtain a product or service from or enter into a financial contract or transaction with the institution, the financial institution has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services for three months after the date of the inquiry.

(G) If a consumer has an existing relationship with a financial institution that is part of a group of affiliated companies, makes a telephone call to the centralized call center for the group of affiliated companies to inquire about products or services offered by the insurance affiliate, and provides contact information to the call center, the call constitutes an inquiry to the insurance affiliate that offers those products or services. The insurance affiliate has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from its affiliated financial institution to make solicitations to the consumer about its products or services for three months after the date of the inquiry.

(iii) Examples where no pre-existing business relationship is created. (A) If a consumer makes a telephone call to a centralized call center for a group of affiliated companies to inquire about the consumer’s existing account at a financial institution, the call does not constitute an inquiry to any affiliate other than the financial institution that holds the consumer’s account and does not establish a pre-existing business relationship between the consumer and any affiliate of the account-holding financial institution.

(B) If a consumer who has a deposit account with a financial institution makes a telephone call to an affiliate of the institution to ask about the affiliate’s retail locations and hours, but does not make an inquiry about the affiliate’s products or services, the call does not constitute an inquiry and does not establish a pre-existing business relationship between the consumer and the affiliate. Also, the affiliate’s capture of the consumer’s telephone number does not constitute an inquiry and does not establish a pre-existing business relationship between the consumer and the affiliate.

(C) If a consumer makes a telephone call to a financial institution in response to an advertisement that offers a free promotional item to consumers who call a toll-free number, but the advertisement does not indicate that the financial institution’s products or services will be marketed to consumers who call in response, the call does not create a pre-existing business relationship between the consumer and the financial institution because the consumer has not made an inquiry about a
product or service offered by the institution, but has merely responded to an offer for a free promotional item.

(5) Solicitation. (i) In general. The term “solicitation” means the marketing of a product or service initiated by a person to a particular consumer that is:

(A) Based on eligibility information communicated to that person by its affiliate as described in this subpart; and

(B) Intended to encourage the consumer to purchase or obtain such product or service.

(ii) Exclusion of marketing directed at the general public. A solicitation does not include marketing communications that are directed at the general public. For example, television, general circulation magazine, and billboard advertisements do not constitute solicitations, even if those communications are intended to encourage consumers to purchase products and services from the person initiating the communications.

(iii) Examples of solicitations. A solicitation would include, for example, a telemarketing call, direct mail, email, or other form of marketing communication directed to a particular consumer that is based on eligibility information received from an affiliate.

(6) You means a person described in paragraph (a) of this section.

§ 1022.21 Affiliate marketing opt-out and exceptions.

(a) Initial notice and opt-out requirement—(1) In general. You may not use eligibility information about a consumer that you receive from an affiliate to make a solicitation for marketing purposes to the consumer, unless:

(i) It is clearly and conspicuously disclosed to the consumer in writing or, if the consumer agrees, electronically, in a concise notice that you may use eligibility information about that consumer received from an affiliate to make solicitations for marketing purposes to the consumer;

(ii) The consumer is provided a reasonable opportunity and a reasonable and simple method to “opt out,” or prohibit you from using eligibility information to make solicitations for marketing purposes to the consumer; and

(iii) The consumer has not opted out.

(2) Example. A consumer has a homeowner’s insurance policy with an insurance company. The insurance company furnishes eligibility information about the consumer to its affiliated creditor. Based on that eligibility information, the creditor wants to make a solicitation to the consumer about its home equity loan products. The creditor does not have a pre-existing business relationship with the consumer and none of the other exceptions apply. The creditor is prohibited from using eligibility information received from its insurance affiliate to make solicitations to the consumer about its home equity loan products unless the consumer is given a notice and opportunity to opt out and the consumer does not opt out.

(3) Affiliates who may provide the notice. The notice required by this paragraph must be provided:

(i) By an affiliate that has or has previously had a pre-existing business relationship with the consumer; or

(ii) As part of a joint notice from two or more members of an affiliated group of companies, provided that at least one of the affiliates on the joint notice has or has previously had a pre-existing business relationship with the consumer.

(b) Making solicitations—(1) In general. For purposes of this subpart, you make a solicitation for marketing purposes if:

(i) You receive eligibility information from an affiliate;

(ii) You use that eligibility information to do one or more of the following:

(A) Identify the consumer or type of consumer to receive a solicitation;

(B) Establish criteria used to select the consumer to receive a solicitation; or

(C) Decide which of your products or services to market to the consumer or tailor your solicitation to that consumer; and

(iii) As a result of your use of the eligibility information, the consumer is provided a solicitation.

(2) Receiving eligibility information from an affiliate, including through a common database. You may receive eligibility information from an affiliate
in various ways, including when the affiliate places that information into a common database that you may access.  

(3) Receipt or use of eligibility information by your service provider. Except as provided in paragraph (b)(5) of this section, you receive or use an affiliate’s eligibility information if a service provider acting on your behalf (whether an affiliate or a nonaffiliated third party) receives or uses that information in the manner described in paragraphs (b)(1)(i) or (b)(1)(ii) of this section. All relevant facts and circumstances will determine whether a person is acting as your service provider when it receives or uses an affiliate’s eligibility information in connection with marketing your products and services.  

(4) Use by an affiliate of its own eligibility information. Unless you have used eligibility information that you receive from an affiliate in the manner described in paragraph (b)(1)(ii) of this section, you do not make a solicitation subject to this subpart if your affiliate:  

(i) Uses its own eligibility information that it obtained in connection with a pre-existing business relationship it has or had with the consumer to market your products or services to the consumer; or  

(ii) Directs its service provider to use the affiliate’s own eligibility information that it obtained in connection with a pre-existing business relationship it has or had with the consumer to market your products or services to the consumer, and you do not communicate directly with the service provider regarding that use.  

(5) Use of eligibility information by a service provider. (i) In general. You do not make a solicitation subject to Subpart C of this part if a service provider (including an affiliated or third-party service provider that maintains or accesses a common database that you may access) receives eligibility information from your affiliate that your affiliate obtained in connection with a pre-existing business relationship it has or had with the consumer and uses that eligibility information to market your products or services to the consumer, so long as:  

(A) Your affiliate controls access to and use of its eligibility information by the service provider (including the right to establish the specific terms and conditions under which the service provider may use such information to market your products or services);  

(B) Your affiliate establishes specific terms and conditions under which the service provider may access and use the affiliate’s eligibility information to market your products and services (or those of affiliates generally) to the consumer, such as the identity of the affiliated companies whose products or services may be marketed to the consumer by the service provider, the types of products or services of affiliated companies that may be marketed, and the number of times the consumer may receive marketing materials, and periodically evaluates the service provider’s compliance with those terms and conditions;  

(C) Your affiliate requires the service provider to implement reasonable policies and procedures designed to ensure that the service provider uses the affiliate’s eligibility information in accordance with the terms and conditions established by the affiliate relating to the marketing of your products or services;  

(D) Your affiliate is identified on or with the marketing materials provided to the consumer; and  

(E) You do not directly use your affiliate’s eligibility information in the manner described in paragraph (b)(1)(ii) of this section.  

(ii) Writing requirements. (A) The requirements of paragraphs (b)(5)(i)(A) and (C) of this section must be set forth in a written agreement between your affiliate and the service provider; and  

(B) The specific terms and conditions established by your affiliate as provided in paragraph (b)(5)(i)(B) of this section must be set forth in writing.  

(6) Examples of making solicitations. (i) A consumer has a deposit account with a financial institution, which is affiliated with an insurance company. The insurance company receives eligibility information about the consumer from the financial institution. The insurance company uses that eligibility information to identify the consumer to receive a solicitation about insurance products, and, as a result, the insurance company provides a solicitation
to the consumer about its insurance products. Pursuant to paragraph (b)(1) of this section, the insurance company has made a solicitation to the consumer.

(ii) The same facts as in the example in paragraph (b)(6)(i) of this section, except that after using the eligibility information to identify the consumer to receive a solicitation about insurance products, the insurance company asks the financial institution to send the solicitation to the consumer and the financial institution does so. Pursuant to paragraph (b)(1) of this section, the insurance company has made a solicitation to the consumer because it used eligibility information about the consumer that it received from an affiliate to identify the consumer to receive a solicitation about its products or services, and, as a result, a solicitation was provided to the consumer about the insurance company’s products.

(iii) The same facts as in the example in paragraph (b)(6)(i) of this section, except that eligibility information about consumers that have deposit accounts with the financial institution is placed into a common database that all members of the affiliated group of companies may independently access and use. Without using the financial institution’s eligibility information, the insurance company develops selection criteria and provides those criteria, marketing materials, and related instructions to the financial institution. The financial institution reviews eligibility information about its own consumers using the selection criteria provided by the insurance company to determine which consumers should receive the insurance company’s marketing materials and sends marketing materials about the insurance company’s products to those consumers. Even though the insurance company has received eligibility information through the common database as provided in paragraph (b)(2) of this section, it did not use that information to identify consumers or establish selection criteria; instead, the financial institution used its own eligibility information. Therefore, pursuant to paragraph (b)(4)(i) of this section, the insurance company has not made a solicitation to the consumer.

(iv) The same facts as in the example in paragraph (b)(6)(iii) of this section, except that the financial institution provides the insurance company’s criteria to the financial institution’s service provider and directs the service provider to use the financial institution’s eligibility information to identify financial institution consumers who meet the criteria and to send the insurance company’s marketing materials to those consumers. The insurance company does not communicate directly with the service provider regarding the use of the financial institution’s information to market its products to the financial institution’s consumers. Pursuant to paragraph (b)(4)(ii) of this section, the insurance company has not made a solicitation to the consumer.

(v) An affiliated group of companies includes a financial institution, an insurance company, and a service provider. Each affiliate in the group places information about its consumers into a common database. The service provider has access to all information in the common database. The financial institution controls access to and use of its eligibility information by the service provider. This control is set forth in a written agreement between the financial institution and the service provider. The written agreement also requires the service provider to establish reasonable policies and procedures designed to ensure that the service provider uses the financial institution’s eligibility information in accordance with specific terms and conditions under which the service provider may use the financial institution’s eligibility information to market the products and services of all affiliates, including the insurance company. In a separate written communication, the financial institution specifies the terms and conditions under which the service provider may use the financial institution’s eligibility information to market the insurance company’s products and services to the financial institution’s consumers. The specific terms and conditions are: a list of affiliated companies (including the insurance company) whose products or services
may be marketed to the financial institution’s consumers by the service provider; the specific products or types of products that may be marketed to the financial institution’s consumers by the service provider; the categories of eligibility information that may be used by the service provider in marketing products or services to the financial institution’s consumers; the types or categories of the financial institution’s consumers to whom the service provider may market products or services of financial institution affiliates; the number and/or types of marketing communications that the service provider may send to the financial institution’s consumers; and the length of time during which the service provider may market the products or services of the financial institution’s affiliates to its consumers. The financial institution periodically evaluates the service provider’s compliance with these terms and conditions. The insurance company asks the service provider to market insurance products to certain consumers who have deposit accounts with the financial institution. Without using the financial institution’s eligibility information, the insurance company develops selection criteria and provides those criteria, marketing materials, and related instructions to the service provider. The service provider uses the financial institution’s eligibility information from the common database to identify the financial institution’s consumers to whom insurance products will be marketed. When the insurance company’s marketing materials are provided to the identified consumers, the name of the financial institution is displayed on the insurance marketing materials, an introductory letter that accompanies the marketing materials, an account statement that accompanies the marketing materials, or the envelope containing the marketing materials. The requirements of paragraph (b)(5) of this section have been satisfied, and the insurance company has not made a solicitation to the consumer.

(vi) The same facts as in the example in paragraph (b)(6)(v) of this section, except that the terms and conditions permit the service provider to use the financial institution’s eligibility information to market the products and services of other affiliates to the financial institution’s consumers whenever the service provider deems it appropriate to do so. The service provider uses the financial institution’s eligibility information in accordance with the discretion afforded to it by the terms and conditions. Because the terms and conditions are not specific, the requirements of paragraph (b)(5) of this section have not been satisfied.

(c) Exceptions. The provisions of this subpart do not apply to you if you use eligibility information that you receive from an affiliate:

(1) To make a solicitation for marketing purposes to a consumer with whom you have a pre-existing business relationship;

(2) To facilitate communications to an individual for whose benefit you provide employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship or status of the individual as a participant or beneficiary of an employee benefit plan;

(3) To perform services on behalf of an affiliate, except that this subparagraph shall not be construed as permitting you to send solicitations on behalf of an affiliate if the affiliate would not be permitted to send the solicitation as a result of the election of the consumer to opt out under this subpart;

(4) In response to a communication about your products or services initiated by the consumer;

(5) In response to an authorization or request by the consumer to receive solicitations; or

(6) If your compliance with this subpart would prevent you from complying with any provision of state insurance laws pertaining to unfair discrimination in any state in which you are lawfully doing business.

(d) Examples of exceptions—(1) Example of the pre-existing business relationship exception. A consumer has a deposit account with a financial institution. The consumer also has a relationship with the financial institution’s securities affiliate for management of the consumer’s securities portfolio. The financial institution receives eligibility information about the consumer from its
(2) Examples of service provider exception. (i) A consumer has an insurance policy issued by an insurance company. The insurance company furnishes eligibility information about the consumer to its affiliated financial institution. Based on that eligibility information, the financial institution wants to make a solicitation to the consumer about its deposit products. The financial institution does not have a pre-existing business relationship with the consumer and none of the other exceptions in paragraph (c) of this section apply. The consumer has been given an opt-out notice and has elected to opt out of receiving such solicitations. The financial institution asks a service provider to send the solicitation to the consumer on its behalf. The service provider may not send the solicitation on behalf of the financial institution because, as a result of the consumer’s opt-out election, the financial institution is not permitted to make the solicitation.

(ii) The same facts as in paragraph (d)(2)(i) of this section, except the consumer has been given an opt-out notice, but has not elected to opt out. The financial institution asks a service provider to send the solicitation to the consumer on its behalf. The service provider may send the solicitation on behalf of the financial institution because, as a result of the consumer’s not opting out, the financial institution is permitted to make the solicitation.

(3) Examples of consumer-initiated communications. (i) A consumer who has a deposit account with a financial institution contacts the institution to request information about saving and investing for a child’s college education without specifying the type of product in which the consumer may be interested. Information about a range of different products or services offered by the financial institution may be responsive to that communication. Such products or services may include the following: mutual funds offered by the institution’s mutual fund affiliate; section 529 plans offered by the institution, its mutual fund affiliate, or another securities affiliate; or trust services offered by a different financial institution in the affiliated group. Any affiliate offering investment products or services that would be responsive to the consumer’s request for information about saving and investing for a child’s college education may use eligibility information to make solicitations to the consumer in response to this communication.

(iii) A credit card issuer makes a marketing call to the consumer without using eligibility information received from an affiliate. The issuer leaves a voice-mail message that invites the consumer to call a toll-free number to apply for the issuer’s credit card. If the consumer calls the toll-free number to inquire about the credit card, the call is a consumer-initiated communication about a product or service and the credit card issuer may now use eligibility information it receives from its affiliates to make solicitations to the consumer.

(iv) A consumer calls a financial institution to ask about retail locations and hours, but does not request information about products or services. The institution may not use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services because the consumer-initiated communication does not relate to the financial institution’s products or services. Thus, the use of eligibility information received

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securities affiliate and uses that information to make a solicitation to the consumer about the financial institution’s wealth management services. The financial institution may make this solicitation even if the consumer has not been given a notice and opportunity to opt out because the financial institution has a pre-existing business relationship with the consumer.

(ii) A consumer who has a deposit account with a financial institution contacts the institution to request information about how to save and invest for a child’s college education without specifying the type of product in which the consumer may be interested. Information about a range of different products or services offered by the financial institution and one or more affiliates of the institution may be responsive to that communication. Such products or services may include the following: mutual funds offered by the institution’s mutual fund affiliate; section 529 plans offered by the institution, its mutual fund affiliate, or another securities affiliate; or trust services offered by a different financial institution in the affiliated group. Any affiliate offering investment products or services that would be responsive to the consumer’s request for information about saving and investing for a child’s college education may use eligibility information to make solicitations to the consumer in response to this communication.

(iii) A credit card issuer makes a marketing call to the consumer without using eligibility information received from an affiliate. The issuer leaves a voice-mail message that invites the consumer to call a toll-free number to apply for the issuer’s credit card. If the consumer calls the toll-free number to inquire about the credit card, the call is a consumer-initiated communication about a product or service and the credit card issuer may now use eligibility information it receives from its affiliates to make solicitations to the consumer.

(iv) A consumer calls a financial institution to ask about retail locations and hours, but does not request information about products or services. The institution may not use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services because the consumer-initiated communication does not relate to the financial institution’s products or services. Thus, the use of eligibility information received
§ 1022.22 Scope and duration of opt-out.

(a) Scope of opt-out—(1) In general. Except as otherwise provided in this section, the consumer’s election to opt out prohibits any affiliate covered by the opt-out notice from using eligibility information received from another affiliate as described in the notice to make solicitations to the consumer.

(b) Continuing relationship. (i) In general. If the consumer establishes a continuing relationship with you or your affiliate, an opt-out notice may apply to eligibility information obtained in connection with:

(A) A single continuing relationship or multiple continuing relationships that the consumer establishes with you or your affiliates, including continuing relationships established subsequent to delivery of the opt-out notice, so long as the notice adequately describes the continuing relationships covered by the opt-out; or

(B) Any other transaction between the consumer and you or your affiliates as described in the notice.

(ii) Examples of continuing relationships. A consumer has a continuing relationship with you or your affiliate if the consumer:

(A) Opens a deposit or investment account with you or your affiliate;
(B) Obtains a loan for which you or your affiliate owns the servicing rights;
(C) Purchases an insurance product from you or your affiliate;
(D) Holds an investment product through you or your affiliate, such as when you act or your affiliate acts as a custodian for securities or for assets in an individual retirement arrangement;
(E) Enters into an agreement or understanding with you or your affiliate whereby you or your affiliate undertakes to arrange or broker a home mortgage loan for the consumer;
(F) Enters into a lease of personal property with you or your affiliate; or
(G) Obtains financial, investment, or economic advisory services from you or your affiliate for a fee.

(3) No continuing relationship. (i) In general. If there is no continuing relationship between a consumer and you or your affiliate, and you or your affiliate obtain eligibility information about a consumer in connection with a transaction with the consumer, such as an isolated transaction or a credit application that is denied, an opt-out notice provided to the consumer only applies to eligibility information obtained in connection with that transaction.

(ii) Examples of isolated transactions. An isolated transaction occurs if:
(A) The consumer uses your or your affiliate’s ATM to withdraw cash from an account at another financial institution; or
(B) You or your affiliate sells the consumer a cashier’s check or money order, airline tickets, travel insurance, or traveler’s checks in isolated transactions.

(4) Menu of alternatives. A consumer may be given the opportunity to choose from a menu of alternatives when electing to prohibit solicitations, such as by electing to prohibit solicitations from certain types of affiliates covered by the opt-out notice but not other types of affiliates covered by the notice, electing to prohibit solicitations based on certain types of eligibility information but not other types of eligibility information, or electing to prohibit solicitations by certain methods of delivery but not other methods of delivery. However, one of the alternatives must allow the consumer to prohibit all solicitations from all of the affiliates that are covered by the notice.

(5) Special rule for a notice following termination of all continuing relationships. (i) In general. A consumer must be given a new opt-out notice if, after all continuing relationships with you or your affiliate(s) are terminated, the consumer subsequently establishes another continuing relationship with you or your affiliate(s) and the consumer’s eligibility information is to be used to make a solicitation. The new opt-out notice must apply, at a minimum, to eligibility information obtained in connection with the new continuing relationship. Consistent with paragraph (b) of this section, the consumer’s decision not to opt out after receiving the new opt-out notice would not override a prior opt-out election by the consumer that applies to eligibility information obtained in connection with a terminated relationship, regardless of whether the new opt-out notice applies to eligibility information obtained in connection with the terminated relationship.

(ii) Example. A consumer has a checking account with a financial institution that is part of an affiliated group. The consumer closes the checking account. One year after closing the checking account, the consumer opens a savings account with the same financial institution. The consumer must be given a new notice and opportunity to opt out before the financial institution’s affiliates may make solicitations to the consumer using eligibility information obtained by the financial institution in connection with the new savings account relationship, regardless of whether the consumer opted out in connection with the checking account.
§ 1022.23 Contents of opt-out notice; consolidated and equivalent notices.

(a) Contents of opt-out notice—(1) In general. A notice must be clear, conspicuous, and concise, and must accurately disclose:

(i) The name of the affiliate(s) providing the notice. If the notice is provided jointly by multiple affiliates and each affiliate shares a common name, such as “ABC,” then the notice may indicate that it is being provided by multiple companies with the ABC name or multiple companies in the ABC group or family of companies, for example, by stating that the notice is provided by “all of the ABC companies,” “the ABC banking, credit card, insurance, and securities companies,” or by listing the name of each affiliate providing the notice. But if the affiliates providing the joint notice do not all share a common name, then the notice must either separately identify each affiliate by name or identify each of the common names used by those affiliates, for example, by stating that the notice applies to “all of the ABC and XYZ companies” or to “the ABC banking and credit card companies and the XYZ insurance companies.”

(ii) A list of the affiliates or types of affiliates whose use of eligibility information may be used to make solicitations to the consumer;

(iii) A general description of the types of eligibility information that may be used to make solicitations to the consumer;

(iv) That the consumer may elect to limit the use of eligibility information to make solicitations to the consumer;

(v) That the consumer’s election will apply for the specified period of time stated in the notice and, if applicable, that the consumer will be allowed to renew the election once that period expires;

(vi) If the notice is provided to consumers who may have previously opted out, such as if a notice is provided to consumers annually, that the consumer who has chosen to limit solicitations does not need to act again until the consumer receives a renewal notice; and

(vii) A reasonable and simple method for the consumer to opt out.

(2) Joint relationships. (i) If two or more consumers jointly obtain a product or service, a single opt-out notice may be provided to the joint consumers. Any of the joint consumers may exercise the right to opt out.

(ii) The opt-out notice must explain how an opt-out direction by a joint consumer will be treated. An opt-out direction by a joint consumer may be treated as applying to all of the associated joint consumers, or each joint consumer may be permitted to opt out separately. If each joint consumer is permitted to opt out separately, one of the joint consumers must be permitted to opt out on behalf of all of the joint consumers and the joint consumers must be permitted to exercise their separate rights to opt out in a single response.

(iii) It is impermissible to require all joint consumers to opt out before implementing any opt-out direction.

(3) Alternative contents. If the consumer is afforded a broader right to opt out of receiving marketing than is required by this subpart, the requirements of this section may be satisfied.
bur. of consumer financial protection § 1022.25
by providing the consumer with a clear, conspicuous, and concise notice that accurately discloses the consumer’s opt-out rights.

(4) Model notices. Model notices are provided in appendix C of this part.

(b) Coordinated and consolidated notices. A notice required by this subpart may be coordinated and consolidated with any other notice or disclosure required to be issued under any other provision of law by the entity providing the notice, including but not limited to the notice described in section 609(d)(2)(A)(iii) of the act and the gramm-leach-bliley act privacy notice.

c) Equivalent notices. A notice or other disclosure that is equivalent to the notice required by this subpart, and that is provided to a consumer together with disclosures required by any other provision of law, satisfies the requirements of this section.

§ 1022.24 Reasonable opportunity to opt out.

(a) In general. You must not use eligibility information about a consumer that you receive from an affiliate to make a solicitation to the consumer about your products or services, unless the consumer is provided a reasonable opportunity to opt out, as required by § 1022.21(a)(1)(ii) of this part.

(b) Examples of a reasonable opportunity to opt out. The consumer is given a reasonable opportunity to opt out if:

(1) By mail. The opt-out notice is mailed to the consumer. The consumer is given 30 days from the date the notice is mailed to elect to opt out by any reasonable means.

(2) By electronic means. (i) The opt-out notice is provided electronically to the consumer, such as by posting the notice at a web site at which the consumer has obtained a product or service. The consumer acknowledges receipt of the electronic notice. The consumer is given 30 days after the date the consumer acknowledges receipt to elect to opt out by any reasonable means.

(ii) The opt-out notice is provided to the consumer by email where the consumer has agreed to receive disclosures by email from the person sending the notice. The consumer is given 30 days after the email is sent to elect to opt out by any reasonable means.

(3) At the time of an electronic transaction. The opt-out notice is provided to the consumer at the time of an electronic transaction, such as a transaction conducted on a web site. The consumer is required to decide, as a necessary part of proceeding with the transaction, whether to opt out before completing the transaction. There is a simple process that the consumer may use to opt out at that time using the same mechanism through which the transaction is conducted.

(4) At the time of an in-person transaction. The opt-out notice is provided to the consumer in writing at the time of an in-person transaction. The consumer is required to decide, as a necessary part of proceeding with the transaction, whether to opt out before completing the transaction, and is not permitted to complete the transaction without making a choice. There is a simple process that the consumer may use during the course of the in-person transaction to opt out, such as completing a form that requires consumers to write a “yes” or “no” to indicate their opt-out preference or that requires the consumer to check one of two blank check boxes; one that allows consumers to indicate that they want to opt out and one that allows consumers to indicate that they do not want to opt out.

(5) By including in a privacy notice. The opt-out notice is included in a gramm-leach-bliley act privacy notice. The consumer is allowed to exercise the opt-out within a reasonable period of time and in the same manner as the opt-out under that privacy notice.

§ 1022.25 Reasonable and simple methods of opting out.

(a) In general. You must not use eligibility information about a consumer that you receive from an affiliate to make a solicitation to the consumer about your products or services, unless the consumer is provided a reasonable and simple method to opt out, as required by § 1022.21(a)(1)(ii) of this part.

(b) Examples—(1) Reasonable and simple opt-out methods. Reasonable and simple methods for exercising the opt-out right include:
§ 1022.26 Delivery of opt-out notices.

(a) In general. The opt-out notice must be provided so that each consumer can reasonably be expected to receive actual notice. For opt-out notices provided electronically, the notice may be provided in compliance with either the electronic disclosure provisions in this subpart or the provisions in section 101 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.

(b) Examples of reasonable expectation of actual notice. A consumer may reasonably be expected to receive actual notice if the affiliate providing the notice:

1. Hand-delivers a printed copy of the notice to the consumer;
2. Mails a printed copy of the notice to the last known mailing address of the consumer;
3. Provides a notice by email to a consumer who has agreed to receive electronic disclosures by email from the affiliate providing the notice; or
4. Posts the notice on the Web site at which the consumer obtained a product or service electronically and requires the consumer to acknowledge receipt of the notice.

(c) Examples of no reasonable expectation of actual notice. A consumer may not reasonably be expected to receive actual notice if the affiliate providing the notice:

1. Only posts the notice on a sign in a branch or office or generally publishes the notice in a newspaper;
2. Sends the notice via email to a consumer who has not agreed to receive electronic disclosures by email from the affiliate providing the notice; or
3. Posts the notice on a Web site without requiring the consumer to acknowledge receipt of the notice.

§ 1022.27 Renewal of opt-out.

(a) Renewal notice and opt-out requirement—(1) In general. After the opt-out period expires, you may not make solicitations based on eligibility information you receive from an affiliate to a consumer who previously opted out, unless:

(i) The consumer has been given a renewal notice that complies with the requirements of this section and §§1022.24 through 1022.26 of this part, and a reasonable opportunity and a reasonable and simple method to renew the opt-out; or
(ii) An exception in §1022.21(c) of this part applies.

(2) Renewal period. Each opt-out renewal must be effective for a period of at least five years as provided in §1022.22(b) of this part.
(3) Affiliates who may provide the notice. The notice required by this paragraph must be provided:
   (i) By the affiliate that provided the previous opt-out notice, or its successor; or
   (ii) As part of a joint renewal notice from two or more members of an affiliated group of companies, or their successors, that jointly provided the previous opt-out notice.

(b) Contents of renewal notice. The renewal notice must be clear, conspicuous, and concise, and must accurately disclose:
   (1) The name of the affiliate(s) providing the notice. If the notice is provided jointly by multiple affiliates and each affiliate shares a common name, such as “ABC,” then the notice may indicate that it is being provided by multiple companies with the ABC name or multiple companies in the ABC group or family of companies, for example, by stating that the notice is provided by “all of the ABC companies,” “the ABC banking, credit card, insurance, and securities companies,” or by listing the name of each affiliate providing the notice. But if the affiliates providing the joint notice do not all share a common name, then the notice must either separately identify each affiliate by name or identify each of the common names used by those affiliates, for example, by stating that the notice applies to “all of the ABC and XYZ companies” or to “the ABC banking and credit card companies and the XYZ insurance companies.”
   (3) A general description of the types of eligibility information that may be used to make solicitations to the consumer;
   (4) That the consumer previously elected to limit the use of certain information to make solicitations to the consumer;
   (5) That the consumer’s election has expired or is about to expire;
   (6) That the consumer may elect to renew the consumer’s previous election;
   (7) If applicable, that the consumer’s election to renew will apply for the specified period of time stated in the notice and that the consumer will be allowed to renew the election once that period expires; and
   (8) A reasonable and simple method for the consumer to opt out.

(c) Timing of the renewal notice—(1) In general. A renewal notice may be provided to the consumer either:
   (i) A reasonable period of time before the expiration of the opt-out period; or
   (ii) Any time after the expiration of the opt-out period but before solicitations that would have been prohibited by the expired opt-out are made to the consumer.
   (2) Combination with annual privacy notice. If you provide an annual privacy notice under the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 et seq., providing a renewal notice with the last annual privacy notice provided to the consumer before expiration of the opt-out period is a reasonable period of time before expiration of the opt-out in all cases.
   (d) No effect on opt-out period. An opt-out period may not be shortened by sending a renewal notice to the consumer before expiration of the opt-out period, even if the consumer does not renew the opt out.
Subpart D—Medical Information

.§ § 1022.30 Obtaining or using medical information in connection with a determination of eligibility for credit.

(a) Scope. This section applies to any person that participates as a creditor in a transaction, except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 137.

(b) General prohibition on obtaining or using medical information—(1) In general. A creditor may not obtain or use medical information pertaining to a consumer in connection with any determination of the consumer’s eligibility, or continued eligibility, for credit, except as provided in this section.

(2) Definitions. (i) Credit has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(ii) Creditor has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(iii) Eligibility, or continued eligibility, for credit means the consumer’s qualification or fitness to receive, or continue to receive, credit, including the terms on which credit is offered. The term does not include:

(A) Any determination of the consumer’s qualification or fitness for employment, insurance (other than a credit insurance product), or other non-credit products or services;

(B) Authorizing, processing, or documenting a payment or transaction on behalf of the consumer in a manner that does not involve a determination of the consumer’s eligibility, or continued eligibility, for credit; or

(C) Maintaining or servicing the consumer’s account in a manner that does not involve a determination of the consumer’s eligibility, or continued eligibility, for credit;

(c) Rule of construction for obtaining and using unsolicited medical information—(1) In general. A creditor does not obtain medical information in violation of the prohibition if it receives medical information pertaining to a consumer in connection with any determination of the consumer’s eligibility, or continued eligibility, for credit without specifically requesting medical information.

(2) Use of unsolicited medical information. A creditor that receives unsolicited medical information in the manner described in paragraph (c)(1) of this section may use that information in connection with any determination of the consumer’s eligibility, or continued eligibility, for credit to the extent the creditor can rely on at least one of the exceptions in § 1022.30(d) or (e).

(3) Examples. A creditor does not obtain medical information in violation of the prohibition if, for example:

(i) In response to a general question regarding a consumer’s debts or expenses, the creditor receives information that the consumer owes a debt to a hospital.

(ii) In a conversation with the creditor’s loan officer, the consumer informs the creditor that the consumer has a particular medical condition.

(iii) In connection with a consumer’s application for an extension of credit, the creditor requests a consumer report from a consumer reporting agency and receives medical information in the consumer report furnished by the agency even though the creditor did not specifically request medical information from the consumer reporting agency.

(d) Financial information exception for obtaining and using medical information—(1) In general. A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer’s eligibility, or continued eligibility, for credit so long as:

(i) The information is the type of information routinely used in making credit eligibility determinations, such as information relating to debts, expenses, income, benefits, assets, collateral, or the purpose of the loan, including the use of proceeds;

(ii) The creditor uses the medical information in a manner and to an extent that is no less favorable than it would use comparable information that is not medical information in a credit transaction; and

(iii) The creditor does not take the consumer’s physical, mental, or behavioral health, condition or history, type
of treatment, or prognosis into account as part of any such determination.

(2) Examples. (i) Examples of the types of information routinely used in making credit eligibility determinations. Paragraph (d)(1)(i) of this section permits a creditor, for example, to obtain and use information about:

(A) The dollar amount, repayment terms, repayment history, and similar information regarding medical debts to calculate, measure, or verify the repayment ability of the consumer, the use of proceeds, or the terms for granting credit;

(B) The value, condition, and lien status of a medical device that may serve as collateral to secure a loan;

(C) The dollar amount and continued eligibility for disability income, workers’ compensation income, or other benefits related to health or a medical condition that is relied on as a source of repayment; or

(D) The identity of creditors to whom outstanding medical debts are owed in connection with an application for credit, including but not limited to, a transaction involving the consolidation of medical debts.

(ii) Examples of uses of medical information consistent with the exception. (A) A consumer includes on an application for credit information about two $20,000 debts. One debt is to a hospital; the other debt is to a retailer. The creditor contacts the hospital and the retailer to verify the amount and payment status of the debts. The creditor learns that both debts are more than 90 days past due. Any two debts of this size that are more than 90 days past due would disqualify the consumer under the creditor’s established underwriting criteria. The creditor denies the application on the basis that the existing debt was instead owed to a retail department store, the creditor would approve the application and extend credit based on the amount and repayment history of the outstanding debt. The creditor, however, denies the application because the consumer is indebted to a hospital. The creditor has used medical information, here the identity of the medical creditor, in a manner and to an extent that is less favorable than it would use comparable non-medical information.

(B) A consumer meets with a loan officer of a creditor to apply for a mortgage loan. While filling out the loan application, the consumer informs the loan officer orally that she has a potentially terminal disease. The consumer meets the creditor’s established requirements for the requested mortgage loan. The loan officer recommends to
the credit committee that the consumer be denied credit because the consumer has that disease. The credit committee follows the loan officer's recommendation and denies the application because the consumer has a potentially terminal disease. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis as part of a determination of eligibility or continued eligibility for credit.  

(C) A consumer who has an apparent medical condition, such as a consumer who uses a wheelchair or an oxygen tank, meets with a loan officer to apply for a home equity loan. The consumer meets the creditor's established requirements for the requested home equity loan and the creditor typically does not require consumers to obtain a debt cancellation contract, debt suspension agreement, or credit insurance product in connection with such loans. However, based on the consumer's apparent medical condition, the loan officer recommends to the credit committee that credit be extended to the consumer only if the consumer obtains a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party. The credit committee agrees with the loan officer's recommendation. The loan officer informs the consumer that the consumer must obtain one of these products and the creditor approves the loan. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis in setting conditions on the consumer's eligibility for credit.  

(e) Specific exceptions for obtaining and using medical information—(1) In general. A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit:  

(i) To determine whether the use of a power of attorney or legal representative that is triggered by a medical condition or event is necessary and appropriate or whether the consumer has the legal capacity to contract when a person seeks to exercise a power of attorney or act as legal representative for a consumer based on an asserted medical condition or event;  

(ii) To comply with applicable requirements of local, state, or Federal laws;  

(iii) To determine, at the consumer's request, whether the consumer qualifies for a legally permissible special credit program or credit-related assistance program that is:  

(A) Designed to meet the special needs of consumers with medical conditions; and  

(B) Established and administered pursuant to a written plan that:  

(I) Identifies the class of persons that the program is designed to benefit; and  

(2) Sets forth the procedures and standards for extending credit or providing other credit-related assistance under the program;  

(iv) To the extent necessary for purposes of fraud prevention or detection;  

(v) In the case of credit for the purpose of financing medical products or services, to determine and verify the medical purpose of a loan and the use of proceeds;  

(vi) Consistent with safe and sound practices, if the consumer or the consumer's legal representative specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit, to accommodate the consumer's particular circumstances, and such request is documented by the creditor;  

(vii) Consistent with safe and sound practices, to determine whether the provisions of a forbearance practice or program that is triggered by a medical condition or event apply to a consumer;  

(viii) To determine the consumer's eligibility for, the triggering of, or the reactivation of a debt cancellation contract or debt suspension agreement if a
medical condition or event is a triggering event for the provision of benefits under the contract or agreement; or

(ix) To determine the consumer’s eligibility for, the triggering of, or the reactivation of a credit insurance product if a medical condition or event is a triggering event for the provision of benefits under the product.

(2) Example of determining eligibility for a special credit program or credit assistance program. A not-for-profit organization establishes a credit assistance program pursuant to a written plan that is designed to assist disabled veterans in purchasing homes by subsidizing the down payment for the home purchase mortgage loans of qualifying veterans. The organization works through mortgage lenders and requires mortgage lenders to obtain medical information about the disability of any consumer that seeks to qualify for the program, use that information to verify the consumer’s eligibility for the program, and forward that information to the organization. A consumer who is a veteran applies to a creditor for a home purchase mortgage loan. The creditor informs the consumer about the credit assistance program for disabled veterans and the consumer seeks to qualify for the program. Assuming that the program complies with all applicable law, including applicable fair lending laws, the creditor may obtain and use medical information about the medical condition and disability, if any, of the consumer to determine whether the consumer qualifies for the credit assistance program.

(3) Examples of verifying the medical purpose of the loan or the use of proceeds.

(i) If a consumer applies for $10,000 of credit for the purpose of financing vision correction surgery, the creditor may verify with the surgeon that the procedure will be performed. If the surgeon reports that surgery will not be performed on the consumer, the creditor may use that medical information to deny the consumer’s application for credit, because the loan would not be used for the stated purpose.

(ii) If a consumer applies for $10,000 of credit for the purpose of financing cosmetic surgery, the creditor may confirm the cost of the procedure with the surgeon. If the surgeon reports that the cost of the procedure is $5,000, the creditor may use that medical information to offer the consumer only $5,000 of credit.

(iii) A creditor has an established medical loan program for financing particular elective surgical procedures. The creditor receives a loan application from a consumer requesting $10,000 of credit under the established loan program for an elective surgical procedure. The consumer indicates on the application that the purpose of the loan is to finance an elective surgical procedure not eligible for funding under the guidelines of the established loan program. The creditor may deny the consumer’s application because the purpose of the loan is not for a particular procedure funded by the established loan program.

(4) Examples of obtaining and using medical information at the request of the consumer.

(i) If a consumer applies for a loan and specifically requests that the creditor consider the consumer’s medical accommodation at the relevant time as an explanation for adverse payment history information in his credit report, the creditor may consider such medical information in evaluating the consumer’s willingness and ability to repay the requested loan to accommodate the consumer, consistent with safe and sound practices. The creditor may also decline to consider such medical information to accommodate the consumer, but may evaluate the consumer’s application in accordance with its otherwise applicable underwriting criteria. The creditor may not deny the consumer’s application or otherwise treat the consumer less favorably because the consumer specifically requested a medical accommodation, if the creditor would have extended the credit or treated the consumer more favorably under the creditor’s otherwise applicable underwriting criteria.

(ii) If a consumer applies for a loan by telephone and explains that his income has been and will continue to be interrupted on account of a medical condition and that he expects to repay the loan by liquidating assets, the creditor may, but is not required to, evaluate the application using the sale
of assets as the primary source of repayment, consistent with safe and sound practices, provided that the creditor documents the consumer’s request by recording the oral conversation or making a notation of the request in the consumer’s file.

(iii) If a consumer applies for a loan and the application form provides a space where the consumer may provide any other information or special circumstances, whether medical or nonmedical, that the consumer would like the creditor to consider in evaluating the consumer’s application, the creditor may use medical information provided by the consumer in that space on that application to accommodate the consumer’s application for credit, consistent with safe and sound practices, or may disregard that information.

(iv) If a consumer specifically requests that the creditor use medical information in determining the consumer’s eligibility, or continued eligibility, for credit, consistent with safe and sound practices, and the creditor determines that it needs additional information regarding the consumer’s circumstances, the creditor may request, obtain, and use additional medical information about the consumer as necessary to verify the information provided by the consumer or to determine whether to make an accommodation for the consumer. The consumer may decline to provide additional information, withdraw the request for an accommodation, and have the application considered under the creditor’s otherwise applicable underwriting criteria.

(v) If a consumer completes and signs a credit application that is not for medical purpose credit and the application contains boilerplate language that routinely requests medical information from the consumer or that indicates that by applying for credit the consumer authorizes or consents to the creditor obtaining and using medical information in connection with a determination of the consumer’s eligibility, or continued eligibility, for credit, the consumer has not specifically requested that the creditor obtain and use medical information to accommodate the consumer’s particular circumstances.

(5) Example of a forbearance practice or program. After an appropriate safety and soundness review, a creditor institutes a program that allows consumers who are or will be hospitalized to defer payments as needed for up to three months, without penalty, if the credit account has been open for more than one year and has not previously been in default, and the consumer provides confirming documentation at an appropriate time. A consumer is hospitalized and does not pay her bill for a particular month. This consumer has had a credit account with the creditor for more than one year and has not previously been in default. The creditor attempts to contact the consumer and speaks with the consumer’s adult child, who is not the consumer’s legal representative. The adult child informs the creditor that the consumer is hospitalized and is unable to pay the bill at that time. The creditor defers payments for up to three months, without penalty, for the hospitalized consumer and sends the consumer a letter confirming this practice and the date on which the next payment will be due. The creditor has obtained and used medical information to determine whether the provisions of a medically-triggered forbearance practice or program apply to a consumer.

§ 1022.31 Limits on redisclosure of information.

(a) Scope. This section applies to any person, except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 137.

(b) Limits on redisclosure. If a person described in paragraph (a) of this section receives medical information about a consumer from a consumer reporting agency or its affiliate, the person must not disclose that information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.
§ 1022.41 Sharing medical information with affiliates.

(a) Scope. This section applies to any person, except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 137.

(b) In general. The exclusions from the term “consumer report” in section 603(d)(2) of the Act that allow the sharing of information with affiliates do not apply to a person described in paragraph (a) of this section if that person communicates to an affiliate:

(1) Medical information;
(2) An individualized list or description based on the payment transactions of the consumer for medical products or services; or
(3) An aggregate list of identified consumers based on payment transactions for medical products or services.

(c) Exceptions. A person described in paragraph (a) of this section may rely on the exclusions from the term “consumer report” in section 603(d)(2) of the Act to communicate the information in paragraph (b) of this section to an affiliate:

(1) In connection with the business of insurance or annuities (including the activities described in section 18B of the model Privacy of Consumer Financial and Health Insurance Portability and Accountability Act issued by the National Association of Insurance Commissioners, as in effect on January 1, 2003);
(2) For any purpose permitted without authorization under the regulations promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA);
(3) For any purpose referred to in section 1179 of HIPAA;
(4) For any purpose described in section 502(e) of the Gramm-Leach-Bliley Act;
(5) In connection with a determination of the consumer’s eligibility, or continued eligibility, for credit consistent with §1022.30 of this part; or
(6) As otherwise permitted by order of the Bureau.

Subpart E—Duties of Furnishers of Information

§ 1022.41 Definitions.

For purposes of this subpart and appendices E of this part, the following definitions apply:

(a) Accuracy means that information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer correctly:

(1) Reflects the terms of and liability for the account or other relationship;
(2) Reflects the consumer’s performance and other conduct with respect to the account or other relationship; and
(3) Identifies the appropriate consumer.

(b) Direct dispute means a dispute submitted directly to a furnisher (including a furnisher that is a debt collector) by a consumer concerning the accuracy of any information contained in a consumer report and pertaining to an account or other relationship that the furnisher has or had with the consumer.

(c) Furnisher means an entity that furnishes information relating to consumers to one or more consumer reporting agencies for inclusion in a consumer report. An entity is not a furnisher when it:

(1) Provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA;
(2) Is acting as a “consumer reporting agency” as defined in section 603(f) of the FCRA;
(3) Is a consumer to whom the furnished information pertains; or
(4) Is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the
§ 1022.42 Reasonable policies and procedures concerning the accuracy and integrity of furnished information.

(a) Policies and procedures. Each furnisher must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency. The policies and procedures must be appropriate to the nature, size, complexity, and scope of each furnisher’s activities.

(b) Guidelines. Each furnisher must consider the guidelines in appendix E of this part in developing its policies and procedures required by this section, and incorporate those guidelines that are appropriate.

(c) Reviewing and updating policies and procedures. Each furnisher must review its policies and procedures required by this section periodically and update them as necessary to ensure their continued effectiveness.

§ 1022.43 Direct disputes.

(a) General rule. Except as otherwise provided in this section, a furnisher must conduct a reasonable investigation of a direct dispute if it relates to:

(1) The consumer’s liability for a credit account or other debt with the furnisher, such as direct disputes relating to whether there is or has been identity theft or fraud against the consumer, whether there is individual or joint liability on an account, or whether the consumer is an authorized user of a credit account;

(2) The terms of a credit account or other debt with the furnisher, such as direct disputes relating to the type of account, principal balance, scheduled payment amount on an account, or the amount of the credit limit on an open-end account;

(3) The consumer’s performance or other conduct concerning an account or other relationship with the furnisher, such as direct disputes relating to the current payment status, high balance, date a payment was made, the amount of a payment made, or the date an account was opened or closed; or

(4) Any other information contained in a consumer report regarding an account or other relationship with the furnisher that bears on the consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(b) Exceptions. The requirements of paragraph (a) of this section do not apply to a furnisher if:

(1) The direct dispute relates to:

(i) The consumer’s identifying information (other than a direct dispute relating to a consumer’s liability for a credit account or other debt with the furnisher, as provided in paragraph (a)(1) of this section) such as name(s), date of birth, Social Security number, telephone number(s), or address(es);

(ii) The identity of past or present employers;

(iii) Inquiries or requests for a consumer report;

(iv) Information derived from public records, such as judgments, bankruptcies, liens, and other legal matters (unless provided by a furnisher with an account or other relationship with the consumer);
(v) Information related to fraud alerts or active duty alerts; or
(vi) Information provided to a consumer reporting agency by another furnisher; or

(2) The furnisher has a reasonable belief that the direct dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization, as defined in 15 U.S.C. 1679a(3), or an entity that would be a credit repair organization, but for 15 U.S.C. 1679a(3)(B)(i).

(c) Direct dispute address. A furnisher is required to investigate a direct dispute only if a consumer submits a dispute notice to the furnisher at:

(1) The address of a furnisher provided by a furnisher and set forth on a consumer report relating to the consumer;

(2) An address clearly and conspicuously specified by the furnisher for submitting direct disputes that is provided to the consumer in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher); or

(3) Any business address of the furnisher if the furnisher has not so specified and provided an address for submitting direct disputes under paragraphs (c)(1) or (2) of this section.

(d) Direct dispute notice contents. A dispute notice must include:

(1) Sufficient information to identify the account or other relationship that is in dispute, such as an account number and the name, address, and telephone number of the consumer, if applicable;

(2) The specific information that the consumer is disputing and an explanation of the basis for the dispute; and

(3) All supporting documentation or other information reasonably required by the furnisher to substantiate the basis of the dispute. This documentation may include, for example: a copy of the relevant portion of the consumer report that contains the allegedly inaccurate information; a police report; a fraud or identity theft affidavit; a court order; or account statements.

(e) Duty of furnisher after receiving a direct dispute notice. After receiving a dispute notice from a consumer pursuant to paragraphs (c) and (d) of this section, the furnisher must:

(1) Conduct a reasonable investigation with respect to the disputed information;

(2) Review all relevant information provided by the consumer with the dispute notice;

(3) Complete its investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) of the FCRA (15 U.S.C. 1681i(a)(1)) within which a consumer reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and

(4) If the investigation finds that the information reported was inaccurate, promptly notify each consumer reporting agency to which the furnisher provided inaccurate information of that determination and provide to the consumer reporting agency any correction to that information that is necessary to make the information provided by the furnisher accurate.

(f) Frivolous or irrelevant disputes. (1) A furnisher is not required to investigate a direct dispute if the furnisher has reasonably determined that the dispute is frivolous or irrelevant. A dispute qualifies as frivolous or irrelevant if:

(i) The consumer did not provide sufficient information to investigate the disputed information as required by paragraph (d) of this section;

(ii) The direct dispute is substantially the same as a dispute previously submitted by or on behalf of the consumer, either directly to the furnisher or through a consumer reporting agency, with respect to which the furnisher has already satisfied the applicable requirements of the Act or this section; provided, however, that a direct dispute is not substantially the same as a dispute previously submitted if the dispute includes information listed in paragraph (d) of this section that had not previously been provided to the furnisher; or

(iii) The furnisher is not required to investigate the direct dispute because one or more of the exceptions listed in paragraph (b) of this section applies.
(2) Notice of determination. Upon making a determination that a dispute is frivolous or irrelevant, the furnisher must notify the consumer of the determination not later than five business days after making the determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the furnisher.

(3) Contents of notice of determination that a dispute is frivolous or irrelevant. A notice of determination that a dispute is frivolous or irrelevant must include the reasons for such determination and identify any information required to investigate the disputed information, which notice may consist of a standardized form describing the general nature of such information.

Subpart F—Duties of Users Regarding Obtaining and Using Consumer Reports

§§ 1022.50–1022.53 [Reserved]

§ 1022.54 Duties of users making written firm offers of credit or insurance based on information contained in consumer files

(a) Scope. This subpart applies to any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, and that is provided to that person under section 604(c)(1)(B) of the FCRA (15 U.S.C. 1681b(c)(1)(B)), except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 137.

(b) Definitions. For purposes of this section and appendix D of this part, the following definitions apply:

(1) Simple and easy to understand means:

(i) A layered format as described in paragraph (c) of this section;

(ii) Plain language designed to be understood by ordinary consumers; and

(iii) Use of clear and concise sentences, paragraphs, and sections.

(iv) Examples. For purposes of this part, examples of factors to be considered in determining whether a statement is in plain language and uses clear and concise sentences, paragraphs, and sections include:

(A) Use of short explanatory sentences;

(B) Use of definite, concrete, everyday words;

(C) Use of active voice;

(D) Avoidance of multiple negatives;

(E) Avoidance of legal and technical business terminology;

(F) Avoidance of explanations that are imprecise and reasonably subject to different interpretations; and

(G) Use of language that is not misleading.

(2) Principal promotional document means the document designed to be seen first by the consumer, such as the cover letter.

(c) Prescreen opt-out notice. Any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, and that is provided to that person under section 604(c)(1)(B) of the FCRA (15 U.S.C. 1681b(c)(1)(B)), shall, with each written solicitation made to the consumer about the transaction, provide the consumer with the following statement, consisting of a short portion and a long portion, which shall be in the same language as the offer of credit or insurance:

(1) Short notice. The short notice shall be a clear and conspicuous, and simple and easy to understand statement as follows:

(i) Content. The short notice shall state that the consumer has the right to opt out of receiving prescreened solicitations, and shall provide the toll-free number the consumer can call to exercise that right. The short notice also shall direct the consumer to the existence and location of the long notice, and shall state the heading for the long notice. The short notice shall not contain any other information.

(ii) Form. The short notice shall be:

(A) In a type size that is larger than the type size of the principal text on the same page, but in no event smaller than 12 point type, or if provided by electronic means, then reasonable steps shall be taken to ensure that the type size is larger than the type size of the principal text on the same page;
§ 1022.71 Definitions.

For purposes of this subpart, the following definitions apply:

(a) Adverse action has the same meaning as in 15 U.S.C. 1681a(k)(1)(A).

(b) Annual percentage rate has the same meaning as in 12 CFR 1026.14(b) with respect to an open-end credit plan and as in 12 CFR 1026.22 with respect to closed-end credit.

(c) Closed-end credit has the same meaning as in 12 CFR 1026.2(a)(10).

(d) Consumer has the same meaning as in 15 U.S.C. 1681a(c).

(e) Consummation has the same meaning as in 12 CFR 1026.2(a)(13).

(f) Consumer report has the same meaning as in 15 U.S.C. 1681a(d).

(g) Consumer reporting agency has the same meaning as in 15 U.S.C. 1681a(f).
(b) Credit has the same meaning as in 15 U.S.C. 1681a(r)(5).
(i) Creditor has the same meaning as in 15 U.S.C. 1681a(r)(5).
(j) Credit card has the same meaning as in 15 U.S.C. 1681a(r)(2).
(k) Credit card issuer has the same meaning as card issuer, as defined in 15 U.S.C. 1681a(r)(1)(A).
(l) Credit score has the same meaning as in 15 U.S.C. 1681g(f)(2)(A).
(m) Firm offer of credit has the same meaning as in 15 U.S.C. 1681a(l).
(n) Material terms means:
(1)(i) Except as otherwise provided in paragraphs (n)(1)(ii) and (n)(3) of this section, in the case of credit extended under an open-end credit plan, the annual percentage rate required to be disclosed under 12 CFR 1026.6(a)(1)(ii) or 12 CFR 1026.6(b)(2)(i), excluding any temporary initial rate that is lower than the rate that will apply after the temporary rate expires, any penalty rate that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, and any fixed annual percentage rate option for a home equity line of credit; (ii) In the case of a credit card (other than a credit card that is used to access a home equity line of credit or a charge card), the annual percentage rate required to be disclosed under 12 CPR 1026.6(b)(2)(i), excluding any temporary initial rate that is lower than the rate that will apply after the temporary rate expires, any penalty rate that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, and any fixed annual percentage rate option for a home equity line of credit;
(2) In the case of closed-end credit, the annual percentage rate required to be disclosed under 12 CFR 1026.17(c) and 1026.18(e); and
(3) In the case of credit for which there is no annual percentage rate, the financial term that varies based on information in a consumer report and that has the most significant financial impact on consumers, such as a deposit required in connection with credit extended by a telephone company or utility or an annual membership fee for a charge card.
(o) Materially less favorable means, when applied to material terms, that the terms granted, extended, or otherwise provided to a consumer differ from the terms granted, extended, or otherwise provided to another consumer from or through the same person such that the cost of credit to the first consumer would be significantly greater than the cost of credit granted, extended, or otherwise provided to the other consumer. For purposes of this definition, factors relevant to determining the significance of a difference in cost include the type of credit product, the term of the credit extension, if any, and the extent of the difference between the material terms granted, extended, or otherwise provided to the two consumers. (p) Open-end credit plan has the same meaning as in 15 U.S.C. 1602(i), as interpreted by the Bureau in Regulation Z (12 CFR part 1026) and the Official Interpretations to Regulation Z (Supplement 1 to 12 CFR part 1026).
(q) Person has the same meaning as in 15 U.S.C. 1681a(b).
section, a “specific type of credit product” means one or more credit products with similar features that are designed for similar purposes. Examples of a specific type of credit product include student loans, unsecured credit cards, secured credit cards, new automobile loans, used automobile loans, fixed-rate mortgage loans, and variable-rate mortgage loans. As an alternative to making this direct comparison, a person may make the determination by using one of the following methods:

(1) **Credit score proxy method.** (i) **In general.** A person that sets the material terms of credit granted, extended, or otherwise provided to a consumer, based in whole or in part on a credit score, may comply with the requirements of paragraph (a) of this section by:

(A) Determining the credit score (hereafter referred to as the “cutoff score”) that represents the point at which approximately 40 percent of the consumers to whom it grants, extends, or provides credit have higher credit scores and approximately 60 percent of the consumers to whom it grants, extends, or provides credit have lower credit scores; and

(B) Providing a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit whose credit score is lower than the cutoff score.

(ii) **Alternative to the 40/60 cutoff score determination.** In the case of credit that has been granted, extended, or provided on the most favorable material terms to more than 40 percent of consumers, a person may, at its option, set its cutoff score at a point at which the approximate percentage of consumers who historically have been granted, extended, or provided credit on material terms other than the most favorable terms would receive risk-based pricing notices under this section.

(iii) **Determining the cutoff score.** (A) **Sampling approach.** A person that currently uses risk-based pricing with respect to the credit products it offers must calculate the cutoff score by considering the credit scores of all or a representative sample of the consumers to whom it has granted, extended, or provided credit for a specific type of credit product.

(B) **Secondary source approach in limited circumstances.** A person that is a new entrant into the credit business, introduces new credit products, or starts to use risk-based pricing with respect to the credit products it currently offers may initially determine the cutoff score based on information derived from appropriate market research or relevant third-party sources for a specific type of credit product, such as research or data from companies that develop credit scores. A person that acquires a credit portfolio as a result of a merger or acquisition may determine the cutoff score based on information from the party which it acquired, with which it merged, or from which it acquired the portfolio.

(C) **Recalculation of cutoff scores.** A person using the credit score proxy method must recalculate its cutoff score(s) no less than every two years in the manner described in paragraph (b)(1)(iii)(A) of this section. A person using the credit score proxy method must calculate a cutoff score(s) based on the scores of its own consumers in the manner described in paragraph (b)(1)(iii)(A) of this section within one year after it begins using a cutoff score derived from market research, third-party data, or information from a party which it acquired, with which it merged, or from which it acquired the portfolio. If such a person does not grant, extend, or provide credit to new consumers during that one-year period such that it lacks sufficient data with which to recalculate a cutoff score based on the credit scores of its own consumers, the person may continue to use a cutoff score derived from market research, third-party data, or information from a party which it acquired, with which it merged, or from which it acquired the portfolio as permitted by paragraph (b)(1)(iii)(B) of this section generally must calculate a cutoff score(s) based on the scores of its own consumers in the manner described in paragraph (b)(1)(iii)(A) of this section within one year after it begins using a cutoff score derived from market research, third-party data, or information from a party which it acquired, with which it merged, or from which it acquired the portfolio. If such a person does not grant, extend, or provide credit to new consumers during that one-year period such that it lacks sufficient data with which to recalculate a cutoff score based on the credit scores of its own consumers, the person may continue to use a cutoff score derived from market research, third-party data, or information from a party which it acquired, with which it merged, or from which it acquired the portfolio as provided in paragraph (b)(1)(iii)(B) until it obtains sufficient data on which to base the recalculation. However, the person must recalculate its cutoff score(s) in the
manner described in paragraph (b)(1)(iii)(A) of this section within two years, if it has granted, extended, or provided credit to some new consumers during that two-year period.

(D) Use of two or more credit scores. A person that generally uses two or more credit scores in setting the material terms of credit granted, extended, or provided to a consumer must determine the cutoff score using the same method the person uses to evaluate multiple scores when making credit decisions. These evaluation methods may include, but are not limited to, selecting the low, median, high, most recent, or average credit score of each consumer to whom it grants, extends, or provides credit. If a person that uses two or more credit scores does not consistently use the same method for evaluating multiple credit scores (e.g., if the person sometimes chooses the median score and other times calculates the average score), the person must determine the cutoff score using a reasonable means. In such cases, use of any one of the methods that the person regularly uses or the average credit score of each consumer to whom it grants, extends, or provides credit is deemed to be a reasonable means of calculating the cutoff score.

(iv) Credit score not available. For purposes of this section, a person using the credit score proxy method who grants, extends, or provides credit to a consumer for whom a credit score is not available must assume that the consumer receives credit on material terms that are materially less favorable than the most favorable credit terms offered to a substantial proportion of consumers from or through that person and must provide a risk-based pricing notice to the consumer.

(v) Examples. (A) A credit card issuer engages in risk-based pricing and the annual percentage rates it offers to consumers are based in whole or in part on a credit score. The credit card issuer takes a representative sample of the consumers to whom it issued credit cards within the preceding three months. The credit card issuer determines that approximately 40 percent of the sampled consumers have a credit score above 720. Thus, the card issuer selects 720 as its cutoff score. A consumer applies to the credit card issuer for a credit card. The card issuer obtains a credit score for the consumer. The consumer’s credit score is 700. Since the consumer’s 700 credit score falls below the 720 cutoff score, the credit card issuer must provide a risk-based pricing notice to the consumer.

(B) A credit card issuer engages in risk-based pricing, and the annual percentage rates it offers to consumers are based in whole or in part on a credit score. The credit card issuer takes a representative sample of the consumers to whom it issued credit cards over the preceding six months. The credit card issuer determines that approximately 80 percent of the sampled consumers received credit at its lowest annual percentage rate, and 20 percent received credit at a higher annual percentage rate. Approximately 80 percent of the sampled consumers have a credit score at or above 750 (on a scale of 350 to 850), and 20 percent have a credit score below 750. Thus, the card issuer selects 750 as its cutoff score. A consumer applies to the credit card issuer for a credit card. The credit card issuer obtains a credit score for the consumer. The consumer’s credit score is 740. Since the consumer’s 740 credit score falls below the 750 cutoff score, the credit card issuer must provide a risk-based pricing notice to the consumer.

(C) An auto lender engages in risk-based pricing, obtains credit scores from one of the nationwide consumer reporting agencies, and uses the credit score proxy method to determine which consumers must receive a risk-based pricing notice. A consumer applies to the auto lender for credit to finance the purchase of an automobile. A credit score about that consumer is not available from the consumer reporting agency from which the lender obtains credit scores. The lender nevertheless grants, extends, or provides credit to the consumer. The lender must provide a risk-based pricing notice to the consumer.

(2) Tiered pricing method. (i) In general. A person that sets the material terms of credit granted, extended, or provided to a consumer by placing the
consumer within one of a discrete number of pricing tiers for a specific type of credit product, based in whole or in part on a consumer report, may comply with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer who is not placed within the top pricing tier or tiers, as described below.

(ii) Four or fewer pricing tiers. If a person using the tiered pricing method has four or fewer pricing tiers, the person complies with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit who does not qualify for the top tier (that is, the lowest-priced tier). For example, a person that uses a tiered pricing structure with annual percentage rates of 8, 10, 12, and 14 percent would provide the risk-based pricing notice to each consumer to whom it grants, extends, or provides credit at annual percentage rates of 10, 12, and 14 percent.

(iii) Five or more pricing tiers. If a person using the tiered pricing method has five or more pricing tiers, the person complies with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit who does not qualify for the top two tiers (that is, the two lowest-priced tiers) and any other tier that, together with the top tiers, comprise no less than the top 30 percent but no more than the top 40 percent of the total number of tiers. Each consumer placed within the remaining tiers must receive a risk-based pricing notice. For example, if a person has nine pricing tiers, the top three tiers (that is, the three lowest-priced tiers) comprise no less than the top 30 percent but no more than the top 40 percent of the tiers. Therefore, a person using this method would provide a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit who is placed within the bottom six tiers.

(c) Application to credit card issuers—

(1) In general. A credit card issuer subject to the requirements of paragraph (a) of this section may use one of the methods set forth in paragraph (b) of this section to identify consumers to whom it must provide a risk-based pricing notice. Alternatively, a credit card issuer may satisfy its obligations under paragraph (a) of this section by providing a risk-based pricing notice to a consumer when:

(i) A consumer applies for a credit card either in connection with an application program, such as a direct-mail offer or a take-one application, or in response to a solicitation under 12 CFR 1026.60, and more than a single possible purchase annual percentage rate may apply under the program or solicitation; and

(ii) Based in whole or in part on a consumer report, the credit card issuer provides a credit card to the consumer with an annual percentage rate referenced in §1022.71(n)(1)(ii) that is greater than the lowest annual percentage rate referenced in §1022.71(n)(1)(ii) available in connection with the application or solicitation.

(2) No requirement to compare different offers. A credit card issuer is not subject to the requirements of paragraph (a) of this section and is not required to provide a risk-based pricing notice to a consumer if:

(i) The consumer applies for a credit card for which the card issuer provides a single annual percentage rate referenced in §1022.71(n)(1)(ii), excluding a temporary initial rate that is lower than the rate that will apply after the temporary rate expires and a penalty rate that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit; or

(ii) The credit card issuer offers the lowest annual percentage rate referenced in §1022.71(n)(1)(ii) available under the credit card offer for which the consumer applied, even if a lower annual percentage rate referenced in §1022.71(n)(1)(ii) is available under a different credit card offer issued by the card issuer.

(3) Examples. (i) A credit card issuer sends a solicitation to the consumer that discloses several possible purchase annual percentage rates that may apply, such as 10, 12, or 14 percent, or a range of purchase annual percentage
rates from 10 to 14 percent. The consumer applies for a credit card in response to the solicitation. The card issuer provides a credit card to the consumer with a purchase annual percentage rate of 12 percent based in whole or in part on a consumer report. Unless an exception applies under §1022.74, the card issuer may satisfy its obligations under paragraph (a) of this section by providing a risk-based pricing notice to the consumer because the consumer received credit at a purchase annual percentage rate greater than the lowest purchase annual percentage rate available under that solicitation.

(ii) The same facts as in the example in paragraph (c)(3)(i) of this section, except that the card issuer provides a credit card to the consumer at a purchase annual percentage rate of 10 percent. The card issuer is not required to provide a risk-based pricing notice to the consumer even if, under a different credit card solicitation, that consumer or other consumers might qualify for a purchase annual percentage rate of 8 percent.

(d) Account review—(1) In general. Except as otherwise provided in this subpart, a person is subject to the requirements of paragraph (a) of this section and must provide a risk-based pricing notice to a consumer in the form and manner required by this subpart if the person:

(i) Uses a consumer report in connection with a review of credit that has been extended to the consumer; and

(ii) Based in whole or in part on the consumer report, increases the annual percentage rate (the annual percentage rate referenced in §1022.71(n)(1)(ii) in the case of a credit card).

(2) Example. A credit card issuer periodically obtains consumer reports for the purpose of reviewing the terms of credit it has extended to consumers in connection with credit cards. As a result of this review, the credit card issuer increases the purchase annual percentage rate applicable to a consumer's credit card based in whole or in part on information in a consumer report. The credit card issuer is subject to the requirements of paragraph (a) of this section and must provide a risk-based pricing notice to the consumer.
(B) The credit score used by the person in making the credit decision;
(C) The range of possible credit scores under the model used to generate the credit score;
(D) All of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquiries made with respect to the consumer report, the number of key factors shall not exceed five;
(E) The date on which the credit score was created; and
(F) The name of the consumer reporting agency or other person that provided the credit score.

(2) Account review. The risk-based pricing notice required by §1022.72(d) must include:

(i) A statement that a consumer report (or credit report) includes information about the consumer’s credit history and the type of information included in that credit history;
(ii) A statement that the person has conducted a review of the account using information from a consumer report;
(iii) A statement that as a result of the review, the annual percentage rate on the account has been increased based on information from a consumer report;
(iv) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;
(v) The identity of each consumer reporting agency that furnished a consumer report used in the account review;
(vi) A statement that Federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;
(vii) A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;
(viii) A statement directing consumers to the Web site of the Bureau to obtain more information about consumer reports; and
(ix) If a credit score of the consumer whose extension of credit is under review is used in increasing the annual percentage rate:
(A) A statement that a credit score is a number that takes into account information in a consumer report, that the consumer’s credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer’s credit history;
(B) The credit score used by the person in making the credit decision;
(C) The range of possible credit scores under the model used to generate the credit score;
(D) All of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquiries made with respect to the consumer report, the number of key factors shall not exceed five;
(E) The date on which the credit score was created; and
(F) The name of the consumer reporting agency or other person that provided the credit score.

(b) Form of the notice—(1) In general. The risk-based pricing notice required by §1022.72(a), (c), or (d) must be:

(i) Clear and conspicuous; and
(ii) Provided to the consumer in oral, written, or electronic form.

(2) Model forms. Model forms of the risk-based pricing notice required by §1022.72(a) and (c) are contained in Appendices H–1 and H–6 of this part. Appropriate use of Model Form H–1 or H–6 is deemed to comply with the requirements of §1022.72(a) and (c). Model forms of the risk-based pricing notice required by §1022.72(d) are contained in Appendices H–2 and H–7 of this part. Appropriate use of Model Form H–2 or H–7 is deemed to comply with the requirements of §1022.72(d). Use of the model forms is optional.

(c) Timing—(1) General. Except as provided in paragraph (c)(3) of this section, a risk-based pricing notice must be provided to the consumer:

(i) In the case of a grant, extension, or other provision of closed-end credit,
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before consummation of the trans-
action, but not earlier than the time
the decision to approve an application
for, or a grant, extension, or other pro-
vision of, credit, is communicated to
the consumer by the person required to
provide the notice;

(ii) In the case of credit granted, ex-
tended, or provided under an open-end
credit plan, before the first transaction
is made under the plan, but not earlier
than the time the decision to approve
an application for, or a grant, exten-
sion, or other provision of, credit is
communicated to the consumer by the
person required to provide the notice;
or

(iii) In the case of a review of credit
that has been extended to the con-
sumer, at the time the decision to in-
crease the annual percentage rate (an-
nual percentage rate referenced in
§ 1022.71(n)(1)(ii) in the case of a credit
card) based on a consumer report is
communicated to the consumer by the
person required to provide the notice,
or if no notice of the increase in the
annual percentage rate is provided to
the consumer prior to the effective
date of the change in the annual per-
centage rate (to the extent permitted
by law), no later than five days after
the effective date of the change in the
annual percentage rate.

(2) Application to certain automobile
lending transactions. When a person to
whom a credit obligation is initially
payable grants, extends, or provides
credit to a consumer for the purpose of
financing the purchase of an auto-
mobile from an auto dealer or other
party that is not affiliated with the
person, any requirement to provide a
risk-based pricing notice pursuant to
this subpart is satisfied if the person:

(i) Provides a notice described in
§§ 1022.72(a), 1022.74(e), or 1022.74(f)
to the consumer within the time periods
set forth in paragraph (c)(1)(i) of this
section, § 1022.74(e)(3), or § 1022.74(f)(4),
as applicable; or

(ii) Arranges to have the auto dealer
or other party provide a notice de-
scribed in §§ 1022.72(a), 1022.74(e), or
1022.74(f) to the consumer on its behalf
within the time periods set forth in
paragraph (c)(1)(i) of this section, §1022.74(e)(3), or §1022.74(f)(4), as appli-
cable, and maintains reasonable poli-
cies and procedures to verify that the
auto dealer or other party provides
such notice to the consumer within the
applicable time periods. If the person
arranges to have the auto dealer or
other party provide a notice described
in §1022.74(e), the person’s obligation
is satisfied if the consumer receives a no-
tice containing a credit score obtained
by the dealer or other party, even if a
different credit score is obtained and
used by the person on whose behalf the
notice is provided.

(3) Timing requirements for contempo-
aneous purchase credit. When credit
under an open-end credit plan is grant-
ed, extended, or provided to a consumer
in person or by telephone for the pur-
pose of financing the contemporaneous
purchase of goods or services, any risk-
based pricing notice required to be pro-
vided pursuant to this subpart (or the
disclosures permitted under §1022.74(e)
or (f)) may be provided at the earlier
of:

(i) The time of the first mailing by
the person to the consumer after the
decision is made to approve the grant,
extension, or other provision of open-
end credit, such as in a mailing con-
taining the account agreement or a
credit card; or

(ii) Within 30 days after the decision
to approve the grant, extension, or
other provision of credit.

(d) Multiple credit scores—(1) In gen-
eral. When a person obtains or creates
two or more credit scores and uses one
of those credit scores in setting the
material terms of credit, for example,
by using the low, middle, high, or most
recent score, the notices described in
paragraphs (a)(1) and (2) of this section
must include that credit score and in-
formation relating to that credit score
required by paragraphs (a)(1)(ix) and
(a)(2)(ix). When a person obtains or cre-
ates two or more credit scores and uses
multiple credit scores in setting the
material terms of credit by, for exam-
ple, computing the average of all the
credit scores obtained or created, the
notices described in paragraphs (a)(1)
and (2) of this section must include one
of those credit scores and information
relating to credit scores required by
paragraphs (a)(1)(ix) and (a)(2)(ix). The
notice may, at the person’s option, in-
clude more than one credit score, along
with the additional information specified in paragraphs (a)(1)(ix) and (a)(2)(ix) of this section for each credit score disclosed.

(2) Examples. (i) A person that uses consumer reports to set the material terms of credit cards granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies and uses the low score when determining the material terms it will offer to the consumer. That person must disclose the low score in the notices described in paragraphs (a)(1) and (2) of this section.

(ii) A person that uses consumer reports to set the material terms of automobile loans granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies, each of which it uses in an underwriting program in order to determine the material terms it will offer to the consumer. That person may choose one of these scores to include in the notices described in paragraph (a)(1) and (2) of this section.

§ 1022.74 Exceptions.

(a) Application for specific terms—(1) In general. A person is not required to provide a risk-based pricing notice to the consumer under §1022.72(a) or (c) if the consumer applies for specific material terms and is granted those terms, unless those terms were specified by the person using a consumer report after the consumer applied for or requested credit and after the person obtained the consumer report. For purposes of this section, “specific material terms” means a single material term, or set of material terms, such as an annual percentage rate of 10 percent, and not a range of alternatives, such as an annual percentage rate that may be 8, 10, or 12 percent, or between 8 and 12 percent.

(2) Example. A consumer receives a firm offer of credit from a credit card issuer. The terms of the firm offer are based in whole or in part on information from a consumer report that the credit card issuer obtained under the FCRA’s firm offer of credit provisions. The solicitation offers the consumer a credit card with a single purchase annual percentage rate of 12 percent. The consumer applies for and receives a credit card with an annual percentage rate of 12 percent. Other customers with the same credit card have a purchase annual percentage rate of 10 percent. The exception applies because the consumer applied for specific material terms and was granted those terms. Although the credit card issuer specified the annual percentage rate in the firm offer of credit based in whole or in part on a consumer report, the credit card issuer specified that material term before, not after, the consumer applied for or requested credit.

(b) Adverse action notice. A person is not required to provide a risk-based pricing notice to the consumer under §1022.72(a), (c), or (d) if the person provides an adverse action notice to the consumer under section 615(a) of the FCRA.

(c) Prescreened solicitations—(1) In general. A person is not required to provide a risk-based pricing notice to the consumer under §1022.72(a) or (c) if the person:

(i) Obtains a consumer report that is a prescreened list as described in section 604(c)(2) of the FCRA; and

(ii) Uses the consumer report for the purpose of making a firm offer of credit to the consumer.

(2) More favorable material terms. This exception applies to any firm offer of credit offered by a person to a consumer, even if the person makes other firm offers of credit to other consumers on more favorable material terms.

(3) Example. A credit card issuer obtains two prescreened lists from a consumer reporting agency. One list includes consumers with high credit scores. The other list includes consumers with low credit scores. The issuer mails a firm offer of credit to the high credit score consumers with a single purchase annual percentage rate of 10 percent. The issuer also mails a firm offer of credit to the low credit score consumers with a single purchase annual percentage rate of 14 percent. The credit card issuer is not required to provide a risk-based pricing notice to the low credit score consumers who receive the 14 percent offer because use of a consumer report to make a firm offer of credit does not trigger the risk-based pricing notice requirement.
§ 1022.74

(d) Loans secured by residential real property—credit score disclosure—(1) In general. A person is not required to provide a risk-based pricing notice to a consumer under §1022.72(a) or (c) if:

(i) The consumer requests from the person an extension of credit that is or will be secured by one to four units of residential real property; and

(ii) The person provides to each consumer described in paragraph (d)(1)(i) of this section a notice that contains the following:

(A) A statement that a consumer report (or credit report) is a record of the consumer’s credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;

(B) A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer’s credit history;

(C) A statement that the consumer’s credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(D) The information required to be disclosed to the consumer pursuant to section 609(g) of the FCRA;

(E) The distribution of credit scores among consumers who are scored under the same scoring model that is used to generate the consumer’s credit score using the same scale as that of the credit score that is provided to the consumer, presented in the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar or by other clear and readily understandable graphical means, or a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers. Use of a graph or statement obtained from the person providing the credit score that meets the requirements of this paragraph (d)(1)(ii)(E) is deemed to comply with this requirement;

(F) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

(G) A statement that Federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free report from each of the nationwide consumer reporting agencies once during any 12-month period;

(H) Contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

(i) A statement directing consumers to the Web site of the Bureau to obtain more information about consumer reports.

(2) Form of the notice. The notice described in paragraph (d)(1)(ii) of this section must be:

(i) Clear and conspicuous;

(ii) Provided on or with the notice required by section 609(g) of the FCRA;

(iii) Segregated from other information provided to the consumer, except for the notice required by section 609(g) of the FCRA; and

(iv) Provided to the consumer in writing and in a form that the consumer may keep.

(3) Timing. The notice described in paragraph (d)(1)(ii) of this section must be provided to the consumer at the time the disclosure required by section 609(g) of the FCRA is provided to the consumer, but in any event at or before consummation in the case of closed-end credit or before the first transaction is made under an open-end credit plan.

(4) Multiple credit scores. (i) In general. When a person obtains two or more credit scores from consumer reporting agencies and uses 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, the notice described in paragraph (d)(1)(ii) of this section must include that credit score and the other information required by that paragraph. When a person obtains two or more credit scores from consumer reporting agencies and uses 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, the notice described in paragraph (d)(1)(ii) of this section must include one of those credit scores and the other information required by that paragraph. The notice may, at the person's option, include more than one credit score, along with the additional information specified in paragraph (d)(1)(ii) of this section for each credit score disclosed.

(ii) Examples. (A) A person that uses consumer reports to set the material terms of mortgage credit granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies and uses the low score when determining the material terms it will offer to the consumer. That person must disclose the low score in the notice described in paragraph (d)(1)(ii) of this section.

(B) A person that uses consumer reports to set the material terms of mortgage credit granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies, each of which it uses in an underwriting program in order to determine the material terms it will offer to the consumer. That person may choose one of these scores to include in the notice described in paragraph (d)(1)(ii) of this section.

(5) Model form. A model form of the notice described in paragraph (d)(1)(ii) of this section consolidated with the notice required by section 609(g) of the FCRA is contained in appendix H–3 of this part. Appropriate use of Model Form H–3 is deemed to comply with the requirements of §1022.74(d). Use of the model form is optional.

(e) Other extensions of credit—credit score disclosure—(1) In general. A person is not required to provide a risk-based pricing notice to a consumer under §1022.72(a) or (c) if:

(i) The consumer requests from the person an extension of credit other than credit that is or will be secured by one to four units of residential real property; and

(ii) The person provides to each consumer described in paragraph (e)(1)(i) of this section a notice that contains the following:

(A) A statement that a consumer report (or credit report) is a record of the consumer’s credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;

(B) A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer’s credit history;

(C) A statement that the consumer’s credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(D) The current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the consumer reporting agency for a purpose related to the extension of credit;

(E) The range of possible credit scores under the model used to generate the credit score;

(F) The distribution of credit scores among consumers who are scored under the same scoring model that is used to generate the consumer’s credit score using the same scale as that of the credit score that is provided to the consumer, presented in the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar, or by other clear and readily understandable graphical means, or a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers. Use of a graph or statement obtained from the person providing the credit score that meets the requirements of this paragraph (e)(1)(ii)(F) is deemed to comply with this requirement;

(G) The date on which the credit score was created;

(H) The name of the consumer reporting agency or other person that provided the credit score;

(I) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;
(J) A statement that Federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free report from each of the nationwide consumer reporting agencies once during any 12-month period;

(K) Contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

(L) A statement directing consumers to the Web site of the Bureau to obtain more information about consumer reports.

(2) Form of the notice. The notice described in paragraph (e)(1)(ii) of this section must be:

(i) Clear and conspicuous;

(ii) Segregated from other information provided to the consumer; and

(iii) Provided to the consumer in writing and in a form that the consumer may keep.

(3) Timing. The notice described in paragraph (e)(1)(ii) of this section 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 or before the first transaction is made under an open-end credit plan.

(4) Multiple credit scores.

(i) In general. When a person obtains two or more credit scores from consumer reporting agencies and uses 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, the notice described in paragraph (e)(1)(ii) of this section must include that credit score and the other information required by that paragraph. When a person obtains two or more credit scores from consumer reporting agencies and uses 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, the notice described in paragraph (e)(1)(ii) of this section must include one of those credit scores and the other information required by that paragraph. The notice may, at the person’s option, include more than one credit score, along with the additional information specified in paragraph (e)(1)(i)(ii) of this section for each credit score disclosed.

(ii) Examples. The manner in which multiple credit scores are to be disclosed under this section are substantially identical to the manner set forth in the examples contained in paragraph (d)(4)(ii) of this section.

(5) Model form. A model form of the notice described in paragraph (e)(1)(ii) of this section is contained in appendix H–4 of this part. Appropriate use of Model Form H–4 is deemed to comply with the requirements of §1022.74(e). Use of the model form is optional.

(f) Credit score not available—(1) In general. A person is not required to provide a risk-based pricing notice to a consumer under §1022.72(a) or (c) if the person:

(i) Regularly obtains credit scores from a consumer reporting agency and provides credit score disclosures to consumers in accordance with paragraphs (d) or (e) of this section, but a credit score is not available from the consumer reporting agency from which the person regularly obtains credit scores for a consumer to whom the person grants, extends, or provides credit;

(ii) Does not obtain a credit score from another consumer reporting agency in connection with granting, extending, or providing credit to the consumer; and

(iii) Provides to the consumer a notice that contains the following:

(A) A statement that a consumer report (or credit report) includes information about the consumer’s credit history and the type of information included in that history;

(B) A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time in response to changes in the consumer’s credit history;

(C) A statement that credit scores are important because consumers with higher credit scores generally obtain more favorable credit terms;

(D) A statement that not having a credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;
(E) A statement that a credit score about the consumer was not available from a consumer reporting agency, which must be identified by name, generally due to insufficient information regarding the consumer’s credit history;

(F) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report;

(G) A statement that Federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period;

(H) The contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

(I) A statement directing consumers to the Web site of the Bureau to obtain more information about consumer reports.

(2) Example. A person that uses consumer reports to set the material terms of non-mortgage credit granted, extended, or provided to consumers regularly requests credit scores from a particular consumer reporting agency and provides those credit scores and additional information to consumers to satisfy the requirements of paragraph (e) of this section. That consumer reporting agency provides to the person a consumer report on a particular consumer that contains one trade line, but does not provide the person with a credit score on that consumer. If the person does not obtain a credit score from another consumer reporting agency and, based in whole or in part on information in a consumer report, grants, extends, or provides credit to the consumer, the person may provide the notice described in paragraph (f)(1)(iii) of this section. If, however, the person obtains a credit score from another consumer reporting agency, the person may not rely upon the exception in paragraph (f) of this section, but may satisfy the requirements of paragraph (e) of this section.

(3) Form of the notice. The notice described in paragraph (f)(1)(iii) of this section must be:

(i) Clear and conspicuous;

(ii) Segregated from other information provided to the consumer; and

(iii) Provided to the consumer in writing and in a form that the consumer may keep.

(4) Timing. The notice described in paragraph (f)(1)(iii) of this section must be provided to the consumer as soon as reasonably practicable after the person has requested the credit score, but in any event not later than consummation of a transaction in the case of closed-end credit or when the first transaction is made under an open-end credit plan.

(5) Model form. A model form of the notice described in paragraph (f)(1)(iii) of this section is contained in appendix H-5 of this part. Appropriate use of Model Form H-5 is deemed to comply with the requirements of §1022.74(f). Use of the model form is optional.

§ 1022.75 Rules of construction.

For purposes of this subpart, the following rules of construction apply:

(a) One notice per credit extension. A consumer is entitled to no more than one risk-based pricing notice under §1022.72(a) or (c), or one notice under §1022.74(d), (e), or (f), for each grant, extension, or other provision of credit. Notwithstanding the foregoing, even if a consumer has previously received a risk-based pricing notice in connection with a grant, extension, or other provision of credit, another risk-based pricing notice is required if the conditions set forth in §1022.72(d) have been met.

(b) Multi-party transactions—(1) Initial creditor. The person to whom a credit obligation is initially payable must provide the risk-based pricing notice described in §1022.72(a) or (c), or satisfy the requirements for and provide the notice required under one of the exceptions in §1022.74(d), (e), or (f), even if that person immediately assigns the credit agreement to a third party and is not the source of funding for the credit.

(2) Purchasers or assignees. A purchaser or assignee of a credit contract with a consumer is not subject to the requirements of this subpart and is not
required to provide the risk-based pricing notice described in §1022.72(a) or (c), or satisfy the requirements for and provide the notice required under one of the exceptions in §1022.74(d), (e), or (f).

(3) Example. A consumer obtains credit to finance the purchase of an automobile. If a bank or finance company is the person to whom the loan obligation is initially payable, the bank or finance company must provide the risk-based pricing notice to the consumer (or satisfy the requirements for and provide the notice required under one of the exceptions noted above) based on the terms offered by that bank or finance company only. The auto dealer has no duty to provide a risk-based pricing notice to the consumer. However, the bank or finance company may comply with this rule if the auto dealer has agreed to provide notices to consumers before consummation pursuant to an arrangement with the bank or finance company, as permitted under §1022.73(c).

(c) Multiple consumers—(1) Risk-based pricing notices. In a transaction involving two or more consumers who are granted, extended, or otherwise provided credit, a person must provide a notice to each consumer to satisfy the requirements of §1022.72(a) or (c). Whether the consumers have the same address or not, the person must provide a separate notice to each consumer if a notice includes a credit score(s). 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. If the consumers have the same address, and the notice does not include a credit score(s), a person may satisfy the requirements by providing a single notice addressed to both consumers.

(2) Credit score disclosure notices. In a transaction involving two or more consumers who are granted, extended, or otherwise provided credit, a person must provide a separate notice to each consumer to satisfy the exceptions in §1022.74(d), (e), or (f). Whether the consumers have the same address or not, the person must provide a separate notice to each consumer. Each separate notice 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.

(3) Examples. (i) Two consumers jointly apply for credit with a creditor. The creditor obtains credit scores on both consumers. Based in part on the credit scores, the creditor grants credit to the consumers on material terms that are materially less favorable than the most favorable terms available to other consumers from the creditor. The creditor provides risk-based pricing notices to satisfy its obligations under this subpart. The creditor must provide a separate risk-based pricing notice to each consumer whether the consumers have the same address or not. Each risk-based pricing notice must contain only the credit score(s) of the consumer to whom the notice is provided.

(ii) Two consumers jointly apply for credit with a creditor. The two consumers reside at the same address. The creditor obtains credit scores on each of the two consumer applicants. The creditor grants credit to the consumers. The creditor provides credit score disclosure notices to satisfy its obligations under this subpart. Even though the two consumers reside at the same address, the creditor must provide a separate credit score disclosure notice to each of the consumers. Each notice must contain only the credit score of the consumer to whom the notice is provided.

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

§§ 1022.80–1022.81 [Reserved]

§ 1022.82 Duties of users regarding address discrepancies.

(a) Scope. This section applies to a user of consumer reports (user) that receives a notice of address discrepancy from a consumer reporting agency described in 15 U.S.C. 1681a(p), except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 137.

(b) Definition. For purposes of this section, a notice of address discrepancy...
means a notice sent to a user by a consumer reporting agency described in 15 U.S.C. 1681a(p) pursuant to 15 U.S.C. 1681c(h)(1), that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency’s file for the consumer.

(c) Reasonable belief—(1) Requirement to form a reasonable belief. A user must develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it has requested the report, when the user receives a notice of address discrepancy.

(2) Examples of reasonable policies and procedures. (i) Comparing the information in the consumer report provided by the consumer reporting agency with information the user:

(A) Obtains and uses to verify the consumer’s identity in accordance with the requirements of the Customer Identification Program (CIP) rules implementing 31 U.S.C. 5318(l) (31 CFR 1020.220);

(B) Maintains in its own records, such as applications, change of address notifications, other customer account records, or retained CIP documentation; or

(C) Obtains from third-party sources; or

(ii) Verifying the information in the consumer report provided by the consumer reporting agency with the consumer.

(d) Consumer’s address—(1) Requirement to furnish consumer’s address to a consumer reporting agency. A user must develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed is accurate to the consumer reporting agency described in 15 U.S.C. 1681a(p) from whom it received the notice of address discrepancy when the user:

(i) Can form a reasonable belief that the consumer report relates to the consumer about whom the user requested the report;

(ii) Establishes a continuing relationship with the consumer; and

(iii) Regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of address discrepancy relating to the consumer was obtained.

(2) Examples of confirmation methods. The user may reasonably confirm an address is accurate by:

(i) Verifying the address with the consumer about whom it has requested the report;

(ii) Reviewing its own records to verify the address of the consumer;

(iii) Verifying the address through third-party sources; or

(iv) Using other reasonable means.

(3) Timing. The policies and procedures developed in accordance with paragraph (d)(1) of this section must provide that the user will furnish the consumer’s address that the user has reasonably confirmed is accurate to the consumer reporting agency described in 15 U.S.C. 1681a(p) as part of the information it regularly furnishes for the reporting period in which it establishes a relationship with the consumer.

Subparts J-L [Reserved]

Subpart M—Duties of Consumer Reporting Agencies Regarding Identity Theft

§ 1022.120 [Reserved]

§ 1022.121 Active duty alerts.

(a) Duration. The duration of an active duty alert shall be twelve months.

§ 1022.122 [Reserved]

§ 1022.123 Appropriate proof of identity.

(a) Consumer reporting agencies shall develop and implement reasonable requirements for what information consumers shall provide to constitute proof of identity for purposes of sections 605A, 605B, and 609(a)(1) of the FCRA. In developing these requirements, the consumer reporting agencies must:

(1) Ensure that the information is sufficient to enable the consumer reporting agency to match consumers with their files; and

(2) Adjust the information to be commensurate with an identifiable risk of
harm arising from misidentifying the consumer.

(b) Examples of information that might constitute reasonable information requirements for proof of identity are provided for illustrative purposes only, as follows:

1. Consumer file match. The identification information of the consumer including his or her full name (first, middle initial, last, suffix), any other or previously used names, current and/or recent full address (street number and name, apt. no., city, state, and zip code), full nine digits of Social Security number, and/or date of birth.

2. Additional proof of identity. Copies of government issued identification documents, utility bills, and/or other methods of authentication of a person’s identity which may include, but would not be limited to, answering questions to which only the consumer might be expected to know the answer.

§§ 1022.124–1022.129 [Reserved]

Subpart N—Duties of Consumer Reporting Agencies Regarding Disclosures to Consumers

§ 1022.130 Definitions

For purposes of this subpart, the following definitions apply:

(a) Annual file disclosure means a file disclosure that is provided to a consumer, upon consumer request and without charge, once in any twelve month period, in compliance with section 612(a) of the FCRA, 15 U.S.C. 1681j(a).

(b) Associated consumer reporting agency means a consumer reporting agency that owns or maintains consumer files housed within systems operated by one or more nationwide consumer reporting agencies.

(c) Consumer report has the meaning provided in section 603(d) of the FCRA, 15 U.S.C. 1681a(d).

(d) Consumer reporting agency has the meaning provided in section 603(f) of the FCRA, 15 U.S.C. 1681a(f).

(e) Extraordinary request volume occurs when the number of consumers requesting or attempting to request file disclosures during any twenty-four hour period is more than 175 percent of the rolling ninety-day daily average of consumers requesting or attempting to request file disclosures. For example, if over the previous ninety days an average of one hundred consumers per day requested or attempted to request file disclosures, then extraordinary request volume would be any volume greater than 175 percent of one hundred, i.e., 176 or more requests in a single twenty-four hour period.

(f) File disclosure means a disclosure by a consumer reporting agency pursuant to section 609 of the FCRA, 15 U.S.C. 1681g.

(g) High request volume occurs when the number of consumers requesting or attempting to request file disclosures during any twenty-four hour period is more than 125 percent of the rolling ninety-day daily average of consumers requesting or attempting to request file disclosures. For example, if over the previous ninety days an average of one hundred consumers per day requested or attempted to request file disclosures, then high request volume would be any volume greater than 125 percent of one hundred, i.e., 126 or more requests in a single twenty-four hour period.

(h) Nationwide consumer reporting agency means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis as defined in section 603(p) of the FCRA, 15 U.S.C. 1681a(p).

(i) Nationwide specialty consumer reporting agency has the meaning provided in section 603(w) of the FCRA, 15 U.S.C. 1681a(w).

(j) Request method means the method by which a consumer chooses to communicate a request for an annual file disclosure.

§§ 1022.131–1022.135 [Reserved]

§ 1022.136 Centralized source for requesting annual file disclosures from nationwide consumer reporting agencies.

(a) Purpose. The purpose of the centralized source is to enable consumers to make a single request to obtain annual file disclosures from all nationwide consumer reporting agencies, as required under section 612(a) of the FCRA, 15 U.S.C. 1681j(a).
(b) Establishment and operation. All nationwide consumer reporting agencies shall jointly design, fund, implement, maintain, and operate a centralized source for the purpose described in Paragraph (a) of this section. The centralized source required by this part shall:

(1) Enable consumers to request annual file disclosures by any of the following request methods, at the consumers’ option:
   (i) A single, dedicated Web site,
   (ii) A single, dedicated toll-free telephone number; and
   (iii) Mail directed to a single address;

(2) Be designed, funded, implemented, maintained, and operated in a manner that:
   (i) Has adequate capacity to accept requests from the reasonably anticipated volume of consumers contacting the centralized source through each request method, as determined in accordance with Paragraph (c) of this section;
   (ii) Collects only as much personally identifiable information as is reasonably necessary to properly identify the consumer as required under the FCRA, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, and to process the transaction(s) requested by the consumer;
   (iii) Provides information through the centralized source Web site and telephone number regarding how to make a request by all request methods required under paragraph (b)(1) of this section; and
   (iv) Provides clear and easily understandable information and instructions to consumers, including, but not necessarily limited to:
      (A) Providing information on the progress of the consumer’s request while the consumer is engaged in the process of requesting a file disclosure;
      (B) For a Web site request method, providing access to a “help” or “frequently asked questions” screen, which includes specific information that consumers might reasonably need to request file disclosures, the answers to questions that consumers might reasonably ask, and instructions whereby a consumer may file a complaint with the centralized source and with the Bureau;

(C) In the event that a consumer requesting a file disclosure through the centralized source cannot be properly identified in accordance with the FCRA, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, providing a statement that the consumers’ identity cannot be verified; and directions on how to complete the request, including what additional information or documentation will be required to complete the request, and how to submit such information; and

(D) A statement indicating that the consumer has reached the Web site or telephone number for ordering free annual credit reports as required by Federal law; and

(3) Make available to consumers a standardized form established jointly by the nationwide consumer reporting agencies, which consumers may use to make a request for an annual file disclosure, either by mail or on the Web site required under paragraph (b)(1) of this section, from the centralized source required by this part. The form provided at appendix L to part 1022, may be used to comply with this section.

(c) Requirement to anticipate. The nationwide consumer reporting agencies shall implement reasonable procedures to anticipate, and to respond to, the volume of consumers who will contact the centralized source through each request method, to request, or attempt to request, a file disclosure, including developing and implementing contingency plans to address circumstances that are reasonably likely to occur and that may materially and adversely impact the operation of the nationwide consumer reporting agency, a centralized source request method, or the centralized source.

(1) The contingency plans required by this section shall include reasonable measures to minimize the impact of such circumstances on the operation of the centralized source and on consumers contacting, or attempting to contact, the centralized source.

(i) Such reasonable measures to minimize impact shall include, but are not necessarily limited to:
(A) The extent reasonably practicable under the circumstances, providing information to consumers on how to use another available request method;

(B) The extent reasonably practicable under the circumstances, communicating, to a consumer who attempts but is unable to make a request, the fact that a condition exists that has precluded the centralized source from accepting all requests, and the period of time after which the centralized source is reasonably anticipated to be able to accept the consumers’ request for an annual file disclosure; and

(C) Taking all reasonable steps to restore the centralized source to normal operating status as quickly as reasonably practicable under the circumstances.

(ii) Reasonable measures to minimize impact may also include, as appropriate, collecting request information but declining to accept the request for processing until a reasonable later time, provided that the consumer is clearly and prominently informed, to the extent reasonably practicable under the circumstances, of when the request will be accepted for processing.

(2) A nationwide consumer reporting agency shall not be deemed in violation of paragraph (b)(2)(i) of this section if a centralized source request method is unavailable to accept requests for a reasonable period of time for purposes of conducting maintenance on the request method, provided that the other required request methods remain available during such time.

(d) Disclosures required. If a nationwide consumer reporting agency has the ability to provide a consumer report to a third party relating to a consumer, regardless of whether the consumer report is owned by that nationwide consumer reporting agency or by an associated consumer reporting agency, that nationwide consumer reporting agency shall, upon proper identification in compliance with section 610(a)(1) of the FCRA, 15 U.S.C. 1681h(a)(1), provide an annual file disclosure to such consumer if the consumer makes a request through the centralized source.

(e) High request volume and extraordinary request volume.—(1) High request volume. Provided that a nationwide consumer reporting agency has implemented reasonable procedures developed in accordance with Paragraph (c) of this section, entitled “requirement to anticipate,” the nationwide consumer reporting agency shall not be deemed in violation of Paragraph (b)(2)(i) of this section for any period of time in which a centralized source request method, the centralized source, or the nationwide consumer reporting agency experiences high request volume, if the nationwide consumer reporting agency:

(i) Collects all consumer request information and delays accepting the request for processing until a reasonable later time; and

(ii) Clearly and prominently informs the consumer of when the request will be accepted for processing.

(2) Extraordinary request volume. Provided that the nationwide consumer reporting agency has implemented reasonable procedures developed in compliance with Paragraph (c) of this section, entitled “requirement to anticipate,” the nationwide consumer reporting agency shall not be deemed in violation of Paragraph (b)(2)(i) of this section for any period of time during which a particular centralized source request method, the centralized source, or the nationwide consumer reporting agency experiences extraordinary request volume.

(f) Information use and disclosure. Any personally identifiable information collected from consumers as a result of a request for annual file disclosure, or other disclosure required by the FCRA, made through the centralized source, may be used or disclosed by the centralized source or a nationwide consumer reporting agency only:

(1) To provide the annual file disclosure or other disclosure required under the FCRA requested by the consumer;

(2) To process a transaction requested by the consumer at the same time as a request for annual file disclosure or other disclosure;

(3) To comply with applicable legal requirements, including those imposed by the FCRA and this part; and
(4) To update personally identifiable information already maintained by the nationwide consumer reporting agency for the purpose of providing consumer reports, provided that the nationwide consumer reporting agency uses and discloses the updated personally identifiable information subject to the same restrictions that would apply, under any applicable provision of law or regulation, to the information updated or replaced.

(g) Communications provided through centralized source. (1) Any advertising or marketing for products or services, any communications or instructions that advertise or market any products or services, or any request to establish an account through the centralized source must be delayed until after the consumer has obtained his or her annual file disclosure.

(i) In the case of requests made by mail or telephone, the consumer “has obtained his or her annual file disclosure” when the file disclosure is mailed, and the nationwide consumer reporting agency may include advertising for other products or services with the file disclosure.

(ii) In the case of requests made through the centralized source Web site, the consumer “has obtained his or her annual file disclosure” when the file disclosure is delivered to the consumer through the Internet, and the nationwide consumer reporting agency may include advertising for other products or services with the file disclosure.

(2) Any communications, instructions, or permitted advertising or marketing shall not interfere with, detract from, contradict, or otherwise undermine the purpose of the centralized source stated in Paragraph (a) of this section.

(3) Examples of interfering, detracting, inconsistent, and/or undermining communications include:

(i) Centralized source materials that represent, expressly or by implication, that a consumer must purchase a paid product or service in order to receive or to understand the annual file disclosure;

(ii) Centralized source materials that represent, expressly or by implication, that annual file disclosures are not free, or that obtaining an annual file disclosure will have a negative impact on the consumers’ credit standing; and

(iii) Centralized source materials that falsely represent, expressly or by implication, that a product or service offered ancillary to receipt of a file disclosure, such as a credit score or credit monitoring service, is free, or fail to clearly and prominently disclose that consumers must cancel a service, advertised as free for an initial period of time, to avoid being charged, if such is the case.

(h) Other practices prohibited through the centralized source. The centralized source shall not:

(1) Contain hyperlinks to commercial or proprietary Web sites until after the consumer has obtained his or her annual file disclosure, except for technical transfers to a Web page on which consumers can request their free annual file disclosure; provided, however, that no hyperlinks to commercial Web sites shall appear on the initial page of the centralized source.

(2) Require consumers to set up an account in connection with obtaining an annual file disclosure; or

(3) Ask or require consumers to agree to terms or conditions in connection with obtaining an annual file disclosure.

§ 1022.137 Streamlined process for requesting annual file disclosures from nationwide specialty consumer reporting agencies.

(a) Streamlined process requirements. Any nationwide specialty consumer reporting agency shall have a streamlined process for accepting and processing consumer requests for annual file disclosures. The streamlined process required by this part shall:

(1) Enable consumers to request annual file disclosures by a toll-free telephone number that:

(i) Provides clear and prominent instructions for requesting disclosures by any additional available request methods, that do not interfere with, detract from, contradict, or otherwise undermine the ability of consumers to obtain annual file disclosures through the streamlined process required by this part;
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(ii) Is published, in conjunction with all other published numbers for the nationwide specialty consumer reporting agency, in any telephone directory in which any telephone number for the nationwide specialty consumer reporting agency is published; and (iii) Is clearly and prominently posted on any Web site owned or maintained by the nationwide specialty consumer reporting agency that is related to consumer reporting, along with instructions for requesting disclosures by any additional available request methods; and

(2) Be designed, funded, implemented, maintained, and operated in a manner that:

(i) Has adequate capacity to accept requests from the reasonably anticipated volume of consumers contacting the nationwide specialty consumer reporting agency through the streamlined process, as determined in compliance with Paragraph (b) of this section;

(ii) Collects only as much personal information as is reasonably necessary to properly identify the consumer as required under the FCRA, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations; and

(iii) Provides clear and easily understandable information and instructions to consumers, including but not necessarily limited to:

(A) Providing information on the status of the consumers request while the consumer is in the process of making a request;

(B) For a Web site request method, providing access to a “help” or “frequently asked questions” screen, which includes more specific information that consumers might reasonably need to order their file disclosure, the answers to questions that consumers might reasonably ask, and instructions whereby a consumer may file a complaint with the nationwide specialty consumer reporting agency and with the Bureau; and

(C) In the event that a consumer requesting a file disclosure cannot be properly identified in accordance with the FCRA, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, providing a statement that the consumers identity cannot be verified; and directions on how to complete the request, including what additional information or documentation will be required to complete the request, and how to submit such information.

(b) Requirement to anticipate. A nationwide specialty consumer reporting agency shall implement reasonable procedures to anticipate, and respond to, the volume of consumers who will contact the nationwide specialty consumer reporting agency through the streamlined process to request, or attempt to request, file disclosures, including developing and implementing contingency plans to address circumstances that are reasonably likely to occur and that may materially and adversely impact the operation of the nationwide specialty consumer reporting agency, a request method, or the streamlined process.

(1) The contingency plans required by this section shall include reasonable measures to minimize the impact of such circumstances on the operation of the streamlined process and on consumers contacting, or attempting to contact, the nationwide specialty consumer reporting agency through the streamlined process.

(i) Such reasonable measures to minimize impact shall include, but are not necessarily limited to:

(A) To the extent reasonably practicable under the circumstances, providing information to consumers on how to use another available request method;

(B) To the extent reasonably practicable under the circumstances, communicating, to a consumer who attempts but is unable to make a request, the fact that a condition exists that has precluded the nationwide specialty consumer reporting agency from accepting all requests, and the period of time after which the agency is reasonably anticipated to be able to accept the consumers request for an annual file disclosure; and

(C) Taking all reasonable steps to restore the streamlined process to normal operating status as quickly as reasonably practicable under the circumstances.

(ii) Measures to minimize impact may also include, as appropriate, collecting request information but declining to accept the request for processing
until a reasonable later time, provided that the consumer is clearly and prominently informed, to the extent reasonably practicable under the circumstances, of when the request will be accepted for processing.

(2) A nationwide specialty consumer reporting agency shall not be deemed in violation of paragraph (a)(2)(i) of this section if the toll-free telephone number required by this part is unavailable to accept requests for a reasonable period of time for purposes of conducting maintenance on the request method, provided that the nationwide specialty consumer reporting agency makes other request methods available to consumers during such time.

(c) High request volume and extraordinary request volume—(1) High request volume. Provided that the nationwide specialty consumer reporting agency has implemented reasonable procedures developed in accordance with Paragraph (b) of this section, entitled “requirement to anticipate,” a nationwide specialty consumer reporting agency shall not be deemed in violation of Paragraph (a)(2)(i) of this section for any period of time during which a streamlined process request method or the nationwide specialty consumer reporting agency experiences high request volume, if the nationwide specialty consumer reporting agency:

(i) Collects all consumer request information and delays accepting the request for processing until a reasonable later time; and

(ii) Clearly and prominently informs the consumer of when the request will be accepted for processing.

(2) Extraordinary request volume. Provided that the nationwide specialty consumer reporting agency has implemented reasonable procedures developed in accordance with Paragraph (b) of this section, entitled “requirement to anticipate,” a nationwide specialty consumer reporting agency shall not be deemed in violation of Paragraph (a)(2)(i) of this section for any period of time during which a streamlined process request method or the nationwide specialty consumer reporting agency experiences extraordinary request volume.

(d) Information use and disclosure. Any personally identifiable information collected from consumers as a result of a request for annual file disclosure, or other disclosure required by the FCRA, made through the streamlined process, may be used or disclosed by the nationwide specialty consumer reporting agency only:

(1) To provide the annual file disclosure or other disclosure required under the FCRA requested by the consumer;

(2) To process a transaction requested by the consumer at the same time as a request for annual file disclosure or other disclosure;

(3) To comply with applicable legal requirements, including those imposed by the FCRA and this part; and

(4) To update personally identifiable information already maintained by the nationwide specialty consumer reporting agency for the purpose of providing consumer reports, provided that the nationwide specialty consumer reporting agency in compliance with this part, a nationwide specialty consumer reporting agency:

(i) Collects all consumer request information and delays accepting the request for processing until a reasonable later time; and

(ii) Clearly and prominently informs the consumer of when the request will be accepted for processing.

§ 1022.138 Prevention of deceptive marketing of free credit reports.

(a) For purposes of this section:

(1) AnnualCreditReport.com and (877) 322–8228 means the Uniform Resource Locator “AnnualCreditReport.com” and toll-free telephone number, (877) 322–8228. These are the locator address and toll-free telephone number currently used by the centralized source. If the locator address or toll-free telephone number changes in the future, the new address or telephone number shall be substituted within a reasonable time.
(2) **Free credit report** means a file disclosure prepared by or obtained from, directly or indirectly, a nationwide consumer reporting agency (as defined in section 603(p) of the FCRA), that is represented, either expressly or impliedly, to be available to the consumer at no cost if the consumer purchases a product or service, or agrees to purchase a product or service subject to cancellation.

(3) **General requirements for disclosures.** The disclosures covered by Paragraph (b) of this section shall contain only the prescribed content and comply with the following requirements:

(i) All disclosures shall be prominent;

(ii) All disclosures shall be made in the same language as that principally used in the advertisement;

(iii) Visual disclosures shall be easily readable; in a high degree of contrast from the immediate background on which it appears; in a format so that the disclosure is distinct from other text, such as inside a border; in a distinct type style, such as bold; and parallel to the base of the advertisement or screen;

(iv) Audio disclosures shall be delivered in a slow and deliberate manner and in a reasonably understandable volume and pitch;

(v) Program-length television, radio, or Internet-hosted multimedia advertisement disclosures shall be made at the beginning, near the middle, and at the end of the advertisement; and

(vi) Nothing contrary to, inconsistent with, or that undermines the required disclosures shall be used in any advertisement in any medium, nor shall any audio, visual, or print technique be used that is likely to detract significantly from the communication of any disclosure.

(b) **Medium-specific disclosures.** All offers of free credit reports shall prominently include the disclosures required by this section.

(1) **Television advertisements.** (i) All advertisements for free credit reports broadcast on television shall include the following disclosure in close proximity to the first mention of a free credit report: “This is not the free credit report provided for by Federal law.”

(ii) The disclosure shall appear at the same time in the audio and visual part of the advertisement. The visual disclosure shall be at least four percent of the vertical picture height and appear for a minimum of four seconds.

(2) **Radio advertisements.** All advertisements for free credit reports broadcast on radio shall include the following disclosure in close proximity to the first mention of a free credit report: “This is not the free credit report provided for by Federal law.”

(3) **Print advertisements.** All advertisements for free credit reports in print shall include the following disclosure in the form specified below and in close proximity to the first mention of a free credit report. The first line of the disclosure shall be centered and contain only the following language: “THIS NOTICE IS REQUIRED BY LAW.” Immediately below the first line of the disclosure the following language shall appear: “You have the right to a free credit report from AnnualCreditReport.com or (877) 322–8228, the ONLY authorized source under Federal law.” Each letter of the disclosure text shall be, at minimum, one-half the size of the largest character used in the advertisement.

(4) **Web sites.** Any Web site offering free credit reports must display the disclosure set forth in paragraphs (b)(4)(i), (ii), and (v) of this section on each page that mentions a free credit report and on each page of the ordering process. This disclosure shall be visible across the top of each page where the disclosure is required to appear; shall appear inside a box; and shall appear in the form specified below:

(i) The first element of the disclosure shall be a header that is centered and shall consist of the following text: “THIS NOTICE IS REQUIRED BY LAW. Read more at consumerfinance.gov/learnmore.” Each letter of the header shall be one-half the size of the largest character of the disclosure text required by paragraph (b)(4)(ii) of this section. The reference to consumerfinance.gov/learnmore shall be an operational hyperlink, underlined, and in a color that is a high degree of contrast from the color of the other disclosure text and background color of the box. Until January 1, 2013,
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Internet-hosted multimedia advertising. All advertisements for free credit reports disseminated through Internet-hosted multimedia in both audio and visual formats shall include the following disclosure in the form specified below and in close proximity to the first mention of a free credit report. The first line of the disclosure shall be centered and contain only the following language: “THIS NOTICE IS REQUIRED BY LAW.” Immediately below the first line of the disclosure the following language shall appear: “You have the right to a free credit report from AnnualCreditReport.com or (877) 322–8228, the ONLY authorized source under Federal law.” The disclosure shall appear at the same time in the audio and visual part of the advertisement. If the advertisement contains characters, the visual disclosure shall be, at minimum, the same size as the largest character on the advertisement.

Telephone requests. When consumers call any telephone number, other than the number of the centralized source, appearing in an advertisement that represents free credit reports are available at the number, consumers must receive the following audio disclosure at the first mention of a free credit report: “The following notice is required by law. You have the right to a free credit report from AnnualCreditReport.com or (877) 322–8228, the only authorized source under Federal law.”

Telemarketing solicitations. When telemarketing sales calls are made that include offers of free credit reports, the call must include at the first mention of a free credit report the following disclosure: “The following notice is required by law. You have the right to a free credit report from AnnualCreditReport.com or (877) 322–8228, the only authorized source under Federal law.”
§ 1022.139 [Reserved]

Subpart O—Miscellaneous Duties of Consumer Reporting Agencies

§ 1022.140 Prohibition against circumventing or evading treatment as a consumer reporting agency

(a) A consumer reporting agency shall not circumvent or evade treatment as a “consumer reporting agency that compiles and maintains files on consumers on a nationwide basis,” as defined under section 603(p) of the FCRA, 15 U.S.C. 1681a(p), by any means, including, but not limited to:

(1) Corporate organization, reorganization, structure, or restructuring, including merger, acquisition, dissolution, divestiture, or asset sale of a consumer reporting agency; or

(2) Maintaining or merging public record and credit account information in a manner that is substantially equivalent to that described in paragraphs (1) and (2) of section 603(p) of the FCRA, 15 U.S.C. 1681a(p).

(b) Examples:

(1) Circumvention through reorganization by data type. XYZ Inc. is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. It restructures its operations so that public record information is assembled and maintained only by its corporate affiliate, ABC Inc. XYZ continues operating as a consumer reporting agency but ceases to comply with the FCRA obligations of a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, asserting that it no longer meets the definition found in FCRA section 603(p), because it no longer maintains public record information. XYZ’s conduct is a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, and thus violates this section.

(2) Circumvention through reorganization by regional operations. PDQ Inc. is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. It restructures its operations so that corporate affiliates separately assemble and maintain all information on consumers residing in each state. PDQ continues to operate as a consumer reporting agency but ceases to comply with the FCRA obligations of a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, asserting that it no longer meets the definition found in FCRA section 603(p), because it no longer operates on a nationwide basis. PDQ’s conduct is a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, and thus violates this section.

(3) Circumvention by a newly formed entity. Smith Co. is a new entrant in the marketplace for consumer reports that bear on a consumer’s credit worthiness, standing and capacity. Smith Co. organizes itself into two affiliated companies: Smith Credit Co. and Smith Public Records Co. Smith Credit Co. assembles and maintains credit account information from persons who furnish that information regularly and in the ordinary course of business on consumers residing nationwide. Smith Public Records Co. assembles and maintains public record information on consumers nationwide. Neither Smith Co. nor its affiliated organizations comply with FCRA obligations of consumer reporting agencies that compile and maintain files on consumers on a nationwide basis. Smith Co.’s conduct is a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, and thus violates this section.

(4) Bona fide, arm’s length transaction with unaffiliated party. Foster Ltd. is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. Foster Ltd. sells its public record information business to an unaffiliated company in a bona fide, arm’s length transaction. Foster Ltd. ceases to assemble, evaluate and maintain public record information on consumers living nationwide, and ceases to offer reports containing public record information. Foster Ltd.’s conduct is not a circumvention or evasion of treatment as a consumer reporting agency that compiles and
APPENDIX C TO PART 1022—MODEL FORMS FOR OPT-OUT NOTICES

a. Although use of the model forms is not required, use of the model forms in this appendix (as applicable) complies with the requirement in section 624 of the Act for clear, conspicuous, and concise notices.

b. Certain changes may be made to the language or format of the model forms without losing the protection from liability afforded by use of the model forms. These changes may not be so extensive as to affect the substance, clarity, or meaningful sequence of the language in the model forms. Persons making such extensive revisions will lose the safe harbor that this appendix provides. Acceptable changes include, for example:

1. Rearranging the order of the references to “your income,” “your account history,” and “your credit score.”

2. Substituting other types of information for “income,” “account history,” or “credit score” for accuracy, such as “payment history,” “credit history,” “payoff status,” or “claims history.”

3. Substituting a clearer and more accurate description of the affiliates providing or covered by the notice for phrases such as “the [ABC] group of companies,” including without limitation a statement that the entity providing the notice recently purchased the consumer’s account.

4. Substituting other types of affiliates covered by the notice for “credit card,” “insurance,” or “securities” affiliates.

5. Omitting items that are not accurate or applicable. For example, if a person does not limit the duration of the opt-out period, the notice may omit information about the renewal notice.

6. Adding a statement informing consumers how much time they have to opt out before shared eligibility information may be used to make solicitations to them.

7. Adding a statement that the consumer may exercise the right to opt out at any time.

8. Adding the following statement, if accurate: “If you previously opted out, you do not need to do so again.”

9. Providing a place on the form for the consumer to fill in identifying information, such as his or her name and address.

10. Adding disclosures regarding the treatment of opt-outs by joint consumers to comply with §1022.23(a)(2) of this part.
C–1—Model Form for Initial Opt-out Notice
(Single-Affiliate Notice)

C–2—Model Form for Initial Opt-out Notice
(Joint Notice)

C–3—Model Form for Renewal Notice (Single-
Affiliate Notice)

C–4—Model Form for Renewal Notice (Joint
Notice)

C–5—Model Form for Voluntary “No Marketing” Notice

C–1—MODEL FORM FOR INITIAL OPT-OUT NOTICE
(SINGLE-AFFILIATE NOTICE)—[YOUR CHOICE TO LIMIT MARKETING]/[MARKETING OPT-OUT]

• [Name of Affiliate] is providing this notice.
• [Optional: Federal law gives you the right to limit some but not all marketing from our affiliates. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from our affiliates.]
• You may limit our affiliates in the [ABC] group of companies, such as our [credit card, insurance, and securities] affiliates, from marketing their products or services to you based on your personal information that we collect and share with them. This information includes your [income], your [account history with us], and your [credit score].
• Your choice to limit marketing offers from our affiliates will apply [until you tell us to change your choice]/[for x years from when you tell us your choice]/[for at least 5 years from when you tell us your choice]. [Include if the opt-out period expires.] Once that period expires, you will receive a renewal notice that will allow you to continue to limit marketing offers from our affiliates for [another x years]/[at least another 5 years].
• [Include, if applicable, in a subsequent notice, including an annual notice, for consumers who may have previously opted out.] If you have already made a choice to limit marketing offers from the [ABC] companies, you do not need to act again until you receive the renewal notice.

To limit marketing offers, contact us [include all that apply]:
• By telephone: 1–(877) ####–####
• On the Web: www.—.com
• By mail: Check the box and complete the form below, and send the form to:
  [Company name]
  [Company address]
  —Do not allow any company [in the ABC group of companies] to use my personal information to market to me.

C–2—MODEL FORM FOR INITIAL OPT-OUT NOTICE
(JOINT NOTICE)—[YOUR CHOICE TO LIMIT MARKETING]/[MARKETING OPT-OUT]

• The [ABC group of companies] is providing this notice.
• [Optional: Federal law gives you the right to limit some but not all marketing from the [ABC] companies. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from the [ABC] companies.]
• You may limit the [ABC] companies, such as the [ABC credit card, insurance, and securities] affiliates, from marketing their products or services to you based on your personal information that they receive from other [ABC] companies. This information includes your [income], your [account history], and your [credit score].
• Your choice to limit marketing offers from the [ABC] companies will apply [until you tell us to change your choice]/[for x years from when you tell us your choice]/[for at least 5 years from when you tell us your choice]. [Include if the opt-out period expires.] Once that period expires, you will receive a renewal notice that will allow you to continue to limit marketing offers from the [ABC] companies for [another x years]/[at least another 5 years].
• [Include, if applicable, in a subsequent notice, including an annual notice, for consumers who may have previously opted out.] If you have already made a choice to limit marketing offers from the [ABC] companies, you do not need to act again until you receive the renewal notice.

To limit marketing offers, contact us [include all that apply]:
• By telephone: 1–(877) ####–####
• On the Web: www.—.com
• By mail: Check the box and complete the form below, and send the form to:
  [Company name]
  [Company address]
  —Do not allow any company [in the ABC group of companies] to use my personal information to market to me.

C–3—MODEL FORM FOR RENEWAL NOTICE (SINGLE-AFFILIATE NOTICE)—[RENEWING YOUR CHOICE TO LIMIT MARKETING]/[RENEWING YOUR MARKETING OPT-OUT]

• [Name of Affiliate] is providing this notice.
• [Optional: Federal law gives you the right to limit some but not all marketing from our affiliates. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from our affiliates.]
• You previously chose to limit our affiliates in the [ABC] group of companies, such as our [credit card, insurance, and securities] affiliates, from marketing their products or services to you based on your personal information that we share with them. This information includes your [income], your [account history with us], and your [credit score].
Your choice has expired or is about to expire.

To renew your choice to limit marketing for [x] more years, contact us [include all that apply]:

• By telephone: 1–(877) ###–####
• On the Web: www.—.com
• By mail: Check the box and complete the form below, and send the form to:
  [Company name]
  [Company address]

—Renew my choice to limit marketing for [x] more years.

C–4—MODEL FORM FOR RENEWAL NOTICE
(JOINT NOTICE)—[RENEWING YOUR CHOICE TO LIMIT MARKETING]/[RENEWING YOUR MARKETING OPT-OUT]

• The [ABC group of companies] is providing this notice.
• [Optional: Federal law gives you the right to limit some but not all marketing from the [ABC] companies. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from the [ABC] companies.]

• You previously chose to limit the [ABC] companies, such as the [ABC credit card, insurance, and securities] affiliates, from marketing their products or services to you based on your personal information that they receive from other ABC companies.

• Your choice has expired or is about to expire.

To renew your choice to limit marketing for [x] more years, contact us [include all that apply]:

• By telephone: 1–(877) ###–####
• On the Web: www.—.com
• By mail: Check the box and complete the form below, and send the form to:
  [Company name]
  [Company address]

—Renew my choice to limit marketing for [x] more years.

C–5—MODEL FORM FOR VOLUNTARY “NO MARKETING” NOTICE—[YOUR CHOICE TO STOP MARKETING]

• [Name of Affiliate] is providing this notice.

• You may choose to stop all marketing from us and our affiliates.
• [Your choice to stop marketing from us and our affiliates will apply until you tell us to change your choice.]

To stop all marketing, contact us [include all that apply]:

• By telephone: 1 (877) ###–####
• On the Web: www.—.com
• By mail: Check the box and complete the form below, and send the form to:
  [Company name]
  [Company address]

—Do not market to me.

APPENDIX D TO PART 1022—MODEL FORMS FOR FIRM OFFERS OF CREDIT OR INSURANCE

In order to comply with §1022.54, the following model notices may be used:

(a) English language model notice—(1) Short notice.
Here's a Line About Credit

J.S. Name
12345 Friendly Street
City, ST 12345

Dear Ms. Name,

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

We saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology.

Sincerely,

John W. Doe
President, Credit Card Company

You can choose to stop receiving “prescreened” offers of [credit or insurance] from this and other companies by calling toll-free [toll-free number]. See PRESCREEN & OPT-OUT NOTICE on other side [or other location] for more information about prescreened offers.

Long notice.
Bur. of Consumer Financial Protection

Pt. 1022, App. D

(b) Spanish language model notice—(1) Short
notice.

VerDate Mar<15>2010

15:56 Mar 17, 2014

Jkt 232042

PO 00000

Frm 00483

Fmt 8010

Sfmt 8002

Q:\12\12V8.TXT

ofr150

PsN: PC150

ER21DE11.001</GPH>

471


Aquí están líneas crédito

J.S. Nombre
1234 Calle Amistosa
Ciudad, ST 12345

Estimada Señora Nombre:

En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

Sinceramente,

John W. Doe
Presidente, Compañía

Usted puede elegir no recibir más “ofertas de [crédito o seguro] pre-investigadas” de esta y otras compañías llamando sin cargos al [número sin cargo]. Ver la NOTIFICACIÓN DE PRE-INVESTIGACIÓN Y EXCLUSIÓN VOLUNTARIA al otro lado de esta página [o en otro lugar] para más información sobre ofertas pre-investigadas.

(2) Long notice.
APPENDIX E TO PART 1022—INTERAGENCY GUIDELINES CONCERNING THE ACCURACY AND INTEGRITY OF INFORMATION FURNISHED TO CONSUMER REPORTING AGENCIES

The Bureau encourages voluntary furnishing of information to consumer reporting agencies. Section 1022.42 of this part requires each furnisher to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of the information it furnishes to consumer reporting agencies. Under §1022.42(b) of this
part, a furnisher must consider the guidelines set forth below in developing its policies and procedures. In establishing these policies and procedures, a furnisher may include any of its existing policies and procedures that are relevant and appropriate. Section 1022.42(c) requires each furnisher to review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness.

I. Nature, Scope, and Objectives of Policies and Procedures

(a) Nature and Scope. Section 1022.42(a) of this part requires that a furnisher’s policies and procedures be appropriate to the nature, size, complexity, and scope of the furnisher’s activities. In developing its policies and procedures, a furnisher should consider, for example:

(1) The types of business activities in which the furnisher engages;
(2) The nature and frequency of the information the furnisher provides to consumer reporting agencies; and
(3) The technology used by the furnisher to furnish information to consumer reporting agencies.

(b) Objectives. A furnisher’s policies and procedures should be reasonably designed to promote the following objectives:

(1) To furnish information about accounts or other relationships with a consumer that is accurate, such that the furnished information:

   (i) Identifies the appropriate consumer;
   (ii) Reflects the terms of and liability for those accounts or other relationships; and
   (iii) Reflects the consumer’s performance and other conduct with respect to the account or other relationship;

(2) To furnish information about accounts or other relationships with a consumer that has integrity, such that the furnished information:

   (i) Is substantiated by the furnisher’s records at the time it is furnished;
   (ii) Is furnished in a form and manner that is designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; thus, the furnished information should:

   (A) Include appropriate identifying information about the consumer to whom it pertains; and
   (B) Be furnished in a standardized and clearly understandable form and manner and with a date specifying the time period to which the information pertains; and
   (iii) Includes the credit limit, if applicable and in the furnisher’s possession;

(3) To conduct reasonable investigations of consumer disputes and take appropriate actions based on the outcome of such investigations; and

(4) To update the information it furnishes as necessary to reflect the current status of the consumer’s account or other relationship, including, for example:

   (i) Any transfer of an account (e.g., by sale or assignment for collection) to a third party; and
   (ii) Any cure of the consumer’s failure to abide by the terms of the account or other relationship.

II. Establishing and Implementing Policies and Procedures

In establishing and implementing its policies and procedures, a furnisher should:

(a) Identify practices or activities of the furnisher that can compromise the accuracy or integrity of information furnished to consumer reporting agencies, such as by:

(1) Reviewing its existing practices and activities, including the technological means and other methods it uses to furnish information to consumer reporting agencies and the frequency and timing of its furnishing of information;

(2) Reviewing its historical records relating to accuracy or integrity or to disputes; reviewing other information relating to the accuracy or integrity of information provided by the furnisher to consumer reporting agencies; and considering the types of errors, omissions, or other problems that may have affected the accuracy or integrity of information it has furnished about consumers to consumer reporting agencies;

(3) Considering any feedback received from consumer reporting agencies, consumers, or other appropriate parties;

(4) Obtaining feedback from the furnisher’s staff; and

(5) Considering the potential impact of the furnisher’s policies and procedures on consumers.

(b) Evaluate the effectiveness of existing policies and procedures of the furnisher regarding the accuracy and integrity of information furnished to consumer reporting agencies; consider whether new, additional, or different policies and procedures are necessary; and consider whether implementation of existing policies and procedures should be modified to enhance the accuracy and integrity of information about consumers furnished to consumer reporting agencies.

(c) Evaluate the effectiveness of specific methods (including technological means) the furnisher uses to provide information to consumer reporting agencies; how those methods may affect the accuracy and integrity of the information it provides to consumer reporting agencies; and whether new, additional, or different methods (including technological means) should be used to provide information to consumer reporting agencies to enhance the accuracy and integrity of that information.
III. SPECIFIC COMPONENTS OF POLICIES AND PROCEDURES

In developing its policies and procedures, a furnisher should address the following, as appropriate:

(a) Establishing and implementing a system for furnishing information about consumers to consumer reporting agencies that is appropriate to the nature, size, complexity, and scope of the furnisher’s business operations.

(b) Using standard data reporting formats and standard procedures for compiling and furnishing data, where feasible, such as the electronic transmission of information about consumers to consumer reporting agencies.

(c) Maintaining records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a direct dispute.

(d) Establishing and implementing appropriate internal controls regarding the accuracy and integrity of information about consumers furnished to consumer reporting agencies, such as by implementing standard procedures and verifying random samples of information provided to consumer reporting agencies.

(e) Training staff that participates in activities related to the furnishing of information about consumers to consumer reporting agencies to implement the policies and procedures.

(f) Providing for appropriate and effective oversight of relevant service providers whose activities may affect the accuracy or integrity of information about consumers furnished to consumer reporting agencies to ensure compliance with the policies and procedures.

(g) Furnishing information about consumers to consumer reporting agencies following mergers, portfolio acquisitions or sales, or other acquisitions or transfers of accounts or other obligations in a manner that prevents re-aging of information, duplicative reporting, or other problems that may similarly affect the accuracy or integrity of the information furnished.

(h) Deleting, updating, and correcting information in the furnisher’s records, as appropriate, to avoid furnishing inaccurate information.

(i) Conducting reasonable investigations of disputes.

(j) Designing technological and other means of communication with consumer reporting agencies to prevent duplicative reporting of accounts, erroneous association of information with the wrong consumer(s), and other occurrences that may compromise the accuracy or integrity of information provided to consumer reporting agencies.

(k) Providing consumer reporting agencies with sufficient identifying information in the furnisher’s possession about each consumer about whom information is furnished to enable the consumer reporting agency properly to identify the consumer.

(l) Conducting a periodic evaluation of its own practices, consumer reporting agency practices of which the furnisher is aware, investigations of disputed information, corrections of inaccurate information, means of communication, and other factors that may affect the accuracy or integrity of information furnished to consumer reporting agencies.

(m) Complying with applicable requirements under the FCRA and its implementing regulations.

APPENDIX H TO PART 1022

APPENDIX H—MODEL FORMS FOR RISK-BASED PRICING AND CREDIT SCORE DISCLOSURE EXCEPTION NOTICES

1. This appendix contains four model forms for risk-based pricing notices and three model forms for use in connection with the credit score disclosure exceptions. Each of the model forms is designated for use in a particular set of circumstances as indicated by the title of that model form.

2. Model form H–1 is for use in complying with the general risk-based pricing notice requirements in Sec. 1022.72 if a credit score is not used in setting the material terms of credit. Model form H–2 is for risk-based pricing notices given in connection with account review if a credit score is not used in increasing the annual percentage rate. Model form H–3 is for use in connection with the credit score disclosure exception for loans that are not secured by residential real property. Model form H–4 is for use in connection with the credit score disclosure exception for loans secured by residential real property. Model form H–5 is for use in connection with the credit score disclosure exception when no credit score is available for a consumer. Model form H–6 is for use in complying with the general risk-based pricing notice requirements in Sec. 1022.72 if a credit score is used in setting the material terms of credit. Model form H–7 is for risk-based pricing notices given in connection with account review if a credit score is used in increasing the annual percentage rate. All forms contained in this appendix are models; their use is optional.

3. A person may change the forms by rearranging the format or by making technical modifications to the language of the forms, in each case without modifying the substance of the disclosures. Any such rearrangement or modification of the language
of the model forms may not be so extensive as to materially affect the substance, clarity, comprehensibility, or meaningful sequence of the forms. Persons making revisions with that effect will lose the benefit of the safe harbor for appropriate use of appendix H model forms. A person is not required to conduct consumer testing when rearranging the format of the model forms.

a. Acceptable changes include, for example:
   i. Corrections or updates to telephone numbers, mailing addresses, or Web site addresses that may change over time.
   ii. The addition of graphics or icons, such as the person’s corporate logo.
   iii. Alteration of the shading or color contained in the model forms.
   iv. Use of a different form of graphical presentation to depict the distribution of credit scores.
   v. Substitution of the words “credit” and “creditor” or “finance” and “finance company” for the terms “loan” and “lender.”
   vi. Including pre-printed lists of the sources of consumer reports or consumer reporting agencies in a “check-the-box” format.
   vii. Including the name of the consumer, transaction identification numbers, a date, and other information that will assist in identifying the transaction to which the form pertains.
   viii. Including the name of an agent, such as an auto dealer or other party, when providing the “Name of the Entity Providing the Notice.”

b. Unacceptable changes include, for example:
   i. Providing model forms on register receipts or interspersed with other disclosures.
   ii. Eliminating empty lines and extra spaces between sentences within the same section.

4. If a person uses an appropriate appendix H model form, or modifies a form in accordance with the above instructions, that person shall be deemed to be acting in compliance with the provisions of §1022.73 or §1022.74, as applicable, of this part. It is intended that appropriate use of Model Form H–3 also will comply with the disclosure that may be required under section 609(g) of the FCRA. Optional language in model forms H–6 and H–7 may be used to direct the consumer to the entity (which may be a consumer reporting agency or the creditor itself, for a proprietary score that meets the definition of a credit score) that provided the credit score, along with the entity’s contact information. Creditors may use or not use the additional language without losing the safe harbor, since the language is optional.

H–1 Model form for risk-based pricing notice.
H–2 Model form for account review risk-based pricing notice.
H–3 Model form for credit score disclosure exception for credit secured by one to four units of residential real property.
H–4 Model form for credit score disclosure exception for credit secured by residential real property.
H–5 Model form for credit score disclosure exception for loans not secured by residential real property.
H–6 Model form for risk-based pricing notice with credit score information.
H–7 Model form for account review risk-based pricing notice with credit score information.
H-1. Model form for risk-based pricing notice

<table>
<thead>
<tr>
<th>Name of Entity Providing the Notice</th>
<th>Your Credit Report[s] and the Price You Pay for Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>What is a credit report?</strong></td>
<td>A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.</td>
</tr>
<tr>
<td><strong>How did we use your credit report[s]?</strong></td>
<td>We used information from your credit report[s] to set the terms of the credit we are offering you, such as the [Annual Percentage Rate/down payment]. The terms offered to you may be less favorable than the terms offered to consumers who have better credit histories.</td>
</tr>
<tr>
<td><strong>What if there are mistakes in your credit report[s]?</strong></td>
<td>You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact [insert name of CRA(s)], which [is/are] the [consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.</td>
</tr>
<tr>
<td><strong>How can you obtain a copy of your credit report[s]?</strong></td>
<td>Under Federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact [insert name of CRA(s)]: By telephone: Call toll-free: 1-877-xxx-xxxx By mail: Mail your written request to: [Insert address] On the web: Visit [insert website address]</td>
</tr>
<tr>
<td><strong>How can you get more information about credit reports?</strong></td>
<td>For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau’s website at <a href="http://www.consumerfinance.gov/learnmore">www.consumerfinance.gov/learnmore</a>.</td>
</tr>
</tbody>
</table>
### H-2. Model form for account review risk-based pricing notice

<table>
<thead>
<tr>
<th>What is a credit report?</th>
<th>A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.</th>
</tr>
</thead>
<tbody>
<tr>
<td>How did we use your credit report[s]?</td>
<td>We have used information from your credit report[s] to review the terms of your account with us. Based on our review of your credit report[s], we have increased the annual percentage rate on your account.</td>
</tr>
<tr>
<td>What if there are mistakes in your credit report[s]?</td>
<td>You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact [insert name of CRA(s)], which [is/are] [a consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.</td>
</tr>
</tbody>
</table>
| How can you obtain a copy of your credit report[s]? | Under Federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact [insert name of CRA(s)]:  

  **By telephone:**  
  Call toll-free: 1-877-xxx-xxxx  

  **By mail:**  
  Mail your written request to:  
  [Insert address]  

  **On the web:**  
  Visit [insert website address]  

| How can you get more information about credit reports? | For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau’s website at www.consumerfinance.gov/learnmore. |
H.3. Model form for credit score disclosure exception for loans secured by one to four units of residential real property

[Name of Entity Providing the Notice]
Your Credit Score and the Price You Pay for Credit

<table>
<thead>
<tr>
<th>Your Credit Score</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Your credit score</td>
<td>[Insert credit score]</td>
</tr>
<tr>
<td>Source:</td>
<td>[Insert source]</td>
</tr>
<tr>
<td>Date:</td>
<td>[Insert date score was created]</td>
</tr>
</tbody>
</table>

Understanding Your Credit Score

What you should know about credit scores
Your credit score is a number that reflects the information in your credit report.
Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
Your credit score can change, depending on how your credit history changes.

How we use your credit score
Your credit score can affect whether you can get a loan and how much you will have to pay for that loan.

The range of scores
Scores range from a low of [Insert bottom number in the range] to a high of [Insert top number in the range].
Generally, the higher your score, the more likely you are to be offered better credit terms.

How your score compares to the scores of other consumers

[Diagram showing distribution of credit scores]

[or] [Your credit score ranks higher than [X] percent of U.S. consumers.]
### Understanding Your Credit Score (continued)

| Key factors that adversely affected your credit score | [Insert first factor]  
| | [Insert second factor]  
| | [Insert third factor]  
| | [Insert fourth factor]  
| | [Insert fifth factor, if applicable] |

### Checking Your Credit Report

| What if there are mistakes in your credit report? | You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency.  
| | It is a good idea to check your credit report to make sure the information it contains is accurate. |
| How can you obtain a copy of your credit report? | Under Federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year.  
| | To order your free annual credit report—  
| | **By telephone:** Call toll-free: 1-877-322-8228  
| | **On the web:** Visit [www.annualcreditreport.com](http://www.annualcreditreport.com)  
| | **By mail:** Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission’s website at [http://www.ftc.gov/bcp/conline/include/requestformfinal.pdf](http://www.ftc.gov/bcp/conline/include/requestformfinal.pdf)) to:  
| | Annual Credit Report Request Service  
| | P.O. Box 105281  
| | Atlanta, GA 30348-5281 |
| How can you get more information? | For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau’s website at [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore). |
Notice to the Home Loan Applicant

In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

The credit score is a computer generated summary calculated at the time of the request and based on information that a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

If you have questions concerning the terms of the loan, contact the lender.
H-4. Model form for credit score disclosure exception for loans not secured by residential real property

[Name of Entity Providing the Notice]
Your Credit Score and the Price You Pay for Credit

<table>
<thead>
<tr>
<th>Your Credit Score</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Your credit score</td>
<td>[Insert credit score]</td>
</tr>
<tr>
<td>Source</td>
<td>Insert source</td>
</tr>
<tr>
<td>Date</td>
<td>Insert date score was created</td>
</tr>
</tbody>
</table>

Understanding Your Credit Score

<table>
<thead>
<tr>
<th>What you should know about credit scores</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Your credit score is a number that reflects the information in your credit report.</td>
<td></td>
</tr>
<tr>
<td>Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.</td>
<td></td>
</tr>
<tr>
<td>Your credit score can change, depending on how your credit history changes.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>How we use your credit score</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Your credit score can affect whether you can get a loan and how much you will have to pay for that loan.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The range of scores</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Scores range from a low of [Insert bottom number in the range] to a high of [Insert top number in the range].</td>
<td></td>
</tr>
<tr>
<td>Generally, the higher your score, the more likely you are to be offered better credit terms.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>How your score compares to the scores of other consumers</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="chart.png" alt="Bar Chart" /></td>
<td></td>
</tr>
<tr>
<td><img src="score_range.png" alt="Score Range" /></td>
<td></td>
</tr>
<tr>
<td>[or] Your credit score ranks higher than [X] percent of U.S. consumers.</td>
<td></td>
</tr>
<tr>
<td>Checking Your Credit Report</td>
<td></td>
</tr>
<tr>
<td>-----------------------------</td>
<td></td>
</tr>
<tr>
<td><strong>What if there are mistakes in your credit report?</strong></td>
<td></td>
</tr>
<tr>
<td>You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency.</td>
<td></td>
</tr>
<tr>
<td>It is a good idea to check your credit report to make sure the information it contains is accurate.</td>
<td></td>
</tr>
<tr>
<td><strong>How can you obtain a copy of your credit report?</strong></td>
<td></td>
</tr>
<tr>
<td>Under Federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year.</td>
<td></td>
</tr>
<tr>
<td>To order your free annual credit report—</td>
<td></td>
</tr>
<tr>
<td><strong>By telephone:</strong> Call toll-free: 1-877-322-8228</td>
<td></td>
</tr>
<tr>
<td><strong>On the web:</strong> Visit <a href="http://www.annualcreditreport.com">www.annualcreditreport.com</a></td>
<td></td>
</tr>
<tr>
<td><strong>By mail:</strong> Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission’s website at <a href="http://www.ftc.gov/bcp/conline/includem/requestformfinal.pdf">http://www.ftc.gov/bcp/conline/includem/requestformfinal.pdf</a>) to:</td>
<td></td>
</tr>
<tr>
<td>Annual Credit Report Request Service</td>
<td></td>
</tr>
<tr>
<td>P.O. Box 105281</td>
<td></td>
</tr>
<tr>
<td>Atlanta, GA 30348-5281</td>
<td></td>
</tr>
<tr>
<td><strong>How can you get more information?</strong></td>
<td></td>
</tr>
<tr>
<td>For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau’s website at <a href="http://www.consumerfinance.gov/learnmore">www.consumerfinance.gov/learnmore</a>.</td>
<td></td>
</tr>
</tbody>
</table>
### H-5. Model form for loans where credit score is not available

**[Name of Entity Providing the Notice]**  
**Credit Scores and the Price You Pay for Credit**

<table>
<thead>
<tr>
<th>Your Credit Score</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Your credit score</strong></td>
<td>Your credit score is not available from [insert name of CRA], which is a consumer reporting agency, because they may not have enough information about your credit history to calculate a score.</td>
</tr>
<tr>
<td><strong>What you should know about credit scores</strong></td>
<td>A credit score is a number that reflects the information in a credit report. A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. A credit score can change, depending on how a consumer's credit history changes.</td>
</tr>
<tr>
<td><strong>Why credit scores are important</strong></td>
<td>Credit scores are important because consumers who have higher credit scores generally will get more favorable credit terms. Not having a credit score can affect whether you can get a loan and how much you will have to pay for that loan.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Checking Your Credit Report</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>What if there are mistakes in your credit report?</strong></td>
<td>You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.</td>
</tr>
</tbody>
</table>
| **How can you obtain a copy of your credit report?** | Under Federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report—  
*By telephone:* Call toll-free: 1-877-322-8228  
*On the web:* Visit www.annualcreditreport.com  
*By mail:* Mail your completed Annual Credit Report Request |
Form (which you can obtain from the Federal Trade Commission’s website at [http://www.ftc.gov/bcp/conline/include/requestformfinal.pdf](http://www.ftc.gov/bcp/conline/include/requestformfinal.pdf)) to:

Annual Credit Report Request Service  
P.O. Box 105281  
Atlanta, GA 30348-5281

| **How can you get more information?** | For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau’s website at [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore). |
### H-6. Model form for risk-based pricing notice with credit score information

**[Name of Entity Providing the Notice]**  
Your Credit Report[s] and the Price You Pay for Credit

<table>
<thead>
<tr>
<th>What is a credit report?</th>
<th>A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.</th>
</tr>
</thead>
</table>
| How did we use your credit report[s]? | We used information from your credit report[s] to set the terms of the credit we are offering you, such as the [Annual Percentage Rate/down payment].  
The terms offered to you may be less favorable than the terms offered to consumers who have better credit histories. |
| What if there are mistakes in your credit report[s]? | You have a right to dispute any inaccurate information in your credit report[s].  
If you find mistakes on your credit report[s], contact [insert name of CRA(s)], which [is/are] the [consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s].  
It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate. |
| How can you obtain a copy of your credit report[s]? | Under Federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact [insert name of CRA(s)]:  
   * **By telephone:** Call toll-free: 1-877-xxx-xxxx  
   * **By mail:** Mail your written request to: [insert address]  
   * **On the web:** Visit [insert website address] |
| How can you get more information about credit reports? | For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau’s website at [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore). |
Your Credit Score and Understanding Your Credit Score

<table>
<thead>
<tr>
<th><strong>Your credit score</strong></th>
<th>[Insert credit score]</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Source:</strong> [Insert source]</td>
<td><strong>Date:</strong> [Insert date score was created]</td>
</tr>
</tbody>
</table>

**What you should know about credit scores**
Your credit score is a number that reflects the information in your credit report. We used your credit score to set the terms of credit we are offering you.

Your credit score can change, depending on how your credit history changes.

**The range of scores**
Scores range from a low of [insert bottom number in the range] to a high of [insert top number in the range].

**Key factors that adversely affected your credit score**
[Insert first factor]  
[Insert second factor]  
[Insert third factor]  
[Insert fourth factor]  
[Insert number of enquiries as a key factor, if applicable]

**[How can you get more information about your credit score?]**
[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:  
Address:  
[ ]  
[ ]  
[ ]  
[ ]  
[ ]  
[Toll-free] Telephone number: ____________________________]
H-7. Model form for account review risk-based pricing notice with credit score information

<table>
<thead>
<tr>
<th>What is a credit report?</th>
<th>A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.</th>
</tr>
</thead>
<tbody>
<tr>
<td>How did we use your credit report[s]?</td>
<td>We have used information from your credit report[s] to review the terms of your account with us. Based on our review of your credit report[s], we have increased the annual percentage rate on your account.</td>
</tr>
<tr>
<td>What if there are mistakes in your credit report[s]?</td>
<td>You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact [insert name of CRA(s)], which [is/are] [a consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.</td>
</tr>
<tr>
<td>How can you obtain a copy of your credit report[s]?</td>
<td>Under Federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact [insert name of CRA(s)]:</td>
</tr>
<tr>
<td></td>
<td>By telephone: Call toll-free: 1-877-xxx-xxxx</td>
</tr>
<tr>
<td></td>
<td>By mail: Mail your written request to: [insert address]</td>
</tr>
<tr>
<td></td>
<td>On the web: Visit [insert website address]</td>
</tr>
<tr>
<td>How can you get more information about credit reports?</td>
<td>For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau’s website at <a href="http://www.consumerfinance.gov/learnmore">www.consumerfinance.gov/learnmore</a>.</td>
</tr>
</tbody>
</table>
APPENDIX I TO PART 1022—SUMMARY OF
CONSUMER IDENTITY THEFT RIGHTS

The prescribed form for this summary is a disclosure that is substantially similar to the Bureau's model summary with all information clearly and prominently displayed. A summary should accurately reflect changes to those items that may change over time (such as telephone numbers) to remain in compliance. Translations of this summary will be in compliance with the Bureau's prescribed model, provided that the translation is accurate and that it is provided in a language used by the recipient consumer.

<table>
<thead>
<tr>
<th>Your credit score</th>
<th>[Insert credit score]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Source: [Insert source]</td>
<td>Date: [Insert date score was created]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>What you should know about credit scores</th>
</tr>
</thead>
<tbody>
<tr>
<td>Your credit score is a number that reflects the information in your credit report. We used your credit score to set the terms of credit we are offering you.</td>
</tr>
<tr>
<td>Your credit score can change, depending on how your credit history changes.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The range of scores</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scores range from a low of [insert bottom number in the range] to a high of [insert top number in the range].</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Key factors that adversely affected your credit score</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Insert first factor]</td>
</tr>
<tr>
<td>[Insert second factor]</td>
</tr>
<tr>
<td>[Insert third factor]</td>
</tr>
<tr>
<td>[Insert fourth factor]</td>
</tr>
<tr>
<td>[Insert number of enquiries as a key factor, if applicable]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>[How can you get more information about your credit score?]</th>
</tr>
</thead>
<tbody>
<tr>
<td>[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at: Address:</td>
</tr>
<tr>
<td>________</td>
</tr>
<tr>
<td>________</td>
</tr>
<tr>
<td>________</td>
</tr>
<tr>
<td>[Toll-free] Telephone number:______________________________</td>
</tr>
</tbody>
</table>
Remedying the Effects of Identity Theft

You are receiving this information because you have notified a consumer reporting agency that you believe that you are a victim of identity theft. Identity theft occurs when someone uses your name, Social Security number, date of birth, or other identifying information, without authority, to commit fraud. For example, someone may have committed identity theft by using your personal information to open a credit card account or get a loan in your name. For more information, visit www.consumerfinance.gov/learnmore or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.

The Fair Credit Reporting Act (FCRA) gives you specific rights when you are, or believe that you are, the victim of identity theft. Here is a brief summary of the rights designed to help you recover from identity theft.

1. You have the right to ask that nationwide consumer reporting agencies place “fraud alerts” in your file to let potential creditors and others know that you may be a victim of identity theft. A fraud alert can make it more difficult for someone to get credit in your name because it tells creditors to follow certain procedures to protect you. It also may delay your ability to obtain credit. You may place a fraud alert in your file by calling just one of the three nationwide consumer reporting agencies. As soon as that agency processes your fraud alert, it will notify the other two, which then also must place fraud alerts in your file.

   - Equifax: 1-800-XXX-XXXX; www.equifax.com
   - Experian: 1-800-XXX-XXXX; www.experian.com
   - TransUnion: 1-800-XXX-XXXX; www.transunion.com

   An initial fraud alert stays in your file for at least 90 days. An extended alert stays in your file for seven years. To place either of these alerts, a consumer reporting agency will require you to provide appropriate proof of your identity, which may include your Social Security number. If you ask for an extended alert, you will have to provide an identity theft report. An identity theft report includes a copy of a report you have filed with a federal, state, or local law enforcement agency, and additional information a consumer reporting agency may require you to submit. For more detailed information about the identity theft report, visit www.consumerfinance.gov/learnmore.

2. You have the right to free copies of the information in your file (your “file disclosure”). An initial fraud alert entitles you to a copy of all the information in your file at each of the three nationwide agencies, and an extended alert entitles you to two free file disclosures in a 12-month period following the placing of the alert. These additional disclosures may help you detect signs of fraud, for example, whether fraudulent accounts have been opened in your name or whether someone has reported a change in your address. Once a year, you also have the right to a free copy of the information in your file at any consumer reporting agency, if you believe it has inaccurate information due to fraud, such as identity theft. You also
have the ability to obtain additional free file disclosures under other provisions of the FCRA. See www.consumerfinance.gov/learnmore.

3. **You have the right to obtain documents relating to fraudulent transactions made or accounts opened using your personal information.** A creditor or other business must give you copies of applications and other business records relating to transactions and accounts that resulted from the theft of your identity, if you ask for them in writing. A business may ask you for proof of your identity, a police report, and an affidavit before giving you the documents. It may also specify an address for you to send your request. Under certain circumstances, a business can refuse to provide you with these documents. See www.consumerfinance.gov/learnmore.

4. **You have the right to obtain information from a debt collector.** If you ask, a debt collector must provide you with certain information about the debt you believe was incurred in your name by an identity thief—like the name of the creditor and the amount of the debt.

5. **If you believe information in your file results from identity theft, you have the right to ask that a consumer reporting agency block that information from your file.** An identity thief may run up bills in your name and not pay them. Information about the unpaid bills may appear on your consumer report. Should you decide to ask a consumer reporting agency to block the reporting of this information, you must identify the information to block, and provide the consumer reporting agency with proof of your identity and a copy of your identity theft report. The consumer reporting agency can refuse or cancel your request for a block if, for example, you don’t provide the necessary documentation, or where the block results from an error or a material misrepresentation of fact made by you. If the agency declines or rescinds the block, it must notify you. Once a debt resulting from identity theft has been blocked, a person or business with notice of the block may not sell, transfer, or place the debt for collection.

6. **You also may prevent businesses from reporting information about you to consumer reporting agencies if you believe the information is a result of identity theft.** To do so, you must send your request to the address specified by the business that reports the information to the consumer reporting agency. The business will expect you to identify what information you do not want reported and to provide an identity theft report.

To learn more about identity theft and how to deal with its consequences, visit www.consumerfinance.gov/learnmore, or write to the Consumer Financial Protection Bureau. You may have additional rights under state law. For more information, contact your local consumer protection agency or your state Attorney General.

In addition to the new rights and procedures to help consumers deal with the effects of identity theft, the FCRA has many other important consumer protections. They are described in more detail at www.consumerfinance.gov/learnmore.

[77 FR 67745, Nov. 14, 2012]

**APPENDIX J TO PART 1022 [RESERVED]**

**APPENDIX K TO PART 1022—SUMMARY OF CONSUMER RIGHTS**

The prescribed form for this summary is a disclosure that is substantially similar to the Bureau’s model summary with all information clearly and prominently displayed. The list of Federal regulators that is included in the Bureau’s prescribed summary may be provided separately so long as this is done in a clear and conspicuous way. A summary should accurately reflect changes to
those items that may change over time (e.g., dollar amounts, or telephone numbers and addresses of Federal agencies) to remain in compliance. Translations of this summary will be in compliance with the Bureau’s prescribed model, provided that the translation is accurate and that it is provided in a language used by the recipient consumer.

Para información en español, visite www.consumerfinance.gov/learnmore o escriba a la Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. For more information, including information about additional rights, go to www.consumerfinance.gov/learnmore or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.

- You must be told if information in your file has been used against you. Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.

- You have the right to know what is in your file. You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
  - a person has taken adverse action against you because of information in your credit report;
  - you are the victim of identity theft and place a fraud alert in your file;
  - your file contains inaccurate information as a result of fraud;
  - you are on public assistance;
  - you are unemployed but expect to apply for employment within 60 days.

In addition, all consumers are entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.consumerfinance.gov/learnmore for additional information.

- You have the right to ask for a credit score. Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.

- You have the right to dispute incomplete or inaccurate information. If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.consumerfinance.gov/learnmore for an explanation of dispute procedures.
• **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete, or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.

• **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.

• **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need—usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.

• **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore).

• **You may limit “prescreened” offers of credit and insurance you get based on information in your credit report.** Unsolicited “prescreened” offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt out with the nationwide credit bureaus at 1-800-XXX-XXXX.

• **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.

• **Identity theft victims and active duty military personnel have additional rights.** For more information, visit [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore).

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. For information about your federal rights, contact:
<table>
<thead>
<tr>
<th>TYPE OF BUSINESS</th>
<th>CONTACT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. a. Banks, savings associations, and credit unions with total assets of</td>
<td>a. Consumer Financial Protection Bureau</td>
</tr>
<tr>
<td>over $10 trillion and their affiliates</td>
<td>1700 G Street, NW</td>
</tr>
<tr>
<td></td>
<td>Washington, DC 20552</td>
</tr>
<tr>
<td>b. Such affiliates that are not banks, savings associations, or credit</td>
<td>b. Federal Trade Commission: Consumer Response Center – FTCRA</td>
</tr>
<tr>
<td>unions also should list, in addition to the CFPB:</td>
<td>Washington, DC 20580</td>
</tr>
<tr>
<td></td>
<td>(877) 382-4357</td>
</tr>
<tr>
<td>2. To the extent not included in item 1 above:</td>
<td></td>
</tr>
<tr>
<td>and federal agencies of foreign banks</td>
<td>Customer Assistance Group</td>
</tr>
<tr>
<td></td>
<td>1301 McKinney Street, Suite 3450</td>
</tr>
<tr>
<td></td>
<td>Houston, TX 77019</td>
</tr>
<tr>
<td>b. State member banks, branches and agencies of foreign banks (other</td>
<td>b. Federal Reserve Consumer Help Center</td>
</tr>
<tr>
<td>than federal branches, federal agencies, and insured State Branches of</td>
<td>P.O. Box 1200</td>
</tr>
<tr>
<td>Foreign Banks), commercial lending companies owned or controlled by</td>
<td>Minneapolis, MN 55480</td>
</tr>
<tr>
<td>foreign banks, and organizations operating under section 25 or 25A of</td>
<td></td>
</tr>
<tr>
<td>the Federal Reserve Act</td>
<td></td>
</tr>
<tr>
<td>c. Nonmember Insured Banks, Insured State Branches of Foreign Banks, and</td>
<td>c. FDIC Consumer Response Center</td>
</tr>
<tr>
<td>insured state savings associations</td>
<td>1100 Walnut Street, Box 91</td>
</tr>
<tr>
<td></td>
<td>Kansas City, MO 64106</td>
</tr>
<tr>
<td>d. Federal Credit Unions</td>
<td>d. National Credit Union Administration</td>
</tr>
<tr>
<td></td>
<td>Office of Consumer Protection (TCP)</td>
</tr>
<tr>
<td></td>
<td>Division of Consumer Compliance and Outreach (DCCO)</td>
</tr>
<tr>
<td></td>
<td>1775 Duke Street</td>
</tr>
<tr>
<td></td>
<td>Alexandria, VA 22314</td>
</tr>
<tr>
<td>3. Air carriers</td>
<td>Asst. General Counsel for Aviation Enforcement &amp; Proceedings</td>
</tr>
<tr>
<td></td>
<td>Aviation Consumer Protection Division</td>
</tr>
<tr>
<td></td>
<td>Department of Transportation</td>
</tr>
<tr>
<td></td>
<td>1200 New Jersey Avenue, S.E.</td>
</tr>
<tr>
<td></td>
<td>Washington, DC 20590</td>
</tr>
<tr>
<td>4. Creditors Subject to the Surface Transportation Board</td>
<td>Office of Proceedings, Surface Transportation Board</td>
</tr>
<tr>
<td></td>
<td>Department of Transportation</td>
</tr>
<tr>
<td></td>
<td>395 E Street, S.W.</td>
</tr>
<tr>
<td></td>
<td>Washington, DC 20423</td>
</tr>
<tr>
<td>5. Creditors Subject to the Packers and Stockyards Act, 1921</td>
<td>Nearest Packers and Stockyards Administration area supervisor</td>
</tr>
<tr>
<td>6. Small Business Investment Companies</td>
<td>Associate Deputy Administrator for Capital Access</td>
</tr>
<tr>
<td></td>
<td>United States Small Business Administration</td>
</tr>
<tr>
<td></td>
<td>409 Third Street, SW, 4th Floor</td>
</tr>
<tr>
<td></td>
<td>Washington, DC 20416</td>
</tr>
<tr>
<td>7. Brokers and Dealers</td>
<td>Securities and Exchange Commission</td>
</tr>
<tr>
<td></td>
<td>100 F Street, N.E.</td>
</tr>
<tr>
<td></td>
<td>Washington, DC 20549</td>
</tr>
<tr>
<td>Credit Banks, and Production Credit Associations</td>
<td>1501 Farm Credit Drive</td>
</tr>
<tr>
<td></td>
<td>McLean, VA 22102-5990</td>
</tr>
<tr>
<td>9. Retailers, Finance Companies, and All Other Creditors Not Listed Above</td>
<td>FTC Regional Office for region in which the creditor operates</td>
</tr>
<tr>
<td></td>
<td>Federal Trade Commission: Consumer Response Center – FTCRA</td>
</tr>
<tr>
<td></td>
<td>Washington, DC 20580</td>
</tr>
<tr>
<td></td>
<td>(877) 382-4357</td>
</tr>
</tbody>
</table>

[77 FR 67747, Nov. 14, 2012]
APPENDIX L TO PART 1022—STANDARDIZED FORM FOR REQUESTING ANNUAL FILE DISCLOSURES

REQUEST FOR FREE CREDIT REPORT

Note to Consumers: You have the right to obtain a free copy of your credit report once every 12 months (also known as an “annual file disclosure”), from each of the nationwide consumer reporting agencies. Your report may contain information on where you work and live, the credit accounts that have been opened in your name, if you’ve paid your bills on time, and whether you have been sued, arrested, or have filed for bankruptcy. Businesses use this information in making decisions about whether to offer you credit, insurance, or employment, and on what terms.

Use this form to request your credit report from any, or all, of the nationwide consumer reporting agencies.

The following information is required to process your request:

Your Full Name: ____________________________________________

Your Street Address: ________________________________________

Your City, State & Zip Code: _________________________________

Your Telephone Numbers (with area code): Day: ______________

Evening: ______________

Your Social Security number: ___________ Your Date of Birth: ______

Place a check next to each credit report you want.

_____ I want a credit report from each of the nationwide consumer reporting agencies

OR

_____ I want a credit report from:

_____ [name of nationwide consumer reporting agency]

_____ [name of nationwide consumer reporting agency]

_____ [name of nationwide consumer reporting agency]

Please check how you would like to receive your report. (Note: because of the need to accurately identify you before we send you your credit report, we may not be able to offer every delivery method to every consumer. We will try to honor your preference.)

495
APPENDIX M TO PART 1022—NOTICE OF FURNISHER RESPONSIBILITIES

The prescribed form for this disclosure is a separate document that is substantially similar to the Bureau’s model notice with all information clearly and prominently displayed. Consumer reporting agencies may limit the disclosure to only those items that they know are relevant to the furnisher that will receive the notice.

For more information on obtaining your free credit report, visit [insert appropriate website address], call [insert appropriate telephone number], or write to [insert appropriate address].

Mail this form to:
[insert appropriate address]

Your report(s) will be sent within 15 days after we receive your request.
NOTICE TO FURNISHERS OF INFORMATION: OBLIGATIONS OF FURNISHERS UNDER THE FCRA

The federal Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681-1681y, imposes responsibilities on all persons who furnish information to consumer reporting agencies (CRAs). These responsibilities are found in Section 623 of the FCRA, 15 U.S.C. 1681s-2. State law may impose additional requirements on furnisher. All furnisher of information to CRAs should become familiar with the applicable laws and may want to consult with their counsel to ensure that they are in compliance. The text of the FCRA is available at the website of the Consumer Financial Protection Bureau (CFPB): www.consumerfinance.gov/learnmore. A list of the sections of the FCRA cross-referenced to the U.S Code is at the end of this document.

Section 623 imposes the following duties upon furnisher:

Accuracy Guidelines

The FCRA requires furnisher to comply with federal guidelines and regulations dealing with the accuracy of information provided to CRAs by furnisher. Federal regulations and guidelines are available at www.consumerfinance.gov/learnmore. Section 623(c).

General Prohibition on Reporting Inaccurate Information

The FCRA prohibits information furnisher from providing information to a CRA that they know or have reasonable cause to believe is inaccurate. However, the furnisher is not subject to this general prohibition if it clearly and conspicuously specifies an address to which consumers may write to notify the furnisher that certain information is inaccurate. Sections 623(a)(1)(A) and (a)(1)(C).

Duty to Correct and Update Information

If at any time a person who regularly and in the ordinary course of business furnishes information to one or more CRAs determines that the information provided is not complete or accurate, the furnisher must promptly provide complete and accurate information to the CRA. In addition, the furnisher must notify all CRAs that received the information of any corrections, and must thereafter report only the complete and accurate information. Section 623(a)(2).
Duties After Notice of Dispute from Consumer

If a consumer notifies a furnisher, at an address specified for the furnisher for such notices, that specific information is inaccurate, and the information is, in fact, inaccurate, the furnisher must thereafter report the correct information to CRAs. Section 623(a)(1)(B).

If a consumer notifies a furnisher that the consumer disputes the completeness or accuracy of any information reported by the furnisher, the furnisher may not subsequently report that information to a CRA without providing notice of the dispute. Section 623(a)(3).

Furnishers must comply with federal regulations that identify when an information furnisher must investigate a dispute made directly to the furnisher by a consumer. Under these regulations, furnishers must complete an investigation within 30 days (or 45 days, if the consumer later provides relevant additional information) unless the dispute is frivolous or irrelevant or comes from a “credit repair organization.” Section 623(a)(8). Federal regulations are available at www.consumerfinance.gov/learnmore. Section 623(a)(8)

Duties After Notice of Dispute from Consumer Reporting Agency

If a CRA notifies a furnisher that a consumer disputes the completeness or accuracy of information provided by the furnisher, the furnisher has a duty to follow certain procedures. The furnisher must:

- Conduct an investigation and review all relevant information provided by the CRA, including information given to the CRA by the consumer. Sections 623(b)(1)(A) and (b)(1)(B).
- Report the results to the CRA that referred the dispute, and, if the investigation establishes that the information was, in fact, incomplete or inaccurate, report the results to all CRAs to which the furnisher provided the information that compile and maintain files on a nationwide basis. Section 623(b)(1)(C) and (b)(1)(D).
- Complete the above steps within 30 days from the date the CRA receives the dispute (or 45 days, if the consumer later provides relevant additional information to the CRA). Section 623(b)(2).
- Promptly modify or delete the information, or block its reporting. Section 623(b)(1)(E).

Duty to Report Voluntary Closing of Credit Accounts

If a consumer voluntarily closes a credit account, any person who regularly and in the ordinary course of business furnished information to one or more CRAs must report this fact when it provides information to CRAs for the time period in which the account was closed. Section 623(a)(4).
Duty to Report Dates of Delinquencies

If a furnisher reports information concerning a delinquent account placed for collection, charged to profit or loss, or subject to any similar action, the furnisher must, within 90 days after reporting the information, provide the CRA with the month and the year of the commencement of the delinquency that immediately preceded the action, so that the agency will know how long to keep the information in the consumer's file. Section 623(a)(5).

Any person, such as a debt collector, that has acquired or is responsible for collecting delinquent accounts and that reports information to CRAs may comply with the requirements of Section 623(a)(5) (until there is a consumer dispute) by reporting the same delinquency date previously reported by the creditor. If the creditor did not report this date, they may comply with the FCRA by establishing reasonable procedures to obtain and report delinquency dates, or, if a delinquency date cannot be reasonably obtained, by following reasonable procedures to ensure that the date reported precedes the date when the account was placed for collection, charged to profit or loss, or subjected to any similar action. Section 623(a)(5).

Duties of Financial Institutions When Reporting Negative Information

Financial institutions that furnish information to “nationwide” consumer reporting agencies, as defined in Section 603(p), must notify consumers in writing if they may furnish or have furnished negative information to a CRA. Section 623(a)(7). The CFPB has prescribed model disclosures, 12 CFR Part 1022, App. B.

Duties When Furnishing Medical Information

A furnisher whose primary business is providing medical services, products, or devices (and such furnisher's agents or assignees) is a medical information furnisher for the purposes of the FCRA and must notify all CRAs to which it reports this fact. Section 623(a)(9). This notice will enable CRAs to comply with their duties under Section 604(g) when reporting medical information.

Duties When ID Theft Occurs

All furnishers must have in place reasonable procedures to respond to notifications from CRAs that information furnished is the result of identity theft, and to prevent furnishing the information in the future. A furnisher may not furnish information that a consumer has identified as resulting from identity theft unless the furnisher subsequently knows or is informed by the consumer that the information is correct. Section 623(a)(6). If a furnisher learns that it has furnished inaccurate information due to identity theft, it must notify each CRA of the correct information and must thereafter report only complete and accurate information. Section 623(a)(2). When any furnisher of information is notified pursuant to the procedures set forth in Section 605B that a debt has resulted from identity theft, the furnisher may not sell, transfer, or place for collection the debt except in certain limited circumstances. Section 615(f).
APPENDIX N TO PART 1022—NOTICE OF USER RESPONSIBILITIES

The prescribed form for this disclosure is a separate document that is substantially similar to the Bureau’s notice with all information clearly and prominently displayed. Consumer reporting agencies may limit the disclosure to only those items that they know are relevant to the user that will receive the notice.
NOTICE TO USERS OF CONSUMER REPORTS:
OBLIGATIONS OF USERS UNDER THE FCRA

The Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681-1681y, requires that this notice be provided to inform users of consumer reports of their legal obligations. State law may impose additional requirements. The text of the FCRA is set forth in full at the Consumer Financial Protection Bureau's (CFPB) website at www.consumerfinance.gov/learnmore. At the end of this document is a list of United States Code citations for the FCRA. Other information about user duties is also available at the CFPB’s website. Users must consult the relevant provisions of the FCRA for details about their obligations under the FCRA.

The first section of this summary sets forth the responsibilities imposed by the FCRA on all users of consumer reports. The subsequent sections discuss the duties of users of reports that contain specific types of information, or that are used for certain purposes, and the legal consequences of violations. If you are a furnisher of information to a consumer reporting agency (CRA), you have additional obligations and will receive a separate notice from the CRA describing your duties as a furnisher.

I. OBLIGATIONS OF ALL USERS OF CONSUMER REPORTS
   
   A. Users Must Have a Permissible Purpose

   Congress has limited the use of consumer reports to protect consumers’ privacy. All users must have a permissible purpose under the FCRA to obtain a consumer report. Section 604 contains a list of the permissible purposes under the law. These are:

   • As ordered by a court or a federal grand jury subpoena. Section 604(a)(1)
   • As instructed by the consumer in writing. Section 604(a)(2)
   • For the extension of credit as a result of an application from a consumer, or the review or collection of a consumer’s account. Section 604(a)(3)(A)
   • For employment purposes, including hiring and promotion decisions, where the consumer has given written permission. Sections 604(a)(3)(B) and 604(b)
For the underwriting of insurance as a result of an application from a consumer. Section 604(a)(3)(C)

When there is a legitimate business need, in connection with a business transaction that is initiated by the consumer. Section 604(a)(3)(F)(i)

To review a consumer’s account to determine whether the consumer continues to meet the terms of the account. Section 604(a)(3)(F)(ii)

To determine a consumer’s eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant’s financial responsibility or status. Section 604(a)(3)(D)

For use by a potential investor or servicer, or current insurer, in a valuation or assessment of the credit or prepayment risks associated with an existing credit obligation. Section 604(a)(3)(E)

For use by state and local officials in connection with the determination of child support payments, or modifications and enforcement thereof. Sections 604(a)(4) and 604(a)(5)

In addition, creditors and insurers may obtain certain consumer report information for the purpose of making “prescreened” unsolicited offers of credit or insurance. Section 604(c). The particular obligations of users of “prescreened” information are described in Section VII below.

B. Users Must Provide Certifications

Section 604(f) prohibits any person from obtaining a consumer report from a consumer reporting agency (CRA) unless the person has certified to the CRA the permissible purpose(s) for which the report is being obtained and certifies that the report will not be used for any other purpose.

C. Users Must Notify Consumers When Adverse Actions Are Taken

The term “adverse action” is defined very broadly by Section 603. “Adverse actions” include all business, credit, and employment actions affecting consumers that can be considered to have a negative impact as defined by Section 603(k) of the FCRA – such as denying or canceling credit or insurance, or denying employment or promotion. No adverse action occurs in a credit transaction where the creditor makes a counteroffer that is accepted by the consumer.
1. Adverse Actions Based on Information Obtained From a CRA

If a user takes any type of adverse action as defined by the FCRA that is based at least in part on information contained in a consumer report, Section 615(a) requires the user to notify the consumer. The notification may be done in writing, orally, or by electronic means. It must include the following:

- The name, address, and telephone number of the CRA (including a toll-free telephone number, if it is a nationwide CRA) that provided the report.
- A statement that the CRA did not make the adverse decision and is not able to explain why the decision was made.
- A statement setting forth the consumer’s right to obtain a free disclosure of the consumer’s file from the CRA if the consumer makes a request within 60 days.
- A statement setting forth the consumer’s right to dispute directly with the CRA the accuracy or completeness of any information provided by the CRA.

2. Adverse Actions Based on Information Obtained From Third Parties Who Are Not Consumer Reporting Agencies

If a person denies (or increases the charge for) credit for personal, family, or household purposes based either wholly or partly upon information from a person other than a CRA, and the information is the type of consumer information covered by the FCRA, Section 615(b)(1) requires that the user clearly and accurately disclose to the consumer his or her right to be told the nature of the information that was relied upon if the consumer makes a written request within 60 days of notification. The user must provide the disclosure within a reasonable period of time following the consumer’s written request.

3. Adverse Actions Based on Information Obtained From Affiliates

If a person takes an adverse action involving insurance, employment, or a credit transaction initiated by the consumer, based on information of the type covered by the FCRA, and this information was obtained from an entity affiliated with the user of the information by common ownership or control, Section 615(b)(2) requires the user to notify the consumer of the adverse action. The notice must inform the consumer that he or she may obtain a disclosure of the nature of the information relied upon by making a written request within 60 days of receiving the adverse action notice. If the consumer makes such a request, the user must disclose the nature of the information not later than 30 days after receiving the request. If consumer report information is shared among affiliates and then used for an adverse action, the user must make an adverse action disclosure as set forth in I.C.1 above.
D. Users Have Obligations When Fraud and Active Duty Military Alerts are in Files

When a consumer has placed a fraud alert, including one relating to identity theft, or an active duty military alert with a nationwide consumer reporting agency as defined in Section 603(p) and resellers, Section 605A(b) imposes limitations on users of reports obtained from the consumer reporting agency in certain circumstances, including the establishment of a new credit plan and the issuance of additional credit cards. For initial fraud alerts and active duty alerts, the user must have reasonable policies and procedures in place to form a belief that the user knows the identity of the applicant or contact the consumer at a telephone number specified by the consumer; in the case of extended fraud alerts, the user must contact the consumer in accordance with the contact information provided in the consumer’s alert.

E. Users Have Obligations When Notified of an Address Discrepancy

Section 605(h) requires nationwide CRAs, as defined in Section 603(p), to notify users that request reports when the address for a consumer provided by the user in requesting the report is substantially different from the addresses in the consumer’s file. When this occurs, users must comply with regulations specifying the procedures to be followed. Federal regulations are available at www.consumerfinance.gov/learnmore.

F. Users Have Obligations When Disposing of Records

Section 628 requires that all users of consumer report information have in place procedures to properly dispose of records containing this information. Federal regulations have been issued that cover disposal.

II. CREDITORS MUST MAKE ADDITIONAL DISCLOSURES

If a person uses a consumer report in connection with an application for, or a grant, extension, or provision of, credit to a consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person, based in whole or in part on a consumer report, the person must provide a risk-based pricing notice to the consumer in accordance with regulations prescribed by the CFPB.

Section 609(g) requires a disclosure by all persons that make or arrange loans secured by residential real property (one to four units) and that use credit scores. These persons must
provide credit scores and other information about credit scores to applicants, including the
disclosure set forth in Section 609(g)(1)(D) ("Notice to the Home Loan Applicant").

III. OBLIGATIONS OF USERS WHEN CONSUMER REPORTS ARE OBTAINED FOR
EMPLOYMENT PURPOSES

A. Employment Other Than in the Trucking Industry

If information from a CRA is used for employment purposes, the user has specific duties,
which are set forth in Section 604(b) of the FCRA. The user must:

• Make a clear and conspicuous written disclosure to the consumer before the report
  is obtained, in a document that consists solely of the disclosure, that a consumer
  report may be obtained.

• Obtain from the consumer prior written authorization. Authorization to access
  reports during the term of employment may be obtained at the time of
  employment.

• Certify to the CRA that the above steps have been followed, that the information
  being obtained will not be used in violation of any federal or state equal
  opportunity law or regulation, and that, if any adverse action is to be taken based
  on the consumer report, a copy of the report and a summary of the consumer’s
  rights will be provided to the consumer.

• Before taking an adverse action, the user must provide a copy of the report to the
  consumer as well as the summary of consumer’s rights. (The user should receive
  this summary from the CRA.) A Section 615(a) adverse action notice should be
  sent after the adverse action is taken.

An adverse action notice also is required in employment situations if credit information
(other than transactions and experience data) obtained from an affiliate is used to deny
employment. Section 615(b)(2)

The procedures for investigative consumer reports and employee misconduct
investigations are set forth below.

B. Employment in the Trucking Industry

Special rules apply for truck drivers where the only interaction between the consumer and
the potential employer is by mail, telephone, or computer. In this case, the consumer may
provide consent orally or electronically, and an adverse action may be made orally, in writing, or
electronically. The consumer may obtain a copy of any report relied upon by the trucking
company by contacting the company.

IV. OBLIGATIONS WHEN INVESTIGATIVE CONSUMER REPORTS ARE USED

Investigative consumer reports are a special type of consumer report in which information about a consumer's character, general reputation, personal characteristics, and mode of living is obtained through personal interviews by an entity or person that is a consumer reporting agency. Consumers who are the subjects of such reports are given special rights under the FCRA. If a user intends to obtain an investigative consumer report, Section 606 requires the following:

- The user must disclose to the consumer that an investigative consumer report may be obtained. This must be done in a written disclosure that is mailed, or otherwise delivered, to the consumer at some time before or not later than three days after the date on which the report was first requested. The disclosure must include a statement informing the consumer of his or her right to request additional disclosures of the nature and scope of the investigation as described below, and the summary of consumer rights required by Section 609 of the FCRA. (The summary of consumer rights will be provided by the CRA that conducts the investigation.)

- The user must certify to the CRA that the disclosures set forth above have been made and that the user will make the disclosure described below.

- Upon the written request of a consumer made within a reasonable period of time after the disclosures required above, the user must make a complete disclosure of the nature and scope of the investigation. This must be made in a written statement that is mailed, or otherwise delivered, to the consumer no later than five days after the date on which the request was received from the consumer or the report was first requested, whichever is later in time.

V. SPECIAL PROCEDURES FOR EMPLOYEE INVESTIGATIONS

Section 603(x) provides special procedures for investigations of suspected misconduct by an employee or for compliance with Federal, state or local laws and regulations or the rules of a self-regulatory organization, and compliance with written policies of the employer. These investigations are not treated as consumer reports so long as the employer or its agent complies with the procedures set forth in Section 603(x), and a summary describing the nature and scope of the inquiry is made to the employee if an adverse action is taken based on the investigation.

VI. OBLIGATIONS OF USERS OF MEDICAL INFORMATION

Section 604(g) limits the use of medical information obtained from consumer reporting agencies (other than payment information that appears in a coded form that does not identify the
medical provider). If the information is to be used for an insurance transaction, the consumer must give consent to the user of the report or the information must be coded. If the report is to be used for employment purposes— or in connection with a credit transaction (except as provided in federal regulations)— the consumer must provide specific written consent and the medical information must be relevant. Any user who receives medical information shall not disclose the information to any other person (except where necessary to carry out the purpose for which the information was disclosed, or as permitted by statute, regulation, or order).

VII. OBLIGATIONS OF USERS OF “PRESCREENED” LISTS

The FCRA permits creditors and insurers to obtain limited consumer report information for use in connection with unsolicited offers of credit or insurance under certain circumstances. Sections 603(1), 604(c), 604(c), and 615(d). This practice is known as “prescreening” and typically involves obtaining from a CRA a list of consumers who meet certain preestablished criteria. If any person intends to use prescreened lists, that person must (1) before the offer is made, establish the criteria that will be relied upon to make the offer and to grant credit or insurance, and (2) maintain such criteria on file for a three-year period beginning on the date on which the offer is made to each consumer. In addition, any user must provide with each written solicitation a clear and conspicuous statement that:

- Information contained in a consumer’s CRA file was used in connection with the transaction.

- The consumer received the offer because he or she satisfied the criteria for credit worthiness or insurability used to screen for the offer.

- Credit or insurance may not be extended if, after the consumer responds, it is determined that the consumer does not meet the criteria used for screening or any applicable criteria that bear on credit worthiness or insurability, or the consumer does not furnish required collateral.

- The consumer may prohibit the use of information in his or her file in connection with future prescreened offers of credit or insurance by contacting the notification system established by the CRA that provided the report. The statement must include the address and toll-free telephone number of the appropriate notification system.

In addition, the CFPB has established the format, type size, and manner of the disclosure required by Section 615(d), with which users must comply. The relevant regulation is 12 CFR 1022.54.
VIII. OBLIGATIONS OF RESELLERS

A. Disclosure and Certification Requirements
Section 607(e) requires any person who obtains a consumer report for resale to take the following steps:

- Disclose the identity of the end-user to the source CRA.
- Identify to the source CRA each permissible purpose for which the report will be furnished to the end-user.
- Establish and follow reasonable procedures to ensure that reports are resold only for permissible purposes, including procedures to obtain:
  (1) the identity of all end-users;
  (2) certifications from all users of each purpose for which reports will be used; and
  (3) certifications that reports will not be used for any purpose other than the purpose(s) specified to the reseller. Resellers must make reasonable efforts to verify this information before selling the report.

B. Reinvestigations by Resellers

Under Section 611(f), if a consumer disputes the accuracy or completeness of information in a report prepared by a reseller, the reseller must determine whether this is a result of an action or omission on its part and, if so, correct or delete the information. If not, the reseller must send the dispute to the source CRA for reinvestigation. When any CRA notifies the reseller of the results of an investigation, the reseller must immediately convey the information to the consumer.

C. Fraud Alerts and Resellers

Section 605A(f) requires resellers who receive fraud alerts or active duty alerts from another consumer reporting agency to include these in their reports.

IX. LIABILITY FOR VIOLATIONS OF THE FCRA

Failure to comply with the FCRA can result in state government or federal government enforcement actions, as well as private lawsuits. Sections 616, 617, and 621. In addition, any person who knowingly and willfully obtains a consumer report under false pretenses may face criminal prosecution. Section 619.

The CFPB’s website, www.consumerfinance.gov/learnmore, has more information about the FCRA, including publications for businesses and the full text of the FCRA.
PART 1024—REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)

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§ 1024.1 Designation.

This part, known as Regulation X, is issued by the Bureau of Consumer Financial Protection to implement the Real Estate Settlement Procedures Act of 1974, as amended, 12 U.S.C. 2601 et. seq.

§ 1024.2 Definitions.

(a) Statutory terms. All terms defined in RESPA (12 U.S.C. 2602) are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) of this section or elsewhere in this part.

(b) Other terms. As used in this part:

Application means the submission of a borrower’s financial information in anticipation of a credit decision relating to a federally related mortgage loan, which shall include the borrower’s name, the borrower’s monthly income, the borrower’s social security number to obtain a credit report, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any other information deemed necessary by the loan originator. An application may either be in writing or electronically submitted, including a written record of an oral application.

Balloon payment has the same meaning as “balloon payment” under Regulation Z (12 CFR part 1026).

Bureau means the Bureau of Consumer Financial Protection.

Business day means a day on which the offices of the business entity are open to the public for carrying on substantially all of the entity’s business functions.

Changed circumstances means:

(i) Acts of God, war, disaster, or other emergency;

(ii) Information particular to the borrower or transaction that was relied on in providing the GFE and that changes or is found to be inaccurate after the GFE has been provided. This may include information about the credit quality of the borrower, the amount of the loan, the estimated value of the property, or any other information that was used in providing the GFE;

(iii) New information particular to the borrower or transaction that was not relied on in providing the GFE; or

(iv) Other circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems.

(2) Changed circumstances do not include:

(i) The borrower’s name, the borrower’s monthly income, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any information contained in any credit report obtained by the loan originator prior to providing the GFE, unless the information changes or is found to be inaccurate after the GFE has been provided; or

(ii) Market price fluctuations by themselves.

Dealer means, in the case of property improvement loans, a seller, contractor, or supplier of goods or services. In the case of manufactured home loans, “dealer” means one who engages in the business of manufactured home retail sales.
Dealer loan or dealer consumer credit contract means, generally, any arrangement in which a dealer assists the borrower in obtaining a federally related mortgage loan from the funding lender and then assigns the dealer’s legal interests to the funding lender and receives the net proceeds of the loan. The funding lender is the lender for the purposes of the disclosure requirements of this part. If a dealer is a “creditor” as defined under the definition of “federally related mortgage loan” in this part, the dealer is the lender for purposes of this part.

Effective date of transfer is defined in section 6(i)(1) of RESPA (12 U.S.C. 2605(i)(1)). In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, the effective date of transfer is the transfer date agreed upon by the transferee servicer and the transferor servicer.

Federally related mortgage loan or mortgage loan means as follows:

(1) Any loan (other than temporary financing, such as a construction loan):

(i) That is secured by a first or subordinate lien on residential real property, including a refinancing of any secured loan on residential real property upon which there is either:

(A) Located or, following settlement, will be constructed using proceeds of the loan, a structure or structures designed principally for occupancy of from one to four families (including individual units of condominiums and cooperatives and including any related interests, such as a share in the cooperative or right to occupancy of the unit); or

(B) Located or, following settlement, will be placed using proceeds of the loan, a manufactured home; and

(ii) For which one of the following paragraphs applies. The loan:

(A) Is made in whole or in part by any lender that is either regulated by or whose deposits or accounts are insured by any agency of the Federal Government;

(B) Is made in whole or in part, or is insured, guaranteed, supplemented, or assisted in any way:

(i) By the Secretary of the Department of Housing and Urban Development (HUD) or any other officer or agency of the Federal Government; or

(2) Under or in connection with a housing or urban development program administered by the Secretary of HUD or a housing or related program administered by any other officer or agency of the Federal Government;

(C) Is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation (or its successors), or a financial institution from which the loan is to be purchased by the Federal Home Loan Mortgage Corporation (or its successors);

(D) Is made in whole or in part by a “creditor”, as defined in section 103(g) of the Consumer Credit Protection Act (15 U.S.C. 1602(g)), that makes or invests in residential real estate loans aggregating more than $1,000,000 per year. For purposes of this definition, the term “creditor” does not include any agency or instrumentality of any State, and the term “residential real estate loan” means any loan secured by residential real property, including single-family and multifamily residential property;

(E) Is originated either by a dealer or, if the obligation is to be assigned to any maker of mortgage loans specified in paragraphs (1)(ii)(A) through (D) of this definition, by a mortgage broker; or

(F) Is the subject of a home equity conversion mortgage, also frequently called a “reverse mortgage,” issued by any maker of mortgage loans specified in paragraphs (1)(ii) (A) through (D) of this definition.

(2) Any installment sales contract, land contract, or contract for deed on otherwise qualifying residential property is a federally related mortgage loan if the contract is funded in whole or in part by proceeds of a loan made by any maker of mortgage loans specified in paragraphs (1)(ii) (A) through (D) of this definition.

(3) If the residential real property securing a mortgage loan is not located in a State, the loan is not a federally related mortgage loan.

Good faith estimate or GFE means an estimate of settlement charges a borrower is likely to incur, as a dollar amount, and related loan information.
based upon common practice and experience in the locality of the mortgaged property, as provided on the form prescribed in §1024.7 and prepared in accordance with the Instructions in appendix C to this part.

HUD means the Department of Housing and Urban Development.

HUD–1 or HUD–1A settlement statement (also HUD–1 or HUD–1A) means the statement that is prescribed in this part for setting forth settlement charges in connection with either the purchase or the refinancing (or other subordinate lien transaction) of 1- to 4-family residential property.

Lender means, generally, the secured creditor or creditors named in the debt obligation and document creating the lien. For loans originated by a mortgage broker that closes a federally related mortgage loan in its own name in a table funding transaction, the lender is the person to whom the obligation is initially assigned at or after settlement. A lender, in connection with dealer loans, is the lender to whom the loan is assigned, unless the lender meets the definition of creditor as defined under “federally related mortgage loan” in this section. See also §1024.5(b)(7), secondary market transactions.

Loan originator means a lender or mortgage broker.

Manufactured home is defined in HUD regulation 24 CFR 3280.2.

Mortgage broker means a person (not an employee of a lender) or entity that renders origination services and serves as an intermediary between a borrower and a lender in a transaction involving a federally related mortgage loan, including such a person or entity that closes the loan in its own name in a table funded transaction. A loan correspondent approved under HUD regulation 24 CFR 202.8 for Federal Housing Administration programs is a mortgage broker for purposes of this part.

Mortgaged property means the real property that is security for the federally related mortgage loan.

Origination service means any service involved in the creation of a mortgage loan, including but not limited to the taking of the loan application, loan processing, the underwriting and funding of the loan, and the processing and administrative services required to perform these functions.

Person is defined in section 3(5) of RESPA (12 U.S.C. 2602(5)).

Prepayment penalty has the same meaning as “prepayment penalty” under Regulation Z (12 CFR part 1026).

Public Guidance Documents means Federal Register documents adopted or published, that the Bureau may amend from time-to-time by publication in the Federal Register. These documents are also available from the Bureau at the address indicated in §1024.3.

Refinancing means a transaction in which an existing obligation that was subject to a secured lien on residential real property is satisfied and replaced by a new obligation undertaken by the same borrower and with the same or a new lender. The following shall not be treated as a refinancing, even when the existing obligation is satisfied and replaced by a new obligation with the same lender (this definition of “refinancing” as to transactions with the same lender is similar to Regulation Z, 12 CFR 1026.20(a)):

(1) A renewal of a single payment obligation with no change in the original terms;

(2) A reduction in the annual percentage rate as computed under the Truth in Lending Act with a corresponding change in the payment schedule;

(3) An agreement involving a court proceeding;

(4) A workout agreement, in which a change in the payment schedule or change in collateral requirements is agreed to as a result of the consumer's default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for continuation of allowable insurance; and

(5) The renewal of optional insurance purchased by the consumer that is added to an existing transaction, if disclosures relating to the initial purchase were provided.

Regulation Z means the regulations issued by the Bureau (12 CFR part 1026) to implement the Federal Truth in Lending Act (15 U.S.C. 1601 et seq.), and includes the Commentary on Regulation Z.
Bur. of Consumer Financial Protection § 1024.2

Required use means a situation in which a person must use a particular provider of a settlement service in order to have access to some distinct service or property, and the person will pay for the settlement service of the particular provider or will pay a charge attributable, in whole or in part, to the settlement service. However, the offering of a package (or combination of settlement services) or the offering of discounts or rebates to consumers for the purchase of multiple settlement services does not constitute a required use. Any package or discount must be optional to the purchaser. The discount must be a true discount below the prices that are otherwise generally available, and must not be made up by higher costs elsewhere in the settlement process.


Servicer means the person responsible for the servicing of a mortgage loan (including the person who makes or holds a mortgage loan if such person also services the mortgage loan). The term does not include:

(1) The Federal Deposit Insurance Corporation (FDIC), in connection with assets acquired, assigned, sold, or transferred pursuant to section 13(c) of the Federal Deposit Insurance Act or as receiver or conservator of an insured depository institution; and

(2) The Federal National Mortgage Corporation (FNMA); the FDIC; HUD, including the Government National Mortgage Association (GNMA) and the Federal Housing Administration (FHA) (including cases in which a mortgage insured under the National Housing Act (12 U.S.C. 1701 et seq.) is assigned to HUD); the National Credit Union Administration (NCUA); the Farm Service Agency; and the Department of Veterans Affairs (VA), in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by termination of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, or commencement of proceedings by the FDIC for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

Servicing means receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts under section 10 of RESPA (12 U.S.C. 2609), and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, servicing includes making payments to the borrower.

Settlement means the process of executing legally binding documents regarding a lien on property that is subject to a federally related mortgage loan. This process may also be called “closing” or “escrow” in different jurisdictions.

Settlement service means any service provided in connection with a prospective or actual settlement, including, but not limited to, any one or more of the following:

(1) Origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of such loans);

(2) Rendering of services by a mortgage broker (including counseling, taking of applications, obtaining verifications and appraisals, and other loan processing and origination services, and communicating with the borrower and lender);

(3) Provision of any services related to the origination, processing or funding of a federally related mortgage loan;

(4) Provision of title services, including title searches, title examinations, abstract preparation, insurability determinations, and the issuance of title commitments and title insurance policies;

(5) Rendering of services by an attorney;

(6) Preparation of documents, including notarization, delivery, and recordation;
(7) Rendering of credit reports and appraisals;
(8) Rendering of inspections, including inspections required by applicable law or any inspections required by the sales contract or mortgage documents prior to transfer of title;
(9) Conducting of settlement by a settlement agent and any related services;
(10) Provision of services involving mortgage insurance;
(11) Provision of services involving hazard, flood, or other casualty insurance or homeowner’s warranties;
(12) Provision of services involving mortgage life, disability, or similar insurance designed to pay a mortgage loan upon disability or death of a borrower, but only if such insurance is required by the lender as a condition of the loan;
(13) Provision of services involving real property taxes or any other assessments or charges on the real property;
(14) Rendering of services by a real estate agent or real estate broker; and
(15) Provision of any other services for which a settlement service provider requires a borrower or seller to pay.

Special information booklet means the booklet adopted pursuant to section 5 of RESPA (12 U.S.C. 2604) to help persons understand the nature and costs of settlement services. The Bureau publishes the form of the special information booklet in the FEDERAL REGISTER or by other public notice. The Bureau may issue or approve additional booklets or alternative booklets by publication of a Notice in the FEDERAL REGISTER.

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

Table funding means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. A table-funded transaction is not a secondary market transaction (see §1024.5(b)(7)).

Third party means a settlement service provider other than a loan originator.

Title company means any institution, or its duly authorized agent, that is qualified to issue title insurance.

Title service means any service involved in the provision of title insurance (lender’s or owner’s policy), including but not limited to: Title examination and evaluation; preparation and issuance of title commitment; clearance of underwriting objections; preparation and issuance of a title insurance policy or policies; and the processing and administrative services required to perform these functions. The term also includes the service of conducting a settlement.

Tolerance means the maximum amount by which the charge for a category or categories of settlement costs may exceed the amount of the estimate for such category or categories on a GFE.

**EFFECTIVE DATE NOTE:** At 78 FR 10873, Feb. 14, 2013, §1024.2 was amended by revising the definitions for “Federally related mortgage loan” or “mortgage loan,” “Mortgage broker,” “Origination service,” “Public Guidance Documents,” “Servicer,” and “Servicing,” effective Jan. 19, 2014. For the convenience of the user, the revised text is set forth as follows:

§1024.2 Definitions.

* * * * *

(b) * * *

Federally related mortgage loan means:
(i) Any loan (other than temporary financing, such as a construction loan):

(1) That is secured by a first or subordinate lien on residential real property, including a refinancing of any secured loan on residential real property, upon which there is either:
(A) Located or, following settlement, will be constructed using proceeds of the loan, a structure or structures designed principally for occupancy of from one to four families (including individual units of condominiums and cooperatives and including any related interests, such as a share in the cooperative or right to occupancy of the unit); or
(B) Located or, following settlement, will be placed using proceeds of the loan, a manufactured home; and
(ii) For which one of the following paragraphs applies. The loan:
(A) Is made in whole or in part by any lender that is either regulated by or whose deposits or accounts are insured by any agency of the Federal Government;
(B) Is made in whole or in part, or is insured, guaranteed, supplemented, or assisted in any way:
(j) By the Secretary of the Department of Housing and Urban Development (HUD) or
any other officer or agency of the Federal Government; or

(2) Under or in connection with a housing or urban development program administered by the Secretary of HUD or a housing or related program administered by any other officer or agency of the Federal Government;

(C) Is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation (or its successors), or a financial institution from which the loan is to be purchased by the Federal Home Loan Mortgage Corporation (or its successors);

(D) Is made in whole or in part by a “creditor,” as defined in section 103(g) of the Consumer Credit Protection Act (15 U.S.C. 1602(g)), that makes or invests in residential real estate loans aggregating more than $1,000,000 per year. For purposes of this definition, the term “creditor” does not include any agency or instrumentality of any State, and the term “residential real estate loan” means any loan secured by residential real property, including single-family and multifamily residential property;

(E) Is originated either by a dealer or, if the obligation is to be assigned to any maker of mortgage loans specified in paragraphs (1)(ii)(A) through (D) of this definition, by a mortgage broker; or

(F) Is the subject of a home equity conversion mortgage, also frequently called a “reverse mortgage,” issued by any maker of mortgage loans specified in paragraphs (1)(lii)(A) through (D) of this definition.

(2) Any installment sales contract, land contract, or contract for deed on otherwise qualifying residential property is a federally related mortgage loan if the contract is funded in whole or in part by proceeds of a loan made by any maker of mortgage loans specified in paragraphs (1)(li) (A) through (D) of this definition.

(3) If the residential real property securing a mortgage loan is not located in a State, the loan is not a federally related mortgage loan.

* * * * *

Mortgage broker means a person (other than an employee of a lender) that renders origination services and serves as an intermediary between a borrower and a lender in a transaction involving a federally related mortgage loan, including such a person that closes the loan in its own name in a table-funded transaction.

* * * * *

Origination service means any service involved in the creation of a federally related mortgage loan, including but not limited to the taking of the loan application, loan processing, the underwriting and funding of the loan, and the processing and administrative services required to perform these functions.

* * * * *

Public Guidance Documents means FEDERAL REGISTER documents adopted or published, that the Bureau may amend from time-to-time by publication in the FEDERAL REGISTER. These documents are also available from the Bureau. Requests for copies of Public Guidance Documents should be directed to the Associate Director, Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

* * * * *

Services means a person responsible for the servicing of a federally related mortgage loan (including the person who makes or holds such loan if such person also services the loan). The term does not include:

(1) The Federal Deposit Insurance Corporation (FDIC), in connection with assets acquired, assigned, sold, or transferred pursuant to section 206 of the Federal Credit Union Act or as conservator or liquidating agent of an insured depository institution;

(2) The National Credit Union Administration (NCUA), in connection with assets acquired, assigned, sold, or transferred pursuant to section 206 of the Federal Credit Union Act or as conservator or liquidating agent of an insured credit union; and

(3) The Federal National Mortgage Corporation (FNMA); the Federal Home Loan Mortgage Corporation (Freddie Mac); the FDIC; HUD, including the Government National Mortgage Association (GNMA) and the Federal Housing Administration (FHA) (including cases in which a mortgage insured under the National Housing Act (12 U.S.C. 1701 et seq.) is assigned to HUD); the NCUA; the Farm Service Agency; and the Department of Veterans Affairs (VA), in any case in which the assignment, sale, or transfer of the servicing of the federally related mortgage loan is preceded by termination of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, commencement of proceedings by the FDIC for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled), or commencement of proceedings by the NCUA for appointment of a conservator or liquidating agent of the servicer (or an entity by which the servicer is owned or controlled).

Servicing means receiving any scheduled periodic payments from a borrower pursuant
§ 1024.3 to the terms of any federally related mortgage loan, including amounts for escrow accounts under section 10 of RESPA (12 U.S.C. 2609), and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, servicing includes making payments to the borrower.

§ 1024.3 Questions or suggestions from public and copies of public guidance documents.

Any questions or suggestions from the public regarding RESPA, or requests for copies of Public Guidance Documents, should be directed to the Associate Director, Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006. Legal questions concerning the interpretation of this part may be directed to the same address.

Effective Date Note: At 78 FR 10874, Feb. 14, 2013, §1024.3 was revised, effective Jan. 10, 2014. For the convenience of the user, the revised text is set forth as follows:

§ 1024.3 E-Sign applicability.

The disclosures required by this part may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).

§ 1024.4 Reliance upon rule, regulation or interpretation by the Bureau.

(a) Rule, regulation or interpretation.

(1) For purposes of sections 19(a) and (b) of RESPA (12 U.S.C. 2617(a) and (b)), only the following constitute a rule, regulation or interpretation of the Bureau:

(i) All provisions, including appendices, of this part. Any other document referred to in this part is not incorporated in this part unless it is specifically set out in this part;

(ii) Any other document that is published in the Federal Register by the Bureau and states that it is an “interpretation,” “interpretive rule,” “com-

mentary,” or a “statement of policy” for purposes of section 19(a) of RESPA. Such documents will be prepared by Bureau staff and counsel. Such documents may be revoked or amended by a subsequent document published in the Federal Register by the Bureau.

(2) A “rule, regulation, or interpretation thereof by the Bureau” for purposes of section 19(b) of RESPA (12 U.S.C. 2617(b)) shall not include the special information booklet prescribed by the Bureau or any other statement or issuance, whether oral or written, by an officer or representative of the Bureau, letter or memorandum by the Director, General Counsel, or other officer or employee of the Bureau, preambles to a regulation or other issuance of the Bureau, Public Guidance Document, report to Congress, pleading, affidavit or other document in litigation, pamphlet, handbook, guide, telegraphic communication, explanation, instructions to forms, speech or other material of any nature which is not specifically included in paragraph (a)(1) of this section.

(b) Unofficial interpretations; staff discretion. In response to requests for interpretation of matters not adequately covered by this part or by an official interpretation issued under paragraph (a)(1)(ii) of this section, unofficial staff interpretations may be provided at the discretion of Bureau staff or counsel. Written requests for such interpretations should be directed to the address indicated in §1024.3. Such interpretations provide no protection under section 19(b) of RESPA (12 U.S.C. 2617(b)). Ordinarily, staff or counsel will not issue unofficial interpretations on matters adequately covered by this part or by official interpretations or commentaries issued under paragraph (a)(1)(ii) of this section.

(c) All informal counsel’s opinions and staff interpretations issued by HUD before November 2, 1992, were withdrawn as of that date. Written and administrative agencies, however, may use previous opinions to determine the validity of conduct under the previous Regulation X.

Effective Date Note: At 78 FR 10874, Feb. 14, 2013, §1024.4 was amended by revising the section heading, paragraph (a)(1), removing paragraph (b), and redesignating paragraph
§ 1024.5 Coverage of RESPA.

(a) Applicability. RESPA and this part apply to all federally related mortgage loans, except for the exemptions provided in paragraph (b) of this section.

(b) Exemptions. (1) A loan on property of 25 acres or more.

(2) Business purpose loans. An extension of credit primarily for a business, commercial, or agricultural purpose, as defined by 12 CFR 1026.3(a)(1) of Regulation Z. Persons may rely on Regulation Z in determining whether the exemption applies.

(3) Temporary financing. Temporary financing, such as a construction loan. The exemption for temporary financing does not apply to a loan made to finance construction of 1- to 4-family residential property if the loan is used as, or may be converted to, permanent financing by the same lender or is used to finance transfer of title to the first user. If a lender issues a commitment for permanent financing, with or without conditions, the loan is covered by this part. Any construction loan for new or rehabilitated 1- to 4-family residential property, other than a loan to a bona fide builder (a person who regularly constructs 1- to 4-family residential structures for sale or lease), is subject to this part if its term is for two years or more. A "bridge loan" or "swing loan" in which a lender takes a security interest in otherwise covered 1- to 4-family residential property is not covered by RESPA and this part.

(4) Vacant land. Any loan secured by vacant or unimproved property, unless within two years from the date of the settlement of the loan, a structure or a manufactured home will be constructed or placed on the real property using the loan proceeds. If a loan for a structure or manufactured home to be placed on vacant or unimproved property will be secured by a lien on that property, the transaction is covered by this part.

(5) Assumption without lender approval. Any assumption in which the lender does not have the right expressly to approve a subsequent person as the borrower on an existing federally related mortgage loan. Any assumption in which the lender’s permission is both required and obtained is covered by RESPA and this part, whether or not the lender charges a fee for the assumption.

(6) Loan conversions. Any conversion of a federally related mortgage loan to different terms that are consistent with provisions of the original mortgage instrument, as long as a new note is not required, even if the lender charges an additional fee for the conversion.

(7) Secondary market transactions. A bona fide transfer of a loan obligation in the secondary market is not covered by RESPA and this part, except as set forth in section 6 of RESPA (12 U.S.C. 2605) and § 1024.21. In determining what constitutes a bona fide transfer, the Bureau will consider the real source of funding and the real interest of the funding lender. Mortgage broker transactions that are table-funded are not secondary market transactions. Neither the creation of a dealer loan or dealer consumer credit contract, nor the first assignment of such loan or contract to a lender, is a secondary market transaction (see §1024.2).

Effective date notes: 1. At 78 FR 10874, Feb. 14, 2013, §1024.5 was amended by revising paragraph (b)(7), effective Jan. 10, 2014. For the convenience of the user, the revised text is set forth as follows:
§ 1024.6

§ 1024.5 Coverage of RESPA.

* * * * *

(b) * * *

(7) Secondary market transactions. A bonafide transfer of a loan obligation in the secondary market is not covered by RESPA and this part, except with respect to RESPA (12 U.S.C. 2605) and subpart C of this part (§§ 1024.30-1024.41). In determining what constitutes a bonafide transfer, the Bureau will consider the real source of funding and the real interest of the funding lender. Mortgage broker transactions that are table-funded are not secondary market transactions. Neither the creation of a dealer loan or dealer consumer credit contract, nor the first assignment of such loan or contract to a lender, is a secondary market transaction (see § 1024.2).

* * * * *

2. At 78 FR 44717, July 24, 2013, § 1024.5 was amended by adding paragraph (c), effective Jan. 10, 2014. For the convenience of the user, the added text is set forth as follows:

§ 1024.5 Coverage of RESPA.

* * * * *

(c) Relation to State laws. (1) State laws that are inconsistent with RESPA or this part are preempted to the extent of the inconsistency. However, RESPA and these regulations do not annul, alter, affect, or exempt any person subject to their provisions from complying with the laws of any State with respect to settlement practices, except to the extent of the inconsistency.

(2) Upon request by any person, the Bureau is authorized to determine if inconsistencies with State law exist; in doing so, the Bureau shall consult with appropriate Federal agencies.

(i) The Bureau may not determine that a State law or regulation is inconsistent with any provision of RESPA or this part if the Bureau determines that such law or regulation gives greater protection to the consumer.

(ii) In determining whether provisions of State law or regulations concerning affiliated business arrangements are inconsistent with RESPA or this part, the Bureau may not construe those provisions that impose more stringent limitations on affiliated business arrangements as inconsistent with RESPA so long as they give more protection to consumers and/or competition.

(3) Any person may request the Bureau to determine whether an inconsistency exists by submitting to the address established by the Bureau to request an official interpretation, a copy of the State law in question, any other law or judicial or administrative opinion that implements, interprets or applies the relevant provision, and an explanation of the possible inconsistency. A determination by the Bureau that an inconsistency with State law exists will be made by publication of a notice in the FEDERAL REGISTER. “Law” as used in this section includes regulations and any enactment which has the force and effect of law and is issued by a State or any political subdivision of a State.

(4) A specific preemption of conflicting State laws regarding notices and disclosures of mortgage servicing transfers is set forth in § 1024.33(d).

3. At 78 FR 80104, Dec. 31, 2013, § 1024.5 was amended by revising paragraph (a), removing and reserving paragraph (b)(1), and adding paragraph (d), effective Aug. 1, 2015. For the convenience of the user, the added and revised text is set forth as follows:

§ 1024.5 Coverage of RESPA.

(a) Applicability. RESPA and this part apply to federally related mortgage loans, except as provided in paragraphs (b) and (d) of this section.

* * * * *

(d) Partial exemptions for certain mortgage loans. Sections 1024.6, 1024.7, 1024.8, 1024.10, and 1024.21(b) and (c) do not apply to a federally related mortgage loan:

(1) That is subject to the special disclosure requirements for certain consumer credit transactions secured by real property set forth in Regulation Z, 12 CFR 1026.19(e), (f), and (g); or

(2) That satisfies the criteria in Regulation Z, 12 CFR 1026.3(h).

* * * * *

Subpart B—Mortgage Settlement and Escrow Accounts

Effective Date Note: At 78 FR 10875, Feb. 14, 2013, §§ 1024.6 through 1024.20 were designated as subpart B, effective Jan. 10, 2014.

§ 1024.6 Special information booklet at time of loan application.

(a) Lender to provide special information booklet. Subject to the exceptions set forth in this paragraph, the lender shall provide a copy of the special information booklet to a person from whom the lender receives, or for whom the lender prepares, a written application for a federally related mortgage loan. When two or more persons apply together for a loan, the lender is in
compliance if the lender provides a copy of the booklet to one of the persons applying.

(1) The lender shall provide the special information booklet by delivering it or placing it in the mail to the applicant not later than three business days (as that term is defined in §1024.2) after the application is received or prepared. However, if the lender denies the borrower’s application for credit before the end of the three-business-day period, then the lender need not provide the booklet to the borrower. If a borrower uses a mortgage broker, the mortgage broker shall distribute the special information booklet and the lender need not do so. The intent of this provision is that the applicant receive the special information booklet at the earliest possible date.

(2) In the case of a federally related mortgage loan involving an open-ended credit plan, as defined in Regulation Z, 12 CFR 1026.2(a)(20), a lender or mortgage broker that provides the borrower with a copy of the brochure entitled “When Your Home Is On the Line: What You Should Know About Home Equity Lines of Credit”, or any successor brochure issued by the Bureau, is deemed to be in compliance with this section.

(3) In the categories of transactions set forth at the end of this paragraph, the lender or mortgage broker does not have to provide the booklet to the borrower. Under the authority of section 19(a) of RESPA (12 U.S.C. 2617(a)), the Bureau may issue a revised or separate special information booklet that deals with these transactions, or the Bureau may choose to endorse the forms or booklets of other Federal agencies. In such an event, the requirements for delivery by lenders and the availability of the booklet or alternate materials for these transactions will be set forth in a Notice in the Federal Register. This paragraph shall apply to the following transactions:

(i) Refinancing transactions; 
(ii) Closed-end loans, as defined in 12 CFR 1026.2(a)(10) of Regulation Z, when the lender takes a subordinate lien; 
(iii) Reverse mortgages; and
(iv) Any other federally related mortgage loan whose purpose is not the purchase of a 1- to 4-family residential property.

(b) Revision. The Bureau may from time to time revise the special information booklet, publishing a notice in the Federal Register.

(c) Reproduction. The special information booklet may be reproduced in any form, provided that no change is made other than as provided under paragraph (d) of this section. The special information booklet may not be made a part of a larger document for purposes of distribution under RESPA and this section. Any color, size and quality of paper, type of print, and method of reproduction may be used so long as the booklet is clearly legible.

(d) Permissible changes. (1)(i) No changes to, deletions from, or additions to the special information booklet currently prescribed by the Bureau shall be made other than the permissible changes specified in paragraphs (d)(1)(ii) through (d)(3) of this section or changes as otherwise approved in writing by the Bureau in accordance with the procedures described in this paragraph. A request to the Bureau for approval of any changes other than the permissible changes specified in paragraphs (d)(1)(ii) through (d)(3) of this section shall be submitted in writing to the address indicated in §1024.3, stating the reasons why the applicant believes such changes, deletions or additions are necessary.

(ii)(A) In the Complaints section of the booklet, it is a permissible change to substitute “the Bureau of Consumer Financial Protection” for “HUD’s Office of RESPA” and “the RESPA office.”

(B) In the Avoiding Foreclosure section of the booklet, it is a permissible change to inform homeowners that they may find information on and assistance in avoiding foreclosures at http://www.consumerfinance.gov. The deletion of the reference to the HUD Web page, http://www.hud.gov/foreclosure/, in the Avoiding Foreclosure section of the booklet is not a permissible change.

(C) In the appendix to the booklet, it is a permissible change to substitute “the Bureau of Consumer Financial Protection” for the reference to the
§ 1024.7 Good faith estimate.

(a) Lender to provide. (1) Except as otherwise provided in paragraphs (a), (b), or (h) of this section, not later than 3 business days after a lender receives an application, or information sufficient to complete an application, the lender must provide the applicant with a GFE. In the case of dealer loans, the lender must either provide the GFE or ensure that the dealer provides the GFE.

(2) The lender must provide the GFE to the loan applicant by hand delivery, by placing it in the mail, or, if the applicant agrees, by fax, email, or other electronic means.

(3) The lender is not required to provide the applicant with a GFE if, before the end of the 3-business-day period:

(i) The lender denies the application; or

(ii) The applicant withdraws the application.

(4) The lender is not permitted to charge, as a condition for providing a GFE, any fee for an appraisal, inspection, or other similar settlement service. The lender may, at its option, charge a fee limited to the cost of a credit report. The lender may not charge additional fees until after the applicant has received the GFE and indicated an intention to proceed with the loan covered by that GFE. If the GFE is mailed to the applicant, the applicant is considered to have received the GFE 3 calendar days after it is mailed, not including Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(5) The lender may at any time collect from the loan applicant any information that it requires in addition to the required application information. However, the lender is not permitted to require, as a condition for providing a GFE, that an applicant submit supplemental documentation to verify the information provided on the application.

(b) Mortgage broker to provide. (1) Except as otherwise provided in paragraphs (a), (b), or (h) of this section, either the lender or the mortgage broker must provide a GFE not later than 3 business days after a mortgage broker receives either an application or information sufficient to complete an application. The lender is responsible for ascertaining whether the GFE has been provided. If the mortgage broker has provided a GFE, the lender is not required to provide an additional GFE.

(2) The mortgage broker must provide the GFE by hand delivery, by placing it in the mail, or, if the applicant agrees, by fax, email, or other electronic means.

(3) The mortgage broker is not required to provide the applicant with a GFE if, before the end of the 3-business-day period:

(i) The mortgage broker or lender denies the application; or

(ii) The applicant withdraws the application.

(4) The mortgage broker is not permitted to charge, as a condition for providing a GFE, any fee for an appraisal, inspection, or other similar settlement service. The mortgage broker may, at its option, charge a fee limited to the cost of a credit report. The mortgage broker may not charge
additional fees until after the applicant has received the GFE and indicated an intention to proceed with the loan covered by that GFE. If the GFE is mailed to the applicant, the applicant is considered to have received the GFE 3 calendar days after it is mailed, not including Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(5) The mortgage broker may at any time collect from the loan applicant any information that it requires in addition to the required application information. However, the mortgage broker is not permitted to require, as a condition for providing a GFE, that an applicant submit supplemental documentation to verify the information provided on the application.

(c) Availability of GFE terms. Except as provided in this paragraph, the estimate of the charges and terms for all settlement services must be available for at least 10 business days from when the GFE is provided, but it may remain available longer, if the loan originator extends the period of availability. The estimate for the following charges are excepted from this requirement: the interest rate, charges and terms dependent upon the interest rate, which includes the charge or credit for the interest rate chosen, the adjusted origination charge, and per diem interest.

(d) Content and form of GFE. The GFE form is set out in appendix C to this part. The loan originator must prepare the GFE in accordance with the requirements of this section and the Instructions in appendix C to this part. The instructions in appendix C to this part allow for flexibility in the preparation and distribution of the GFE in hard copy and electronic format.

(e) Tolerances for amounts included on GFE. (1) Except as provided in paragraph (f) of this section, the actual charges at settlement may not exceed the amounts included on the GFE for:
   (i) The origination charge;
   (ii) While the borrower’s interest rate is locked, the credit or charge for the interest rate chosen;
   (iii) While the borrower’s interest rate is locked, the adjusted origination charge; and
   (iv) Transfer taxes.

   (2) Except as provided in paragraph (f) of this section, the sum of the charges at settlement for the following services may not be greater than 10 percent above the sum of the amounts included on the GFE:
   (i) Lender-required settlement services, where the lender selects the third party settlement service provider;
   (ii) Lender-required services, title services and required title insurance, and owner’s title insurance, when the borrower uses a settlement service provider identified by the loan originator; and
   (iii) Government recording charges.

   (3) The amounts charged for all other settlement services included on the GFE may change at settlement.

(f) Binding GFE. The loan originator is bound, within the tolerances provided in paragraph (e) of this section, to the settlement charges and terms listed on the GFE provided to the borrower, unless a revised GFE is provided prior to settlement consistent with this paragraph (f) or the GFE expires in accordance with paragraph (f)(4) of this section. If a loan originator provides a revised GFE consistent with this paragraph, the loan originator must document the reason that a revised GFE was provided. Loan originators must retain documentation of any reason for providing a revised GFE for no less than 3 years after settlement.

   (1) Changed circumstances affecting settlement costs. If changed circumstances result in increased costs for any settlement services such that the charges at settlement would exceed the tolerances for those charges, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of receiving information sufficient to establish changed circumstances. The revised GFE may increase charges for services listed on the GFE only to the extent that the changed circumstances actually resulted in higher charges.

   (2) Changed circumstances affecting loan. If changed circumstances result in a change in the borrower’s eligibility for the specific loan terms identified in the GFE, the loan originator...
may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of receiving information sufficient to establish changed circumstances. The revised GFE may increase charges for services listed on the GFE only to the extent that the changed circumstances affecting the loan actually resulted in higher charges.

3 Borrower-requested changes. If a borrower requests changes to the mortgage loan identified in the GFE that change the settlement charges or the terms of the loan, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of the borrower’s request. The revised GFE may increase charges for services listed on the GFE only to the extent that the borrower-requested changes to the mortgage loan identified on the GFE actually resulted in higher charges.

4 Expiration of GFE. If a borrower does not express an intent to continue with an application within 10 business days after the GFE is provided, or such longer time specified by the loan originator pursuant to paragraph (c) of this section, the loan originator is no longer bound by the GFE.

5 Interest rate-dependent charges and terms. If the interest rate has not been locked, or a locked interest rate has expired, the charge or credit for the interest rate chosen, the adjusted origination charges, per diem interest, and loan terms related to the interest rate may change. When the interest rate is later locked, a revised GFE must be provided showing the revised interest rate-dependent charges and terms. The loan originator must provide the revised GFE within 3 business days of the interest rate being locked or, for an expired interest rate, re-locked. All other charges and terms must remain the same as on the original GFE, except as otherwise provided in paragraph (f) of this section.

6 New construction home purchases. In transactions involving new construction home purchases, where settlement is anticipated to occur more than 60 calendar days from the time a GFE is provided, the loan originator may provide the GFE to the borrower with a clear and conspicuous disclosure stating that at any time up until 60 calendar days prior to closing, the loan originator may issue a revised GFE. If no such separate disclosure is provided, the loan originator cannot issue a revised GFE, except as otherwise provided in paragraph (f) of this section.

GFE is not a loan commitment. Nothing in this section shall be interpreted to require a loan originator to make a loan to a particular borrower. The loan originator is not required to provide a GFE if the loan originator does not have available a loan for which the borrower is eligible.

Open-end lines of credit (home-equity plans) under Truth in Lending Act. In the case of a federally related mortgage loan involving an open-end line of credit (home-equity plan) covered under the Truth in Lending Act and Regulation Z, a lender or mortgage broker that provides the borrower with the disclosures required by 12 CFR 1026.40 of Regulation Z at the time the borrower applies for such loan shall be deemed to satisfy the requirements of this section.

Violations of section 5 of RESPA (12 U.S.C. 2604). A loan originator that violates the requirements of this section shall be deemed to have violated section 5 of RESPA. If any charges at settlement exceed the charges listed on the GFE by more than the permitted tolerances, the loan originator may cure the tolerance violation by reimbursing to the borrower the amount by which the tolerance was exceeded, at settlement or within 30 calendar days after settlement. A borrower will be deemed to have received timely reimbursement if the loan originator delivers or places the payment in the mail within 30 calendar days after settlement.

Effective Date Note: At 78 FR 10875, Feb. 14, 2013, §1024.7 was amended by revising paragraph (f)(3), effective Jan. 10, 2014. For the convenience of the user, the revised text is set forth as follows:

§1024.7 Good faith estimate.

* * * * * * * * * * * *

(f) * * *
§ 1024.8 Use of HUD–1 or HUD–1A settlement statements.

(a) Use by settlement agent. The settlement agent shall use the HUD–1 settlement statement in every settlement involving a federally related mortgage loan in which there is a borrower and a seller. For transactions in which there is a borrower and no seller, such as refinancing loans or subordinate lien loans, the HUD–1 may be utilized by using the borrower’s side of the HUD–1 statement. Alternatively, the form HUD–1A may be used for these transactions. The HUD–1 or HUD–1A may be modified as permitted under this part. Either the HUD–1 or the HUD–1A, as appropriate, shall be used for every RESPA-covered transaction, unless its use is specifically exempted. The use of the HUD–1 or HUD–1A is exempted for open-end lines of credit (home-equity plans) covered by the Truth in Lending Act and Regulation Z.

(b) Charges to be stated. The settlement agent shall complete the HUD–1 or HUD–1A, in accordance with the instructions set forth in appendix A to this part. The loan originator must transmit to the settlement agent all information necessary to complete the HUD–1 or HUD–1A.

(1) In general. The settlement agent shall state the actual charges paid by the borrower and seller on the HUD–1, or by the borrower on the HUD–1A. The settlement agent must separately itemize each third party charge paid by the borrower and seller. All origination services performed by or on behalf of the loan originator must be included in the loan originator’s own charge. Administrative and processing services related to title services must be included in the title underwriter’s or title agent’s own charge. The amount stated on the HUD–1 or HUD–1A for any itemized service cannot exceed the amount actually received by the settlement service provider for that itemized service, unless the charge is an average charge in accordance with paragraph (b)(2) of this section.

(2) Use of average charge. (i) The average charge for a settlement service shall be no more than the average amount paid for a settlement service by one settlement service provider to another settlement service provider on behalf of borrowers and sellers for a particular class of transactions involving federally related mortgage loans. The total amounts paid by borrowers and sellers for a settlement service based on the use of an average charge may not exceed the total amounts paid to the providers of that service for the particular class of transactions.

(ii) The settlement service provider shall define the particular class of transactions for purposes of calculating the average charge as all transactions involving federally related mortgage loans for:

(A) A period of time as determined by the settlement service provider, but not less than 30 calendar days and not more than 6 months;

(B) A geographic area as determined by the settlement service provider; and

(C) A type of loan as determined by the settlement service provider.

(iii) A settlement service provider may use an average charge in the same class of transactions for which the charge was calculated. If the settlement service provider uses the average charge for any transaction in the class, the settlement service provider must use the same average charge in every transaction within that class for which a GFE was provided.

(iv) The use of an average charge is not permitted for any settlement service if the charge for the service is based on the loan amount or property value. For example, an average charge may not be used for transfer taxes, interest charges, reserves or escrow, or any type of insurance, including mortgage insurance, title insurance, or hazard insurance.
§ 1024.9 Reproduction of settlement statements.

(a) Permissible changes—HUD-1. The following changes and insertions are permitted when the HUD-1 settlement statement is reproduced:

(1) The person reproducing the HUD-1 may insert its business name and logo in section A and may rearrange, but not delete, the other information that appears in section A.

(2) The name, address, and other information regarding the lender and settlement agent may be printed in sections F and H, respectively.

(3) Reproduction of the HUD-1 must conform to the terminology, sequence, and numbering of line items as presented in lines 100–1400. However, blank lines or items listed in lines 100–1400 that are not used locally or in connection with mortgages by the lender may be deleted, except for the following: Lines 100, 120, 200, 220, 300, 301, 302, 303, 400, 420, 500, 520, 600, 601, 602, 603, 700, 800, 900, 1000, 1100, 1200, 1300, and 1400. The form may be shortened correspondingly. The number of a deleted item shall not be used for a substitute or new item, but the number of a blank space on the HUD-1 may be used for a substitute or new item.

(4) Charges not listed on the HUD-1, but that are customary locally or pursuant to the lender’s practice, may be inserted in blank spaces. Where existing blank spaces on the HUD-1 are insufficient, additional lines and spaces may be added and numbered in sequence with spaces on the HUD-1.

(b) Permissible changes—HUD-1A. The changes and insertions on the HUD-1 permitted under paragraph (a) of this section are also permitted when the HUD-1A settlement statement is reproduced, except the changes described in paragraphs (a)(3) and (6) of this section.

(5) The following variations in layout and format are within the discretion of persons reproducing the HUD-1 and do not require prior HUD approval: size of pages; tint or color of pages; size and style of type or print; vertical spacing between lines or provision for additional horizontal space on lines (for example, to provide sufficient space for recording time periods used in prorations); printing of the HUD-1 contents on separate pages, on the front and back of a single page, or on one continuous page; use of multicopy tear-out sets; printing on rolls for computer purposes; reorganization of sections B through I, when necessary to accommodate computer printing; and manner of placement of the HUD number, but not the OMB approval number, neither of which may be deleted. The expiration date associated with the OMB number listed on the form may be deleted. Any changes in the HUD number or OMB approval number may be announced by notice in the FEDERAL REGISTER, rather than by amendment of this part.

(6) The borrower’s information and the seller’s information may be provided on separate pages.

(7) Signature lines may be added.

(8) The HUD-1 may be translated into languages other than English.

(9) An additional page may be attached to the HUD-1 for the purpose of including customary recitals and information used locally in real estate settlements; for example, breakdown of payoff figures, a breakdown of the borrower’s total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between buyer and seller, and the date funds are transferred. If space permits, such information may be added at the end of the HUD-1.

(10) As required by HUD/FHA in FHA-insured loans.

(11) As allowed by §1024.17, relating to an initial escrow account statement.
§ 1024.10 One-day advance inspection of HUD–1 or HUD–1A settlement statement; delivery; recordkeeping.

(a) Inspection one day prior to settlement upon request by the borrower. The settlement agent shall permit the borrower to inspect the HUD–1 or HUD–1A settlement statement, completed to set forth those items that are known to the settlement agent at the time of inspection, during the business day immediately preceding settlement. Items related only to the seller’s transaction may be omitted from the HUD–1.

(b) Delivery. The settlement agent shall provide a completed HUD–1 or HUD–1A to the borrower, the seller (if there is one), the lender (if the lender is not the settlement agent), and/or their agents. When the borrower’s and seller’s copies of the HUD–1 or HUD–1A differ as permitted by the instructions in appendix A to this part, both copies shall be provided to the lender (if the lender is not the settlement agent). The settlement agent shall deliver the completed HUD–1 or HUD–1A at or before the settlement, except as provided in paragraphs (c) and (d) of this section.

(c) Waiver. The borrower may waive the right to delivery of the completed HUD–1 or HUD–1A no later than at settlement by executing a written waiver at or before settlement. In such case, the completed HUD–1 or HUD–1A shall be mailed or delivered to the borrower, seller, and lender (if the lender is not the settlement agent) as soon as practicable after settlement.

(d) Exempt transactions. When the borrower or the borrower’s agent does not attend the settlement, or when the settlement agent does not conduct a meeting of the parties for that purpose, the transaction shall be exempt from the requirements of paragraphs (a) and (b) of this section, except that the HUD–1 or HUD–1A shall be mailed or delivered as soon as practicable after settlement.

(e) Recordkeeping. The lender shall retain each completed HUD–1 or HUD–1A and related documents for five years after settlement, unless the lender disposes of its interest in the mortgage and does not service the mortgage. In that case, the lender shall provide its copy of the HUD–1 or HUD–1A to the owner or servicer of the mortgage as a part of the transfer of the loan file. Such owner or servicer shall retain the HUD–1 or HUD–1A for the remainder of the five-year period. The Bureau shall have the right to inspect or require copies of records covered by this paragraph (e).

§ 1024.11 Mailing.

The provisions of this part requiring or permitting mailing of documents shall be deemed to be satisfied by placing the document in the mail (whether or not received by the addressee) addressed to the addresses stated in the loan application or in other information submitted to or obtained by the lender at the time of loan application or submitted or obtained by the lender or settlement agent, except that a revised address shall be used where the lender or settlement agent has been expressly informed in writing of a change in address.

§ 1024.12 No fee.

No fee shall be imposed or charge made upon any other person, as a part of settlement costs or otherwise, by a lender in connection with a federally related mortgage loan made by it (or a loan for the purchase of a manufactured home), or by a servicer (as that term is defined under 12 U.S.C. 2605(i)(2)) for or on account of the preparation and distribution of the HUD–1 or HUD–1A settlement statement, escrow account statements required pursuant to section 10 of RESPA (12 U.S.C.)
§ 1024.13 Relation to state laws.

(a) State laws that are inconsistent with RESPA or this part are preempted to the extent of the inconsistency. However, RESPA and these regulations do not annul, alter, affect, or exempt any person subject to their provisions from complying with the laws of any state with respect to settlement practices, except to the extent of the inconsistency.

(b) Upon request by any person, the Bureau is authorized to determine if inconsistencies with state law exist; in doing so, the Bureau shall consult with appropriate Federal agencies.

(1) The Bureau may not determine that a state law or regulation is inconsistent with any provision of RESPA or this part, if the Bureau determines that such law or regulation gives greater protection to the consumer.

(2) In determining whether provisions of state law or regulations concerning affiliated business arrangements are inconsistent with RESPA or this part, the Bureau may not construe those provisions that impose more stringent limitations on affiliated business arrangements as inconsistent with RESPA so long as they give more protection to consumers and/or competition.

(c) Any person may request the Bureau to determine whether an inconsistency exists by submitting to the address indicated in § 1024.3, a copy of the state law in question, any other law or judicial or administrative opinion that implements, interprets or applies the relevant provision, and an explanation of the possible inconsistency. A determination by the Bureau that an inconsistency with state law exists will be made by publication of a notice in the Federal Register. “Law” as used in this section includes regulations and any enactment which has the force and effect of law and is issued by a state or any political subdivision of a State.

(d) A specific preemption of conflicting state laws regarding notices and disclosures of mortgage servicing transfers is set forth in § 1024.21(h).

§ 1024.14 Prohibition against kickbacks and unearned fees.

(a) Section 8 violation. Any violation of this section is a violation of section 8 of RESPA (12 U.S.C. 2607).

(b) No referral fees. No person shall give and no person shall accept any fee, kickback or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a settlement service involving a federally related mortgage loan shall be referred to any person. Any referral of a settlement service is not a compensable service, except as set forth in § 1024.14(g)(1). A company may not pay any other company or the employees of any other company for the referral of settlement service business.

(c) No split of charges except for actual services performed. No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed. A charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this section. The source of the payment does not determine whether or not a service is compensable. Nor may the prohibitions of this part be avoided by creating an arrangement wherein the purchaser of services splits the fee.

(d) Thing of value. This term is broadly defined in section 3(2) of RESPA (12 U.S.C. 2607).
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U.S.C. 2602(2)). It includes, without limitation, monies, things, discounts, salaries, commissions, fees, and duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payment of another person’s expenses, or reduction in credit against an existing obligation. The term “payment” is used throughout §§1024.14 and 1024.15 as synonymous with the giving or receiving of any “thing of value” and does not require transfer of money.  

(e) Agreement or understanding. An agreement or understanding for the referral of business incident to or part of a settlement service need not be written or verbalized but may be established by a practice, pattern or course of conduct. When a thing of value is received repeatedly and is connected in any way with the volume or value of the business referred, the receipt of the thing of value is evidence that it is made pursuant to an agreement or understanding for the referral of business.  

(f) Referral. (1) A referral includes any oral or written action directed to a person which has the effect of affirmatively influencing the selection by any person of a provider of a settlement service or business incident to or part of a settlement service when such person will pay for such settlement service or business incident thereto or pay a charge attributable in whole or in part to such settlement service or business.  

(2) A referral also occurs whenever a person paying for a settlement service or business incident thereto is required to use (see §1024.2, “required use”) a particular provider of a settlement service or business incident thereto.  

(g) Fees, salaries, compensation, or other payments. (1) Section 8 of RESPA permits:  

(i) A payment to an attorney at law for services actually rendered;  

(ii) A payment by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance;  

(iii) A payment by a lender to its duly appointed agent or contractor for services actually performed in the origination, processing, or funding of a loan;  

(iv) A payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed;  

(v) A payment pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and real estate brokers, (The statutory exemption restated in this paragraph refers only to fee divisions within real estate brokerage arrangements when all parties are acting in a real estate brokerage capacity, and has no applicability to any fee arrangements between real estate brokers and mortgage brokers.);  

(vi) Normal promotional and educational activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto; or  

(vii) An employer’s payment to its own employees for any referral activities.  

(2) The Bureau may investigate high prices to see if they are the result of a referral fee or a split of a fee. If the payment of a thing of value bears no reasonable relationship to the market value of the goods or services provided, then the excess is not for services or goods actually performed or provided. These facts may be used as evidence of a violation of section 8 and may serve as a basis for a RESPA investigation. High prices standing alone are not proof of a RESPA violation. The value of a referral (i.e., the value of any additional business obtained thereby) is not to be taken into account in determining whether the payment exceeds the reasonable value of such goods, facilities or services. The fact that the
transfer of the thing of value does not result in an increase in any charge made by the person giving the thing of value is irrelevant in determining whether the act is prohibited.

(3) **Multiple services.** When a person in a position to refer settlement service business, such as an attorney, mortgage lender, real estate broker or agent, or developer or builder, receives a payment for providing additional settlement services as part of a real estate transaction, such payment must be for services that are actual, necessary and distinct from the primary services provided by such person. For example, for an attorney of the buyer or seller to receive compensation as a title agent, the attorney must perform core title agent services (for which liability arises) separate from attorney services, including the evaluation of the title search to determine the insurability of the title, the clearance of underwriting objections, the actual issuance of the policy or policies on behalf of the title insurance company, and, where customary, issuance of the title commitment, and the conducting of the title search and closing.

(h) **Recordkeeping.** Any documents provided pursuant to this section shall be retained for five (5) years from the date of execution.

(i) **Appendix B of this part.** Illustrations in appendix B of this part demonstrate some of the requirements of this section.

§ 1024.15 **Affiliated business arrangements.**

(a) **General.** An affiliated business arrangement is defined in section 3(7) of RESPA (12 U.S.C. 2602(7)).

(b) **Violation and exemption.** An affiliated business arrangement is not a violation of section 8 of RESPA (12 U.S.C. 2607) and of §1024.14 if the conditions set forth in this section are satisfied. Paragraph (b)(1) of this section shall not apply to the extent it is inconsistent with section 8(c)(4)(A) of RESPA (12 U.S.C. 2607(c)(4)(A)).

(1) The person making each referral has provided to each person whose business is referred a written disclosure, in the format of the Affiliated Business Arrangement Disclosure Statement set forth in appendix D of this part, of the nature of the relationship (explaining the ownership and financial interest) between the provider of settlement services (or business incident thereto) and the person making the referral and of an estimated charge or range of charges generally made by such provider (which describes the charge using the same terminology, as far as practical, as section L of the HUD–1 settlement statement). The disclosures must be provided on a separate piece of paper no later than the time of each referral or, if the lender requires use of a particular provider, the time of loan application, except that:

   (i) Where a lender makes the referral to a borrower, the condition contained in paragraph (b)(1) of this section may be satisfied at the time that the good faith estimate or a statement under §1024.7(d) is provided; and

   (ii) Whenever an attorney or law firm requires a client to use a particular title insurance agent, the attorney or law firm shall provide the disclosures no later than the time the attorney or law firm is engaged by the client.

   (iii) Failure to comply with the disclosure requirements of this section may be overcome if the person making a referral can prove by a preponderance of the evidence that procedures reasonably adopted to result in compliance with these conditions have been maintained and that any failure to comply with these conditions was unintentional and the result of a bona fide error. An error of legal judgment with respect to a person's obligations under RESPA is not a bona fide error. Administrative and judicial interpretations of section 130(c) of the Truth in Lending Act shall not be binding interpretations of the preceding sentence or section 8(d)(3) of RESPA (12 U.S.C. 2607(d)(3)).

(2) No person making a referral has required (as defined in §1024.2, “required use”) any person to use any particular provider of settlement services or business incident thereto, except if such person is a lender, for requiring a buyer, borrower or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the
lender’s interest in a real estate trans-
action, or except if such person is an
attorney or law firm for arranging for
issuance of a title insurance policy for
a client, directly as agent or through a
separate corporate title insurance
agency that may be operated as an ad-
junct to the law practice of the attor-
ey or law firm, as part of representa-
tion of that client in a real estate
transaction.
(3) The only thing of value that is re-
ceived from the arrangement other
than payments listed in §1024.14(g) is a
return on an ownership interest or
franchise relationship.
   (i) In an affiliated business arrange-
ment:
      (A) Bona fide dividends, and capital
or equity distributions, related to own-
ership interest or franchise relation-
ship, between entities in an affiliate re-
lationship, are permissible; and
      (B) Bona fide business loans, ad-
vances, and capital or equity contribu-
tions between entities in an affiliate
relationship (in any direction), are not
prohibited—so long as they are for or-
dinary business purposes and are not
fees for the referral of settlement serv-
ice business or unearned fees.
   (ii) A return on an ownership interest
does not include:
      (A) Any payment which has as a basis
of calculation no apparent business
motive other than distinguishing
among recipients of payments on the
basis of the amount of their actual, es-
timated or anticipated referrals;
      (B) Any payment which varies ac-
cording to the relative amount of refer-
ral by the different recipients of simi-
lar payments; or
      (C) A payment based on an owner-
ship, partnership or joint venture share
which has been adjusted on the basis of
previous relative referrals by recipi-
ents of similar payments.
   (iii) Neither the mere labeling of a
thing of value, nor the fact that it may
be calculated pursuant to a corporate
or partnership organizational docu-
ment or a franchise agreement, will de-
termine whether it is a bona fide return
on an ownership interest or franchise
relationship. Whether a thing of value
is such a return will be determined by
analyzing facts and circumstances on a
case by case basis.
   (iv) A return on franchise rela-
tionship may be a payment to or from a
franchisee but it does not include any
payment which is not based on the
franchise agreement, nor any payment
which varies according to the number
or amount of referrals by the
franchisor or franchisee or which is
based on a franchise agreement which
has been adjusted on the basis of a pre-
vious number or amount of referrals by
the franchiser or franchisees. A fran-
chise agreement may not be con-
structed to insulate against kickbacks
or referral fees.
(c) Definitions. As used in this sec-
tion:
    Associate is defined in section 3(8) of
RESPA (12 U.S.C. 2602(8)).
    Affiliate relationship means the rela-
tionship among business entities where
one entity has effective control over
the other by virtue of a partnership or
other agreement or is under common
control with the other by a third entity
or where an entity is a corporation re-
lated to another corporation as parent
to subsidiary by an identity of stock
ownership.
    Beneficial ownership means the effec-
tive ownership of an interest in a pro-
vider of settlement services or the
right to use and control the ownership
interest involved even though legal
ownership or title may be held in an-
other person’s name.
    Control, as used in the definitions of
“associate” and “affiliate relationship,”
means that a person:
   (i) Is a general partner, officer, direc-
tor, or employer of another person;
   (ii) Directly or indirectly or acting in
concert with others, or through one or
more subsidiaries, owns, holds with
power to vote, or holds proxies rep-
resenting, more than 20 percent of the
voting interests of another person;
   (iii) Affirmatively influences in any
manner the election of a majority of
the directors of another person; or
   (iv) Has contributed more than 20
percent of the capital of the other per-
son.
    Direct ownership means the holding of
legal title to an interest in a provider of
settlement service except where
title is being held for the beneficial
owner.
Franchise is defined in FTC regulation 16 CFR 436.1(h).
Franchisor is defined in FTC regulation 16 CFR 436.1(k).
Franchisee is defined in FTC regulation 16 CFR 436.1(i).
FTC means the Federal Trade Commission.
Person who is in a position to refer settlement service business means any real estate broker or agent, lender, mortgage broker, builder or developer, attorney, title company, title agent, or other person deriving a significant portion of his or her gross income from providing settlement services.
(d) Recordkeeping. Any documents provided pursuant to this section shall be retained for 5 years after the date of execution.
(e) Appendix B of this part. Illustrations in appendix B of this part demonstrate some of the requirements of this section.

§ 1024.16 Title companies.

No seller of property that will be purchased with the assistance of a federally related mortgage loan shall violate section 9 of RESPA (12 U.S.C. 2608). Section 1024.2 defines required use of a provider of a settlement service.

§ 1024.17 Escrow accounts.

(a) General. This section sets out the requirements for an escrow account that a lender establishes in connection with a federally related mortgage loan. It sets limits for escrow accounts using calculations based on monthly payments and disbursements within a calendar year. If an escrow account involves biweekly or any other payment period, the requirements in this section shall be modified accordingly. A Public Guidance Document entitled “Biweekly Payments—Example” provides examples of biweekly accounting and a Public Guidance Document entitled “Annual Escrow Account Disclosure Statement—Example” provides examples of a 3-year accounting cycle that may be used in accordance with paragraph (c)(9) of this section. A Public Guidance Document entitled “Consumer Disclosure for Voluntary Escrow Account Payments” provides a model disclosure format that originators and servicers are encouraged, but not required, to provide to consumers when the originator or servicer anticipates a substantial increase in disbursements from the escrow account after the first year of the loan. The disclosures in that model format may be combined with or included in the Initial Escrow Account Statement required in §1024.17(g).

(b) Definitions. As used in this section: Aggregate (or) composite analysis, hereafter called aggregate analysis, means an accounting method a servicer uses in conducting an escrow account analysis by computing the sufficiency of escrow account funds by analyzing the account as a whole. Appendix E to this part sets forth examples of aggregate escrow account analyses.
Annual escrow account statement means a statement containing all of the information set forth in §1024.17(i). As noted in §1024.17(i), a servicer shall submit an annual escrow account statement to the borrower within 30 calendar days of the end of the escrow account computation year, after conducting an escrow account analysis.
Cushion or reserve (hereafter cushion) means funds that a servicer may require a borrower to pay into an escrow account to cover unanticipated disbursements or disbursements made before the borrower’s payments are available in the account, as limited by §1024.17(c).
Deficiency is the amount of a negative balance in an escrow account. As noted in §1024.17(f), if a servicer advances funds for a borrower, then the servicer must perform an escrow account analysis before seeking repayment of the deficiency.
Delivery means the placing of a document in the United States mail, first-class postage paid, addressed to the last known address of the recipient. Hand delivery also constitutes delivery.
Disbursement date means the date on which the servicer actually pays an escrow item from the escrow account.
Escrow account means any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood
insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay. The definition encompasses any account established for this purpose, including a “trust account”, “reserve account”, “impound account”, or other term in different localities. An “escrow account” includes any arrangement where the servicer adds a portion of the borrower’s payments to principal and subsequently deducts from principal the disbursements for escrow account items. For purposes of this section, the term “escrow account” excludes any account that is under the borrower’s total control.

**Escrow account analysis** means the accounting that a servicer conducts in the form of a trial running balance for an escrow account to:

1. Determine the appropriate target balances;
2. Compute the borrower’s monthly payments for the next escrow account computation year and any deposits needed to establish or maintain the account; and
3. Determine whether shortages, surpluses or deficiencies exist.

**Escrow account computation year** is a 12-month period that a servicer establishes for the escrow account beginning with the borrower’s initial payment date. The term includes each 12-month period thereafter, unless a servicer chooses to issue a short year statement under the conditions stated in §1024.17(i)(4).

**Escrow account item or separate item** means any separate expenditure category, such as “taxes” or “insurance”, for which funds are collected in the escrow account for disbursement. An escrow account item with installment payments, such as local property taxes, remains one escrow account item regardless of multiple disbursement dates to the tax authority.

**Initial escrow account statement** means the first disclosure statement that the servicer delivers to the borrower concerning the borrower’s escrow account. The initial escrow account statement shall meet the requirements of §1024.17(g) and be in substantially the format set forth in §1024.17(h).

**Installment payment** means one of two or more payments payable on an escrow account item during an escrow account computation year. An example of an installment payment is where a jurisdiction bills quarterly for taxes.

**Payment due date** means the date each month when the borrower’s monthly payment to an escrow account is due to the servicer. The initial payment date is the borrower’s first payment due date to an escrow account.

**Penalty** means a late charge imposed by the payee for paying after the disbursement is due. It does not include any additional charge or fee imposed by the payee associated with choosing installment payments as opposed to annual payments or for choosing one installment plan over another.

**Pre-accural** is a practice some servicers use to require borrowers to deposit funds, needed for disbursement and maintenance of a cushion, in the escrow account some period before the disbursement date. Pre-accural is subject to the limitations of §1024.17(c).

**Shortage** means an amount by which a current escrow account balance falls short of the target balance at the time of escrow analysis.

**Single-item analysis** means an accounting method servicers use in conducting an escrow account analysis by computing the sufficiency of escrow account funds by considering each escrow item separately. Appendix E to this part sets forth examples of single-item analysis.

**Submission (of an escrow account statement)** means the delivery of the statement.

**Surplus** means an amount by which the current escrow account balance exceeds the target balance for the account.

**System of recordkeeping** means the servicer’s method of keeping information that reflects the facts relating to that servicer’s handling of the borrower’s escrow account, including, but not limited to, the payment of amounts from the escrow account and the submission of initial and annual escrow account statements to borrowers.

**Target balance** means the estimated month end balance in an escrow account that is just sufficient to cover the remaining disbursements from the
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escrow account in the escrow account computation year, taking into account the remaining scheduled periodic payments, and a cushion, if any.

Trial running balance means the accounting process that derives the target balances over the course of an escrow account computation year. Section 1024.17(d) provides a description of the steps involved in performing a trial running balance.

(c) Limits on payments to escrow accounts. (1) A lender or servicer (hereafter servicer) shall not require a borrower to deposit into any escrow account, created in connection with a federally related mortgage loan, more than the following amounts:

(i) Charges at settlement or upon creation of an escrow account. At the time a servicer creates an escrow account for a borrower, the servicer may charge the borrower an amount sufficient to pay the charges respecting the mortgaged property, such as taxes and insurance, which are attributable to the period from the date such payment(s) were last paid until the initial payment date. The “amount sufficient to pay” is computed so that the lowest month end target balance projected for the escrow account computation year is zero (–0–) (see Step 2 in appendix E to this part). In addition, the servicer may charge the borrower a cushion that shall be no greater than one-sixth (1⁄6) of the estimated total annual payments from the escrow account.

(ii) Charges during the life of the escrow account. Throughout the life of an escrow account, the servicer may charge the borrower a monthly sum equal to one-twelfth (1⁄12) of the total annual escrow payments which the servicer reasonably anticipates paying from the account. In addition, the servicer may add an amount to maintain a cushion no greater than one-sixth (1⁄6) of the estimated total annual payments from the escrow account. However, if a servicer determines through an escrow account analysis that there is a shortage or deficiency, the servicer may require the borrower to pay additional deposits to make up the shortage or eliminate the deficiency, subject to the limitations set forth in §1024.17(f).

(2) Escrow analysis at creation of escrow account. Before establishing an escrow account, the servicer must conduct an escrow account analysis to determine the amount the borrower must deposit into the escrow account (subject to the limitations of paragraph (c)(1)(i) of this section), and the amount of the borrower’s periodic payments into the escrow account (subject to the limitations of paragraph (c)(1)(ii) of this section). In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer must use a date on or before the deadline to avoid a penalty as the disbursement date for the escrow item and comply with any other requirements of paragraph (k) of this section. Upon completing the initial escrow account analysis, the servicer must prepare and deliver an initial escrow account statement to the borrower, as set forth in paragraph (g) of this section. The servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists and must make any adjustments to the account pursuant to paragraph (f) of this section.

(3) Subsequent escrow account analyses. For each escrow account, the servicer must conduct an escrow account analysis at the completion of the escrow account computation year to determine the borrower’s monthly escrow account payments for the next computation year, subject to the limitations of paragraph (c)(1)(ii) of this section. In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer must use a date on or before the deadline to avoid a penalty as the disbursement date for the escrow item and comply with any other requirements of paragraph (k) of this section. The servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists, and must make any adjustments to the account pursuant to paragraph (f) of this section. Upon completing an escrow account analysis, the servicer...
must prepare and submit an annual escrow account statement to the borrower, as set forth in paragraph (i) of this section.

(4) Aggregate accounting required. All servicers must use the aggregate accounting method in conducting escrow account analyses.

(5) Cushion. The cushion must be no greater than one-sixth (1/6) of the estimated total annual disbursements from the escrow account.

(6) Restrictions on pre-accrual. A servicer must not practice pre-accrual.

(7) Servicer estimates of disbursement amounts. To conduct an escrow account analysis, the servicer shall estimate the amount of escrow account items to be disbursed. If the servicer knows the charge for an escrow item in the next computation year, then the servicer shall use that amount in estimating disbursement amounts. If the charge is unknown to the servicer, the servicer may base the estimate on the preceding year’s charge, or the preceding year’s charge as modified by an amount not exceeding the most recent year’s change in the national Consumer Price Index for all urban consumers (CPI, all items). In cases of unassessed new construction, the servicer may base an estimate on the assessment of comparable residential property in the market area.

(8) Provisions in mortgage documents. The servicer must examine the mortgage loan documents to determine the applicable cushion for each escrow account. If the mortgage loan documents provide for lower cushion limits, then the terms of the loan documents apply. Where the terms of any mortgage loan document allow greater payments to an escrow account than allowed by this section, then this section controls the applicable limits. Where the mortgage loan documents do not specifically establish an escrow account, whether a servicer may establish an escrow account for the loan is a matter for determination by other Federal or state law. If the mortgage loan document is silent on the escrow account limits and a servicer establishes an escrow account under other Federal or state law, then the limitations of this section apply unless applicable Federal or state law provides for a lower amount.

If the loan documents provide for escrow accounts up to the RESPA limits, then the servicer may require the maximum amounts consistent with this section, unless an applicable Federal or state law sets a lesser amount.

(9) Assessments for periods longer than one year. Some escrow account items may be billed for periods longer than one year. For example, servicers may need to collect flood insurance or water purification escrow funds for payment every three years. In such cases, the servicer shall estimate the borrower’s payments for a full cycle of disbursements. For a flood insurance premium payable every 3 years, the servicer shall collect the payments reflecting 36 equal monthly amounts. For two out of the three years, however, the account balance may not reach its low monthly balance because the low point will be on a three-year cycle, as compared to an annual one. The annual escrow account statement shall explain this situation (see example in the Public Guidance Document entitled “Annual Escrow Account Disclosure Statement—Example”, available in accordance with §1024.3).

(d) Methods of escrow account analysis.

(1) The following sets forth the steps servicers must use to determine whether their use of aggregate analysis conforms with the limitations in §1024.17(c)(1). The steps set forth in this section result in maximum limits. Servicers may use accounting procedures that result in lower target balances. In particular, servicers may use a cushion less than the permissible cushion or no cushion at all. This section does not require the use of a cushion.

(2) Aggregate analysis. (i) In conducting the escrow account analysis using aggregate analysis, the target balances may not exceed the balances computed according to the following arithmetic operations:

(A) The servicer first projects a trial balance for the account as a whole over the next computation year (a trial running balance). In doing so the servicer assumes that it will make estimated disbursements on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. The servicer does
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not use pre-accrual on these disbursement dates. The servicer also assumes that the borrower will make monthly payments equal to one-twelfth of the estimated total annual escrow account disbursements.

(B) The servicer then examines the monthly trial balances and adds to the first monthly balance an amount just sufficient to bring the lowest monthly trial balance to zero, and adjusts all other monthly balances accordingly.

(C) The servicer then adds to the monthly balances the permissible cushion. The cushion is two months of the borrower’s escrow payments to the servicer or a lesser amount specified by state law or the mortgage document (net of any increases or decreases because of prior year shortages or surpluses, respectively).

(ii) Lowest monthly balance. Under aggregate analysis, the lowest monthly target balance for the account shall be less than or equal to one-sixth of the estimated total annual escrow account disbursements or a lesser amount specified by state law or the mortgage document. The target balances that the servicer derives using these steps yield the maximum limit for the escrow account. Appendix E to this part illustrates these steps.

(e) Transfer of servicing. (1) If the new servicer changes either the monthly payment amount or the accounting method used by the transferor (old) servicer, then the new servicer shall provide the borrower with an initial escrow account statement within 60 days of the date of servicing transfer.

(i) Where a new servicer provides an initial escrow account statement upon the transfer of servicing, the new servicer shall use the effective date of the transfer of servicing to establish the new escrow account computation year.

(ii) Where the new servicer retains the monthly payments and accounting method used by the transferor servicer, then the new servicer may continue to use the escrow account computation year established by the transferor servicer or may choose to establish a different computation year using a short-year statement. At the completion of the escrow account computation year or any short year, the new servicer shall perform an escrow analysis and provide the borrower with an annual escrow account statement.

(2) The new servicer shall treat shortages, surpluses and deficiencies in the transferred escrow account according to the procedures set forth in §1024.17(f).

(f) Shortages, surpluses, and deficiencies requirements—(1) Escrow account analysis. For each escrow account, the servicer shall conduct an escrow account analysis to determine whether a surplus, shortage or deficiency exists.

(i) As noted in §1024.17(c)(2) and (3), the servicer shall conduct an escrow account analysis upon establishing an escrow account and at completion of the escrow account computation year.

(ii) The servicer may conduct an escrow account analysis at other times during the escrow computation year. If a servicer advances funds in paying a disbursement, which is not the result of a borrower’s payment default under the underlying mortgage document, then the servicer shall conduct an escrow account analysis to determine the extent of the deficiency before seeking repayment of the funds from the borrower under this paragraph (f).

(2) Surpluses. (i) If an escrow account analysis discloses a surplus, the servicer shall, within 30 days from the date of the analysis, refund the surplus to the borrower if the surplus is greater than or equal to 50 dollars ($50). If the surplus is less than 50 dollars ($50), the servicer may refund such amount to the borrower, or credit such amount against the next year’s escrow payments.

(ii) These provisions regarding surpluses apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower’s payments within 30 days of the payment due date. If the servicer does not receive the borrower’s payment within 30 days of the payment due date, then the servicer may retain the surplus in the escrow account pursuant to the terms of the mortgage loan documents.

(iii) After an initial or annual escrow analysis has been performed, the servicer and the borrower may enter into a voluntary agreement for the forthcoming escrow accounting year.
for the borrower to deposit funds into the escrow account for that year greater than the limits established under paragraph (c) of this section. Such an agreement shall cover only one escrow accounting year, but a new voluntary agreement may be entered into after the next escrow analysis is performed. The voluntary agreement may not alter how surpluses are to be treated when the next escrow analysis is performed at the end of the escrow accounting year covered by the voluntary agreement.

(3) Shortages. (i) If an escrow account analysis discloses a shortage of less than one month’s escrow account payment, then the servicer has three possible courses of action:
   (A) The servicer may allow a shortage to exist and do nothing to change it;
   (B) The servicer may require the borrower to repay the shortage amount within 30 days; or
   (C) The servicer may require the borrower to repay the shortage amount in equal monthly payments over at least a 12-month period.

(ii) If an escrow account analysis discloses a shortage that is greater than or equal to one month’s escrow account payment, then the servicer has two possible courses of action:
   (A) The servicer may allow a shortage to exist and do nothing to change it; or
   (B) The servicer may require the borrower to repay the shortage in equal monthly payments over at least a 12-month period.

(4) Deficiency. If the escrow account analysis confirms a deficiency, then the servicer may require the borrower to pay additional monthly deposits to the account to eliminate the deficiency.

(i) If the deficiency is less than one month’s escrow account payment, then the servicer:
   (A) May allow the deficiency to exist and do nothing to change it;
   (B) May require the borrower to repay the deficiency within 30 days; or
   (C) May require the borrower to repay the deficiency in 2 or more equal monthly payments.

(ii) If the deficiency is greater than or equal to 1 month’s escrow payment, the servicer may allow the deficiency to exist and do nothing to change it or may require the borrower to repay the deficiency in two or more equal monthly payments.

(iii) These provisions regarding deficiencies apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower’s payments within 30 days of the payment due date. If the servicer does not receive the borrower’s payment within 30 days of the payment due date, then the servicer may recover the deficiency pursuant to the terms of the mortgage loan documents.

(5) Notice of shortage or deficiency in escrow account. The servicer shall notify the borrower at least once during the escrow account computation year if there is a shortage or deficiency in the escrow account. The notice may be part of the annual escrow account statement or it may be a separate document.

(g) Initial escrow account statement. (1) Submission at settlement, or within 45 calendar days of settlement. As noted in §1024.17(c)(2), the servicer shall conduct an escrow account analysis before establishing an escrow account to determine the amount the borrower shall deposit into the escrow account, subject to the limitations of §1024.17(c)(1). After conducting the escrow account analysis for each escrow account, the servicer shall submit an initial escrow account statement to the borrower at settlement or within 45 calendar days of settlement for escrow accounts that are established as a condition of the loan.

(1) The initial escrow account statement shall include the amount of the borrower’s monthly mortgage payment and the portion of the monthly payment going into the escrow account and shall itemize the estimated taxes, insurance premiums, and other charges that the servicer reasonably anticipates to be paid from the escrow account during the escrow account computation year and the anticipated disbursement dates of those charges. The initial escrow account statement shall indicate the amount that the servicer selects as a cushion. The statement
shall include a trial running balance for the account.

(ii) Pursuant to §1024.17(h)(2), the servicer may incorporate the initial escrow account statement into the HUD–1 or HUD–1A settlement statement. If the servicer does not incorporate the initial escrow account statement into the HUD–1 or HUD–1A settlement statement, then the servicer shall submit the initial escrow account statement to the borrower as a separate document.

(2) Time of submission of initial escrow account statement for an escrow account established after settlement. For escrow accounts established after settlement (and which are not a condition of the loan), a servicer shall submit an initial escrow account statement to a borrower within 45 calendar days of the date of establishment of the escrow account.

(h) Format for initial escrow account statement. (1) The format and a completed example for an initial escrow account statement are set out in Public Guidance Documents entitled “Initial Escrow Account Disclosure Statement—Format” and “Initial Escrow Account Disclosure Statement—Example”, available in accordance with §1024.3.

(2) Incorporation of initial escrow account statement into HUD–1 or HUD–1A settlement statement. Pursuant to §1024.9(a)(11), a servicer may add the initial escrow account statement to the HUD–1 or HUD–1A settlement statement. The servicer may include the initial escrow account statement in the basic text or may attach the initial escrow account statement as an additional page to the HUD–1 or HUD–1A settlement statement.

(3) Identification of payees. The initial escrow account statement need not identify a specific payee by name if it provides sufficient information to identify the use of the funds. For example, appropriate entries include: county taxes, hazard insurance, condominium dues, etc. If a particular payee, such as a taxing body, receives more than one payment during the escrow account computation year, the statement shall indicate each payment and disbursement date. If there are several taxing authorities or insurers, the statement shall identify each taxing body or insurer (e.g., “City Taxes”, “School Taxes”, “Hazard Insurance”, or “Flood Insurance,” etc.).

(i) Annual escrow account statements. For each escrow account, a servicer shall submit an annual escrow account statement to the borrower within 30 days of the completion of the escrow account computation year. The servicer shall also submit to the borrower the previous year’s projection or initial escrow account statement. The servicer shall conduct an escrow account analysis before submitting an annual escrow account statement to the borrower.

(1) Contents of annual escrow account statement. The annual escrow account statement shall provide an account history, reflecting the activity in the escrow account during the escrow account computation year, and a projection of the activity in the account for the next year. In preparing the statement, the servicer may assume scheduled payments and disbursements will be made for the final 2 months of the escrow account computation year. The annual escrow account statement must include, at a minimum, the following (the items in paragraphs (i)(1)(i) through (i)(1)(iv) must be clearly itemized):

(i) The amount of the borrower’s current monthly mortgage payment and the portion of the monthly payment going into the escrow account;
(ii) The amount of the past year’s monthly mortgage payment and the portion of the monthly payment that went into the escrow account;
(iii) The total amount paid into the escrow account during the past computation year;
(iv) The total amount paid out of the escrow account during the same period for taxes, insurance premiums, and other charges (as separately identified);
(v) The balance in the escrow account at the end of the period;
(vi) An explanation of how any surplus is being handled by the servicer;
(vii) An explanation of how any shortage or deficiency is to be paid by the borrower; and
(viii) If applicable, the reason(s) why the estimated low monthly balance was
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not reached, as indicated by noting differences between the most recent account history and last year’s projection. Public Guidance Documents entitled “Annual Escrow Account Disclosure Statement—Format” and “Annual Escrow Account Disclosure Statement—Example” set forth an acceptable format and methodology for conveying this information.

(2) No annual statements in the case of default, foreclosure, or bankruptcy. This paragraph (i)(2) contains an exemption from the provisions of §1024.17(i)(1). If at the time the servicer conducts the escrow account analysis the borrower is more than 30 days overdue, then the servicer is exempt from the requirements of submitting an annual escrow account statement to the borrower under §1024.17(i). This exemption also applies in situations where the servicer has brought an action for foreclosure under the underlying mortgage loan, or where the borrower is in bankruptcy proceedings. If the servicer does not issue an annual statement pursuant to this exemption and the loan subsequently is reinstated or otherwise becomes current, the servicer shall provide a history of the account since the last annual statement (which may be longer than 1 year) within 90 days of the date the account became current.

(3) Delivery with other material. The servicer may deliver the annual escrow account statement to the borrower with other statements or materials, including the Substitute 1098, which is provided for Federal income tax purposes.

(4) Short year statements. A servicer may issue a short year annual escrow account statement (“short year statement”) to change one escrow account computation year to another. By using a short year statement a servicer may adjust its production schedule or alter the escrow account computation year for the escrow account.

(1) Effect of short year statement. The short year statement shall end the “escrow account computation year” for the escrow account and establish the beginning date of the new escrow account computation year. The servicer shall deliver the short year statement to the borrower within 60 days from the end of the short year.

(ii) Short year statement upon servicing transfer. Upon the transfer of servicing, the transferor (old) servicer shall submit a short year statement to the borrower within 60 days of the effective date of transfer.

(iii) Short year statement upon loan payoff. If a borrower pays off a mortgage loan during the escrow account computation year, the servicer shall submit a short year statement to the borrower within 60 days after receiving the pay-off funds.

(j) Formats for annual escrow account statement. The formats and completed examples for annual escrow account statements using single-item analysis (pre-rule accounts) and aggregate analysis are set out in Public Guidance Documents entitled “Annual Escrow Account Disclosure Statement—Format” and “Annual Escrow Account Disclosure Statement—Example”.

(k) Timely payments. (1) If the terms of any federally related mortgage loan require the borrower to make payments to an escrow account, the servicer must pay the disbursements in a timely manner, that is, on or before the deadline to avoid a penalty, as long as the borrower’s payment is not more than 30 days overdue.

(2) The servicer must advance funds to make disbursements in a timely manner as long as the borrower’s payment is not more than 30 days overdue. Upon advancing funds to pay a disbursement, the servicer may seek repayment from the borrower for the deficiency pursuant to paragraph (f) of this section.

(3) For the payment of property taxes from the escrow account, if a taxing jurisdiction offers a servicer a choice between annual and installment disbursements, the servicer must also comply with this paragraph (k)(3). If the taxing jurisdiction neither offers a discount for disbursements on a lump sum annual basis nor imposes any additional charge or fee for installment disbursements, the servicer may, at the
servicer's discretion (but is not required by RESPA to), make lump sum annual disbursements in order to take advantage of the discount for the borrower or avoid the additional charge or fee for installments, as long as such method of disbursement complies with paragraphs (k)(1) and (k)(2) of this section. The Bureau encourages, but does not require, the servicer to follow the preference of the borrower, if such preference is known to the servicer.

(4) Notwithstanding paragraph (k)(3) of this section, a servicer and borrower may mutually agree, on an individual case basis, to a different disbursement basis (installment or annual) or disbursement date for property taxes from that required under paragraph (k)(3) of this section, so long as the agreement meets the requirements of paragraphs (k)(1) and (k)(2) of this section. The borrower must voluntarily agree; neither loan approval nor any term of the loan may be conditioned on the borrower's agreeing to a different disbursement basis or disbursement date.

(5) After receiving a request from the Bureau for information relating to whether a servicer submitted an escrow account statement to the borrower, the servicer shall respond within 30 days. If the servicer is unable to provide the Bureau with such information, the Bureau shall deem that lack of information to be evidence of the servicer's failure to submit the statement to the borrower.

(m) Discretionary payments. Any borrower's discretionary payment (such as credit life or disability insurance) made as part of a monthly mortgage payment is to be noted on the initial and annual statements. If a discretionary payment is established or terminated during the escrow account computation year, this change should be noted on the next annual statement. A discretionary payment is not part of the escrow account unless the payment is required by the lender, in accordance with the definition of "settlement service" in §1024.2, or the servicer chooses to place the discretionary payment in the escrow account. If a servicer has not established an escrow account for a federally related mortgage loan and only receives payments for discretionary items, this section is not applicable.

EFFECTIVE DATE NOTE: At 78 FR 10875, Feb. 14, 2013, §1024.17 was amended by revising paragraphs (c)(8), (f)(2)(ii), (f)(4)(iii), (i)(2), (i)(4)(iii), adding paragraph (k)(5), removing paragraph (l), and redesignating paragraph (m) as paragraph (l), effective Jan. 10, 2014. For the convenience of the user, the added and revised text is set forth as follows:

§ 1024.17 Escrow accounts.

(c) * * * * * *

(8) Provisions in federally related mortgage documents. The servicer must examine the federally related mortgage loan documents to determine the applicable cushion for each escrow account. If any such documents provide for lower cushion limits, then the terms of the loan documents apply. Where the terms of any such documents allow greater payments to an escrow account than allowed by this section, then this section controls the applicable limits. Where such documents do not specifically establish an escrow account, whether a servicer may establish an
escrow account for the loan is a matter for determination by other Federal or State law. 
If such documents are silent on the escrow account limits and a servicer establishes an escrow account under other Federal or State law, then the limitations of this section apply unless applicable Federal or State law provides for a lower amount. If such documents provide for escrow accounts up to the RESPA limits, then the servicer may require the maximum amounts consistent with this section, unless an applicable Federal or State law sets a lesser amount.

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(1) * * *  

(2) * * *  

(i) These provisions regarding surpluses apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower’s payments within 30 days of the payment due date. If the servicer does not receive the borrower’s payment within 30 days of the payment due date, then the servicer may retain the surplus in the escrow account pursuant to the terms of the federally related mortgage loan documents.  

(4) * * *  

(ii) These provisions regarding deficiencies apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower’s payments within 30 days of the payment due date. If the servicer does not receive the borrower’s payment within 30 days of the payment due date, then the servicer may recover the deficiency pursuant to the terms of the federally related mortgage loan documents.  

(5) * * *  

(1) No annual statements in the case of default, foreclosure, or bankruptcy. This paragraph (1)(2) contains an exemption from the requirements of submitting an annual escrow account statement to the borrower under §1024.17(i). If at the time the servicer conducts the escrow account analysis the borrower is more than 30 days overdue, then the servicer is exempt from the requirements of submitting an annual escrow account statement to the borrower under §1024.17(i). This exemption also applies in situations where the servicer has brought an action for foreclosure under the underlying federally related mortgage loan, or where the borrower is in bankruptcy proceedings. If the servicer does not issue an annual statement pursuant to this exemption and the loan subsequently is reinstated or otherwise becomes current, the servicer shall provide a history of the account since the last annual statement (which may be longer than 1 year) within 90 days of the date the account became current.  

(4) * * *  

(ii) Short year statement upon loan payoff. If a borrower pays off a federally related mortgage loan during the escrow account computation year, the servicer shall submit a short year statement to the borrower within 60 days after receiving the payoff funds.  

(k) * * *  

(5) Timely payment of hazard insurance. (i) In general. Except as provided in paragraph (k)(5)(ii) of this section, with respect to a borrower whose mortgage payment is more than 30 days overdue, but who has established an escrow account for the payment of hazard insurance, as defined in §1024.31, a servicer may not purchase force-placed insurance, as that term is defined in §1024.37(a), unless a servicer is unable to disburse funds from the borrower’s escrow account to ensure that the borrower’s hazard insurance premium charges are paid in a timely manner.  

(ii) Inability to disburse funds. (A) When inability exists. A servicer is considered unable to disburse funds from a borrower’s escrow account to ensure that the borrower’s hazard insurance premium payments are made in a timely manner only if the servicer has a reasonable basis to believe either that the borrower’s hazard insurance has been canceled (or was not renewed) for reasons other than non-payment of premium charges or that the borrower’s property is vacant.  

(B) When inability does not exist. A servicer shall not be considered unable to disburse funds from the borrower’s escrow account because the escrow account contains insufficient funds for paying hazard insurance premiums.  

(C) Recoupment of advances. If a servicer advances funds to an escrow account to ensure that the borrower’s hazard insurance premium charges are paid in a timely manner, a servicer may seek repayment from the borrower for the funds the servicer advanced, unless otherwise prohibited by applicable law.  

(iii) Small servicers. Notwithstanding paragraphs (k)(5)(i) and (k)(5)(ii)(B) of this section and subject to the requirements in §1024.37, a servicer that qualifies as a small servicer pursuant to 12 CFR 1026.41(e)(4) may purchase force-placed insurance and charge the cost of that insurance to the borrower if the cost to the borrower of the force-placed insurance is less than the amount the small servicer would need to disburse from the borrower’s escrow account to ensure that the
§ 1024.18 Validation of contracts and liens.

Section 17 of RESPA (12 U.S.C. 2615) governs the validity of contracts and liens under RESPA.

Effective Date Note: At 78 FR 10876, Feb. 14, 2013, §1024.18 was removed and reserved, effective Jan. 10, 2014.

§ 1024.19 Enforcement.

(a) Enforcement policy. It is the policy of the Bureau regarding RESPA enforcement matters to cooperate with Federal, state, or local agencies having supervisory powers over lenders or other persons with responsibilities under RESPA. Federal agencies with supervisory powers over lenders may use their powers to require compliance with RESPA. In addition, failure to comply with RESPA may be grounds for administrative action by HUD under HUD regulation 2 CFR part 2424 concerning debarment, suspension, ineligibility of contractors and grantees, or under HUD regulation 24 CFR part 25 concerning the HUD Mortgagee Review Board. Nothing in this paragraph is a limitation on any other form of enforcement that may be legally available.

(b) Investigations. The procedures for investigations and investigational proceedings are set forth in part 1080 of this title.

Effective Date Note: At 78 FR 10876, Feb. 14, 2013, §1024.19 was removed and reserved, effective Jan. 10, 2014.

§ 1024.20 List of homeownership counseling organizations.

(a) Provision of list. (1) Except as otherwise provided in this section, not later than three business days after a lender, mortgage broker, or dealer receives an application, or information sufficient to complete an application, the lender must provide the loan applicant with a clear and conspicuous written list of homeownership counseling organizations that provide relevant counseling services in the loan applicant’s location. The list of homeownership counseling organizations distributed to each loan applicant under this section shall be obtained no earlier than 30 days prior to the time when the list is provided to the loan applicant from either:

(i) The Web site maintained by the Bureau for lenders to use in complying with the requirements of this section; or

(ii) Data made available by the Bureau or HUD for lenders to use in complying with the requirements of this section, provided that the data is used in accordance with instructions provided with the data.

(2) The list of homeownership counseling organizations provided under this section may be combined and provided with other mortgage loan disclosures required pursuant to Regulation Z, 12 CFR part 1026, or this part unless prohibited by Regulation Z or this part.

(3) A mortgage broker or dealer may provide the list of homeownership counseling organizations required under this section to any loan applicant from whom it receives or for whom it prepares an application. If the mortgage broker or dealer has provided the required list of homeownership counseling organizations, the lender is not required to provide an additional list. The lender is responsible for ensuring that the list of homeownership counseling organizations is provided to a loan applicant in accordance with this section.

(4) If the lender, mortgage broker, or dealer does not provide the list of homeownership counseling organizations required under this section to the loan applicant in person, the lender must mail or deliver the list to the loan applicant by other means. The list may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. 7001 et seq.

(5) The lender is not required to provide the list of homeownership counseling organizations required under this section if, before the end of the three-business-day period provided in paragraph (a)(1) of this section, the lender denies the application or the loan applicant withdraws the application.
§ 1024.21 Mortgage servicing transfers.

(a) Definitions. As used in this section:

Master servicer means the owner of the right to perform servicing, which may actually perform the servicing itself or may do so through a subservicer.

Mortgage servicing loan means a federally related mortgage loan, as that term is defined in §1024.2, subject to the exemptions in §1024.5, when the mortgage loan is secured by a first lien. The definition does not include subordinate lien loans or open-end lines of credit (home equity plans) covered by the Truth in Lending Act and Regulation Z, including open-end lines of credit secured by a first lien.

Qualified written request means a written correspondence from the borrower to the servicer prepared in accordance with paragraph (e)(2) of this section.

Subservicer means a servicer who does not own the right to perform servicing, but who does so on behalf of the master servicer.

Transferor servicer means a servicer, including a table funding mortgage broker or dealer on a first lien dealer loan, who transfers or will transfer the right to perform servicing functions pursuant to an agreement or understanding.

Transferee servicer means a servicer who obtains or who will obtain the right to perform servicing functions pursuant to an agreement or understanding.

(b) Servicing Disclosure Statement; Requirements. (1) At the time an application for a mortgage servicing loan is submitted, or within 3 business days after submission of the application, the lender, mortgage broker who anticipates using table funding, or dealer who anticipates a first lien dealer loan, who transfers or will transfer the right to perform servicing functions pursuant to an agreement or understanding.

Transferor servicer means a servicer, including a table funding mortgage broker or dealer on a first lien dealer loan, who transfers or will transfer the right to perform servicing functions pursuant to an agreement or understanding.

(2) Timeshare plans. A lender is not required to provide an applicant for a reverse mortgage transaction subject to 12 CFR 1026.33(a) the list of homeownership counseling organizations required under this section.

(3) Transfers. A lender is not required to provide an applicant for a mortgage loan secured by a timeshare, as described under 11 U.S.C. 101(53D), the list of homeownership counseling organizations required under this section.

(78 FR 6961, Jan. 31, 2013)

Effective Date Note: At 78 FR 6961, Jan. 31, 2013, §1024.20 was added, effective Jan. 10, 2014.
If the lender, table funding mortgage broker, or dealer in a first lien dealer loan will engage in the servicing of the mortgage loan for which the applicant has applied, the disclosure may consist of a statement that the entity will service such loan and does not intend to sell, transfer, or assign the servicing of the loan. If the lender, table funding mortgage broker, or dealer in a first lien dealer loan will not engage in the servicing of the mortgage loan for which the applicant has applied, the disclosure may consist of a statement that such entity intends to assign, sell, or transfer servicing of such mortgage loan before the first payment is due. In all other instances, the disclosure must state that the servicing of the loan may be assigned, sold or transferred while the loan is outstanding.

(c) Servicing Disclosure Statement; Delivery. The lender, table funding mortgage broker, or dealer that anticipates a first lien dealer loan shall deliver the Servicing Disclosure Statement within 3 business days from receipt of the application by hand delivery, by placing it in the mail, or, if the applicant agrees, by fax, email, or other electronic means. In the event the borrower is denied credit within the 3 business-day period, no servicing disclosure statement is required to be delivered. If co-applicants indicate the same address on their application, one copy delivered to that address is sufficient. If different addresses are shown by co-applicants on the application, a copy must be delivered to each of the co-applicants.

(d) Notices of Transfer; loan servicing—
(1) Requirement for notice. (i) Except as provided in this paragraph (d)(1)(i) or paragraph (d)(1)(ii) of this section, each transferor servicer and transferee servicer of any mortgage servicing loan shall deliver the Notice of Transfer to the borrower a least 15 days before the effective date of the transfer of the servicing of the mortgage servicing loan.
(2) Time of notice. (i) Except as provided in paragraph (d)(2)(ii) of this section:
(A) The transferor servicer shall deliver the Notice of Transfer to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage servicing loan;
(B) The transferee servicer shall deliver the Notice of Transfer to the borrower not more than 15 days after the effective date of the transfer; and
(C) The transferor and transferee servicers may combine their notices into one notice, which shall be delivered to the borrower not less than 15 days before the effective date of the transfer of the mortgage servicing loan.
(ii) The Notice of Transfer shall be delivered to the borrower by the transferor servicer or the transferee servicer not more than 30 days after the effective date of the transfer of the servicing of the mortgage servicing loan.
(3) Notices of Transfer; contents. The Notices of Transfer required under

(A) Transfers between affiliates;
(B) Transfers resulting from mergers or acquisitions of servicers or subservicers; and
(C) Transfers between master servicers, where the subservicer remains the same.
(i) The Federal Housing Administration (FHA) is not required under paragraph (d) of this section to submit to the borrower a Notice of Transfer in cases where a mortgage insured under the National Housing Act is assigned to FHA.

(2) Time of notice. (i) Except as provided in paragraph (d)(2)(ii) of this section:
(A) The transferor servicer shall deliver the Notice of Transfer to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage servicing loan;
(B) The transferee servicer shall deliver the Notice of Transfer to the borrower not more than 15 days after the effective date of the transfer; and
(C) The transferor and transferee servicers may combine their notices into one notice, which shall be delivered to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage servicing loan.

(ii) The Notice of Transfer shall be delivered to the borrower by the transferor servicer or the transferee servicer not more than 30 days after the effective date of the transfer of the servicing of the mortgage servicing loan.
(3) Notices of Transfer; contents. The Notices of Transfer required under

paragraph (d) of this section shall include the following information:

(i) The effective date of the transfer of servicing;

(ii) The name, consumer inquiry addresses (including, at the option of the servicer, a separate address where qualified written requests must be sent), and a toll-free or collect-call telephone number for an employee or department of the transferee servicer;

(iii) A toll-free or collect-call telephone number for an employee or department of the transferor servicer that can be contacted by the borrower for answers to servicing transfer inquiries;

(iv) The date on which the transferor servicer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments. These dates shall either be the same or consecutive days;

(v) Information concerning any effect the transfer may have on the terms or the continued availability of mortgage life or disability insurance, or any other type of optional insurance, and any action the borrower must take to maintain coverage;

(vi) A statement that the transfer of servicing does not affect any other term or condition of the mortgage documents, other than terms directly related to the servicing of the loan; and

(vii) A statement of the borrower’s rights in connection with complaint resolution, including the information set forth in paragraph (e) of this section. Appendix MS–2 of this part illustrates a statement satisfactory to the Bureau.

(4) Notices of Transfer; sample notice. Sample language that may be used to comply with the requirements of paragraph (d) of this section is set out in appendix MS–2 of this part. Minor modifications to the sample language may be made to meet the particular circumstances of the servicer, but the substance of the sample language shall not be omitted or substantially altered.

(5) Consumer protection during transfer of servicing. During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage servicing loan, if the transferor servicer (rather than the transferee servicer that should properly receive payment on the loan) receives payment on or before the applicable due date (including any grace period allowed under the loan documents), a late fee may not be imposed on the borrower with respect to that payment and the payment may not be treated as late for any other purposes.

(e) Duty of loan servicer to respond to borrower inquiries—(1) Notice of receipt of inquiry. Within 20 business days of a servicer of a mortgage servicing loan receiving a qualified written request from the borrower for information relating to the servicing of the loan, the servicer shall provide to the borrower a written response acknowledging receipt of the qualified written request. This requirement shall not apply if the action requested by the borrower is taken within that period and the borrower is notified of that action in accordance with the paragraph (f)(3) of this section. By notice either included in the Notice of Transfer or separately delivered by first-class mail, postage prepaid, a servicer may establish a separate and exclusive office and address for the receipt and handling of qualified written requests.

(2) Qualified written request; defined. (i) For purposes of paragraph (e) of this section, a qualified written request means a written correspondence (other than notice on a payment coupon or other payment medium supplied by the servicer) that includes, or otherwise enables the servicer to identify, the name and account of the borrower, and includes a statement of the reasons that the borrower believes the account is in error, if applicable, or that provides sufficient detail to the servicer regarding information relating to the servicing of the loan sought by the borrower.

(ii) A written request does not constitute a qualified written request if it is delivered to a servicer more than 1 year after either the date of transfer of servicing or the date that the mortgage servicing loan amount was paid in full, whichever date is applicable.

(3) Action with respect to the inquiry. Not later than 60 business days after receiving a qualified written request from the borrower, and, if applicable,
before taking any action with respect to the inquiry, the servicer shall:

(i) Make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and transmit to the borrower a written notification of the correction. This written notification shall include the name and telephone number of a representative of the servicer who can provide assistance to the borrower; or

(ii) After conducting an investigation, provide the borrower with a written explanation or clarification that includes:

(A) To the extent applicable, a statement of the servicer’s reasons for concluding the account is correct and the name and telephone number of an employee, office, or department of the servicer that can provide assistance to the borrower; or

(B) Information requested by the borrower, or an explanation of why the information requested is unavailable or cannot be obtained by the servicer, and the name and telephone number of an employee, office, or department of the servicer that can provide assistance to the borrower.

(4) Protection of credit rating. (i) During the 60-business day period beginning on the date of the servicer receiving from a borrower a qualified written request relating to a dispute on the borrower’s payments, a servicer may not provide adverse information regarding any payment that is the subject of the qualified written request to any consumer reporting agency (as that term is defined in section 603 of the Fair Credit Reporting Act, 15 U.S.C. 1681a).

(ii) In accordance with section 17 of RESPA (12 U.S.C. 2615), the protection of credit rating provision of paragraph (e)(4)(i) of this section does not impede a lender or servicer from pursuing any of its remedies, including initiating foreclosure, allowed by the underlying mortgage loan instruments.

(f) Damages and costs. (1) Whoever fails to comply with any provision of this section shall be liable to the borrower for each failure in the following amounts:

(i) Individuals. In the case of any action by an individual, an amount equal to the sum of any actual damages sustained by the individual as the result of the failure and, when there is a pattern or practice of noncompliance with the requirements of this section, any additional damages in an amount not to exceed $1,000.

(ii) Class actions. In the case of a class action, an amount equal to the sum of any actual damages to each borrower in the class that result from the failure and, when there is a pattern or practice of noncompliance with the requirements of this section, any additional damages in an amount not greater than $1,000 for each class member. However, the total amount of any additional damages in a class action may not exceed the lesser of $500,000 or 1 percent of the net worth of the servicer.

(iii) Costs. In addition, in the case of any successful action under paragraph (f) of this section, the costs of the action and any reasonable attorneys’ fees incurred in connection with the action.

(2) Nonliability. A transferor or transferee servicer shall not be liable for any failure to comply with the requirements of this section, if within 60 days after discovering an error (whether pursuant to a final written examination report or the servicer’s own procedures) and before commencement of an action under this section and the receipt of written notice of the error from the borrower, the servicer notifies the person concerned of the error and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person otherwise would have paid.

(g) Timely payments by servicer. If the terms of any mortgage servicing loan require the borrower to make payments to the servicer of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the mortgaged property, the servicer shall make payments from the escrow account in a timely manner for the taxes, insurance premiums, and other charges as the payments become due, as governed by the requirements in §1024.17(k).
(h) Preemption of state laws. A lender who makes a mortgage servicing loan or a servicer shall be considered to have complied with the provisions of any state law or regulation requiring notice to a borrower at the time of application for a loan or transfer of servicing of a loan if the lender or servicer complies with the requirements of this section. Any state law requiring notice to the borrower at the time of application or at the time of transfer of servicing of the loan is preempted, and there shall be no additional borrower disclosure requirements. Provisions of state law, such as those requiring additional notices to insurance companies or taxing authorities, are not preempted by section 6 of RESPA or this section, and this additional information may be added to a notice prepared under this section, if the procedure is allowable under state law.

Effective Date Note: At 78 FR 10876, Feb. 14, 2013, §1024.21 was removed, effective Jan. 10, 2014.

§ 1024.22 Severability.
If any particular provision of this part or the application of any particular provision to any person or circumstance is held invalid, the remainder of this part and the application of such provisions to other persons or circumstances shall not be affected by such holding.

Effective Date Note: At 78 FR 10876, Feb. 14, 2013, §1024.22 was removed, effective Jan. 10, 2014.

§ 1024.23 ESIGN applicability.
The Electronic Signatures in Global and National Commerce Act ("ESIGN"), 15 U.S.C. 7001–7031, shall apply to this part.

Effective Date Note: At 78 FR 10876, Feb. 14, 2013, §1024.21 was removed, effective Jan. 10, 2014.

Subpart C—Mortgage Servicing

Source: 78 FR 10876, Feb. 14, 2013, unless otherwise noted.

Effective Date Note: At 78 FR 10876, Feb. 14, 2013 subpart C was added, effective Jan. 10, 2014.

§ 1024.30 Scope.
(a) In general. Except as provided in paragraph (b) and (c) of this section, this subpart applies to any mortgage loan, as that term is defined in §1024.31.
(b) Exemptions. Except as otherwise provided in §1024.41(j), §§1024.38 through 1024.41 of this subpart shall not apply to the following:
(1) A servicer that qualifies as a small servicer pursuant to 12 CFR 1026.41(e)(4);
(2) A servicer with respect to any reverse mortgage transaction as that term is defined in §1024.31; and
(3) A servicer with respect to any mortgage loan for which the servicer is a qualified lender as that term is defined in 12 CFR 617.7000.
(c) Scope of certain sections. (1) Section 1024.33(a) only applies to mortgage loans that are secured by a first lien.
(2) The procedures set forth in §§1024.39 through 1024.41 of this subpart only apply to a mortgage loan that is secured by a property that is a borrower’s principal residence.

Effective Date Notes: 1. At 78 FR 60437, Oct. 1, 2013, §1024.30 was amended by revising paragraph (a), effective Jan. 10, 2014. For the convenience of the user, the revised text is set forth as follows:

§ 1024.30 Scope.

(a) In general. Except as provided in paragraphs (b) and (c) of this section, this subpart applies to any mortgage loan, as that term is defined in §1024.31.

2. At 78 FR 80104, Dec. 31, 2013, §1024.30 was amended by revising paragraph (c)(1), effective Aug. 1, 2015. For the convenience of the user, the revised text is set forth as follows:

§ 1024.30 Scope.

(c) Scope of certain sections. (1) Section 1024.33(a) only applies to reverse mortgage transactions.

§ 1024.31 Definitions.
For purposes of this subpart: Consumer reporting agency has the meaning set forth in section 603 of the Fair Credit Reporting Act, 15 U.S.C. 1681a.
Day means calendar day.
§ 1024.32 General disclosure requirements.

(a) Disclosure requirements. (1) Form of disclosures. Except as otherwise provided in this subpart, disclosures required under this subpart must be clear and conspicuous, in writing, and in a form that a recipient may keep. The disclosures required by this subpart may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act, as set forth in §1024.3. A servicer may use commonly accepted or readily understandable abbreviations in complying with the disclosure requirements of this subpart.

(2) Foreign language disclosures. Disclosures required under this subpart may be made in a language other than English, provided that the disclosures are made available in English upon a recipient’s request.

(b) Additional information; disclosures required by other laws. Unless expressly prohibited in this subpart, by other applicable law, such as the Truth in Lending Act (15 U.S.C. 1601 et seq.) or the Truth in Savings Act (12 U.S.C. 4301 et seq.), or by the terms of an agreement with a Federal or State regulatory agency, a servicer may include additional information in a disclosure required under this subpart or combine any disclosure required under this subpart with any disclosure required by such other law.

§ 1024.33 Mortgage servicing transfers.

(a) Servicing disclosure statement. Within three days (excluding legal public holidays, Saturdays, and Sundays) after a person applies for a first-lien mortgage loan, the lender, mortgage broker who anticipates using table funding, or dealer in a first-lien dealer loan shall provide to the person a servicing disclosure statement that states whether the servicing of the mortgage loan may be assigned, sold, or transferred to any other person at any time.

(1) Form of disclosures. Except as otherwise provided in this subpart, disclosures required under this subpart must be clear and conspicuous, in writing, and in a form that a recipient may keep. The disclosures required by this subpart may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act, as set forth in §1024.3. A servicer may use commonly accepted or readily understandable abbreviations in complying with the disclosure requirements of this subpart.

(2) Foreign language disclosures. Disclosures required under this subpart may be made in a language other than English, provided that the disclosures are made available in English upon a recipient’s request.

(b) Additional information; disclosures required by other laws. Unless expressly prohibited in this subpart, by other applicable law, such as the Truth in Lending Act (15 U.S.C. 1601 et seq.) or the Truth in Savings Act (12 U.S.C. 4301 et seq.), or by the terms of an agreement with a Federal or State regulatory agency, a servicer may include additional information in a disclosure required under this subpart or combine any disclosure required under this subpart with any disclosure required by such other law.
who applies for a first-lien mortgage loan is denied credit within the three-day period, a servicing disclosure statement is not required to be delivered.

(b) Notices of transfer of loan servicing.

(1) Requirement for notice. Except as provided in paragraph (b)(2) of this section, each transferor servicer and transferee servicer of any mortgage loan shall provide to the borrower a notice of transfer for any assignment, sale, or transfer of the servicing of the mortgage loan. The notice must contain the information described in paragraph (b)(4) of this section. Appendix MS–2 of this part contains a model form for the disclosures required under this paragraph (b).

(2) Certain transfers excluded. (i) The following transfers are not assignments, sales, or transfers of mortgage loan servicing for purposes of this section if there is no change in the payee, address to which payment must be delivered, account number, or amount of payment due:

(A) A transfer between affiliates;

(B) A transfer that results from mergers or acquisitions of servicers or subservicers;

(C) A transfer that occurs between master servicers without changing the subservicer;

(ii) The Federal Housing Administration (FHA) is not required to provide to the borrower a notice of transfer where a mortgage insured under the National Housing Act is assigned to the FHA.

(3) Time of notice. (i) In general. Except as provided in paragraphs (b)(3)(ii) and (iii) of this section, the transferor servicer shall provide the notice of transfer to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage loan. The transferee servicer shall provide the notice of transfer to the borrower not more than 15 days after the effective date of the transfer. The transferor and transferee servicers may provide a single notice, in which case the notice shall be provided not less than 15 days before the effective date of the transfer of the servicing of the mortgage loan.

(ii) Extended time. The notice of transfer shall be provided to the borrower by the transferor servicer or the transferee servicer not more than 30 days after the effective date of the transfer of the servicing of the mortgage loan in any case in which the transfer of servicing is preceded by:

(A) Termination of the contract for servicing the loan for cause;

(B) Commencement of proceedings for bankruptcy of the servicer;

(C) Commencement of proceedings by the FDIC for conservatorship or receivership of the servicer or an entity that owns or controls the servicer; or

(D) Commencement of proceedings by the NCUA for appointment of a conservator or liquidating agent of the servicer or an entity that owns or controls the servicer.

(iii) Notice provided at settlement. Notices of transfer provided at settlement by the transferor servicer and transferee servicer, whether as separate notices or as a combined notice, satisfy the timing requirements of paragraph (b)(3) of this section.

(4) Contents of notice. The notices of transfer shall include the following information:

(i) The effective date of the transfer of servicing;

(ii) The name, address, and a collect call or toll-free telephone number for an employee or department of the transferee servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries;

(iii) The name, address, and a collect call or toll-free telephone number for an employee or department of the transferor servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries;

(iv) The date on which the transferor servicer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments. These dates shall either be the same or consecutive days;

(v) Whether the transfer will affect the terms or the continued availability of mortgage life or disability insurance, or any other type of optional insurance, and any action the borrower must take to maintain such coverage; and

(vi) A statement that the transfer of servicing does not affect any term or condition of the mortgage loan other
than terms directly related to the servicing of the loan.

(c) Borrower payments during transfer of servicing. (1) Payments not considered late. During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage loan, if the transferor servicer (rather than the transferee servicer that should properly receive payment on the loan) receives payment on or before the applicable due date (including any grace period allowed under the mortgage loan instruments), a payment may not be treated as late for any purpose.

(2) Treatment of payments. Beginning on the effective date of transfer of the servicing of any mortgage loan, with respect to payments received incorrectly by the transferor servicer (rather than the transferee servicer that should properly receive the payment on the loan), the transferor servicer shall promptly either:

(i) Transfer the payment to the transferee servicer for application to a borrower’s mortgage loan account, or

(ii) Return the payment to the person that made the payment and notify such person of the proper recipient of the payment.

(d) Preemption of State laws. A lender who makes a mortgage loan or a servicer shall be considered to have complied with the provisions of any State law or regulation requiring notice to a borrower at the time of application for a loan or transfer of servicing of a loan if the lender or servicer complies with the requirements of this section. Any State law requiring notice to the borrower at the time of application for a loan or transfer of servicing of a loan is preempted, and there shall be no additional borrower disclosure requirements. Provisions of State law, such as those requiring additional notices to insurance companies or taxing authorities, that are not preempted by section 6 of RESPA or this section, and this additional information may be added to a notice provided under this section, if permitted under State law.

EFFECTIVE DATE NOTE: At 78 FR 80104, Dec. 31, 2013, §1024.33 was amended by revising paragraph (a), effective Aug. 1, 2015. For the convenience of the user, the added and revised text is set forth as follows:

§ 1024.33 Mortgage servicing transfers.

(a) Servicing disclosure statement. Within three days (excluding legal public holidays, Saturdays, and Sundays) after a person applies for a reverse mortgage transaction, the lender, mortgage broker who anticipates using table funding, or dealer in a first-lien dealer loan shall provide to the person a servicing disclosure statement that states whether the servicing of the mortgage loan may be assigned, sold, or transferred to any other person at any time. Appendix MS–1 of this part contains a model form for the disclosures required under this paragraph (a). If a person who applies for a reverse mortgage transaction is denied credit within the three-day period, a servicing disclosure statement is not required to be delivered.

§ 1024.34 Timely escrow payments and treatment of escrow account balances.

(a) Timely escrow disbursements required. If the terms of a mortgage loan require the borrower to make payments to the servicer of the mortgage loan for deposit into an escrow account to pay taxes, insurance premiums, and other charges for the mortgaged property, the servicer shall make payments from the escrow account in a timely manner, that is, on or before the deadline to avoid a penalty, as governed by the requirements in §1024.17(k).

(b) Refund of escrow balance. (1) In general. Except as provided in paragraph (b)(2) of this section, within 20 days (excluding legal public holidays, Saturdays, and Sundays) of a borrower’s payment of a mortgage loan in full, a servicer shall return to the borrower any amounts remaining in an escrow account that is within the servicer’s control.

(2) Servicer may credit funds to a new escrow account. Notwithstanding paragraph (b)(1) of this section, if the borrower agrees, a servicer may credit any amounts remaining in an escrow account that is within the servicer’s control to an escrow account for a new mortgage loan as of the date of the settlement of the new mortgage loan if the new mortgage loan is provided to the borrower by a lender that:

(i) Was also the lender to whom the prior mortgage loan was initially payable;
§ 1024.35 Error resolution procedures.

(a) Notice of error. A servicer shall comply with the requirements of this section for any written notice from the borrower that asserts an error and that includes the name of the borrower, information that enables the servicer to identify the borrower’s mortgage loan account, and the error the borrower believes has occurred. A notice on a payment coupon or other payment form supplied by the servicer need not be treated by the servicer as a notice of error. A qualified written request that asserts an error relating to the servicing of a mortgage loan is a notice of error for purposes of this section, and a servicer must comply with all requirements applicable to a notice of error with respect to such qualified written request.

(b) Scope of error resolution. For purposes of this section, the term “error” refers to the following categories of covered errors:

1. Failure to accept a payment that conforms to the servicer’s written requirements for the borrower to follow in making payments.

2. Failure to apply an accepted payment to principal, interest, escrow, or other charges under the terms of the mortgage loan and applicable law.

3. Failure to credit a payment to a borrower’s mortgage loan account as of the date of receipt in violation of 12 CFR 1026.36(c)(1).

4. Failure to pay taxes, insurance premiums, or other charges, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay, in a timely manner as required by §1024.34(a), or to refund an escrow account balance as required by §1024.34(b).

5. Imposition of a fee or charge that the servicer lacks a reasonable basis to impose upon the borrower.

6. Failure to provide an accurate payoff balance amount upon a borrower’s request in violation of section 12 CFR 1026.36(c)(3).

7. Failure to provide accurate information to a borrower regarding loss mitigation options and foreclosure, as required by §1024.39.

8. Failure to transfer accurately and timely information relating to the servicing of a borrower’s mortgage loan account to a transferee servicer.

9. Making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process in violation of §1024.41(f) or (j).

10. Moving for foreclosure judgment or order of sale, or conducting a foreclosure sale in violation of §1024.41(g) or (j).

11. Any other error relating to the servicing of a borrower’s mortgage loan.

(c) Contact information for borrowers to assert errors. A servicer may, by written notice provided to a borrower, establish an address that a borrower must use to submit a notice of error in accordance with the procedures in this section. The notice shall include a statement that the borrower must use the established address to assert an error. If a servicer designates a specific address for receiving notices of error, the servicer shall designate the same address for receiving information requests pursuant to §1024.36(b). A servicer shall provide a written notice to a borrower before any change in the address used for receiving a notice of error. A servicer that designates an address for receipt of notices of error must post the designated address on any Web site maintained by the servicer if the Web site lists any contact address for the servicer.

(d) Acknowledgment of receipt. Within five days (excluding legal public holidays, Saturdays, and Sundays) of a servicer receiving a notice of error from a borrower, the servicer shall provide to the borrower a written response acknowledging receipt of the notice of error.

(e) Response to notice of error. (1) Investigation and response requirements. (i) In general. Except as provided in paragraphs (f) and (g) of this section, a servicer must respond to a notice of error by either:
§ 1024.35  

(A) Correcting the error or errors identified by the borrower and providing the borrower with a written notification of the correction, the effective date of the correction, and contact information, including a telephone number, for further assistance; or  

(B) Conducting a reasonable investigation and providing the borrower with a written notification that includes a statement that the servicer has determined that no error occurred, a statement of the reason or reasons for this determination, a statement of the borrower’s right to request such documents, and contact information, including a telephone number, for further assistance.  

(ii) Different or additional error. If during a reasonable investigation of a notice of error, a servicer concludes that errors occurred other than, or in addition to, the error or errors alleged by the borrower, the servicer shall correct all such additional errors and provide the borrower with a written notification that describes the errors the servicer identified, the action taken to correct the errors, the effective date of the correction, and contact information, including a telephone number, for further assistance.  

(2) Requesting information from borrower. A servicer may request supporting documentation from a borrower in connection with the investigation of an asserted error, but may not:  

(i) Require a borrower to provide such information as a condition of investigating an asserted error; or  

(ii) Determine that no error occurred because the borrower failed to provide any requested information without conducting a reasonable investigation pursuant to paragraph (e)(1)(i)(B) of this section.  

(3) Time limits. (i) In general. A servicer must comply with the requirements of paragraph (e)(1) of this section:  

(A) Not later than seven days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the notice of error for errors asserted under paragraph (b)(6) of this section.  

(B) Prior to the date of a foreclosure sale or within 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the notice of error, whichever is earlier, for errors asserted under paragraphs (b)(9) and (10) of this section.  

(C) For all other asserted errors, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the applicable notice of error.  

(ii) Extension of time limit. For asserted errors governed by the time limit set forth in paragraph (e)(3)(i)(C) of this section, a servicer may extend the time period for responding by an additional 15 days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the 30-day period, the servicer notifies the borrower of the extension and the reasons for the extension in writing. A servicer may not extend the time period for responding to errors asserted under paragraph (b)(6), (9), or (10) of this section.  

(4) Copies of documentation. A servicer shall provide to the borrower, at no charge, copies of documents and information relied upon by the servicer in making its determination that no error occurred within 15 days (excluding legal public holidays, Saturdays, and Sundays) of receiving the borrower’s request for such documents. A servicer is not required to provide documents relied upon that constitute confidential, proprietary or privileged information. If a servicer withholds documents relied upon because it has determined that such documents constitute confidential, proprietary or privileged information, the servicer must notify the borrower of its determination in writing within 15 days (excluding legal public holidays, Saturdays, and Sundays) of receipt of the borrower’s request for such documents.  

(f) Alternative compliance. (1) Early correction. A servicer is not required to comply with paragraphs (d) and (e) of this section if the servicer corrects the error or errors asserted by the borrower and notifies the borrower of that correction in writing within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving the notice of error.
§ 1024.36 Requests for information.

(a) Information request. A servicer shall comply with the requirements of this section for any written request for

(B) The mortgage loan balance was paid in full.

(2) Notice to borrower. If a servicer determines that, pursuant to this paragraph (g), the servicer is not required to comply with the requirements of paragraphs (d), (e), and (i) of this section, the servicer shall notify the borrower of its determination in writing not later than five days (excluding legal public holidays, Saturdays, and Sundays) after making such determination. The notice to the borrower shall set forth the basis under paragraph (g)(1) of this section upon which the servicer has made such determination.

(h) Payment requirements prohibited. A servicer shall not charge a fee, or require a borrower to make any payment that may be owed on a borrower’s account, as a condition of responding to a notice of error.

(i) Effect on servicer remedies.

(1) Adverse information. After receipt of a notice of error, a servicer may not, for 60 days, furnish adverse information to any consumer reporting agency regarding any payment that is the subject of the notice of error.

(2) Remedies permitted. Except as set forth in this section with respect to an assertion of error under paragraph (b)(9) or (10) of this section, nothing in this section shall limit or restrict a lender or servicer from pursuing any remedy it has under applicable law, including initiating foreclosure or proceeding with a foreclosure sale.

EFFECTIVE DATE NOTE: At 78 FR 60437, Oct. 1, 2013, §1024.35 was amended by revising paragraph (g)(1)(iii)(B), effective Jan. 10, 2014. For the convenience of the user, the revised text is set forth as follows:

§ 1024.35 Error resolution procedures.

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(B) The mortgage loan is discharged.

§ 1024.36 Requests for information.

(a) Information request. A servicer shall comply with the requirements of this section for any written request for

(A) Servicing for the mortgage loan that is the subject of the asserted error was transferred from the servicer receiving the notice of error to a transferee servicer; or

(B) The mortgage loan balance was paid in full.
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information from a borrower that includes the name of the borrower, information that enables the servicer to identify the borrower’s mortgage loan account, and states the information the borrower is requesting with respect to the borrower’s mortgage loan. A request on a payment coupon or other payment form supplied by the servicer need not be treated by the servicer as a request for information. A request for a payoff balance need not be treated by the servicer as a request for information. A qualified written request that requests information relating to the servicing of the mortgage loan is a request for information for purposes of this section, and a servicer must comply with all requirements applicable to a request for information with respect to such qualified written request.

(b) Contact information for borrowers to request information. A servicer may, by written notice provided to a borrower, establish an address that a borrower must use to request information in accordance with the procedures in this section. The notice shall include a statement that the borrower must use the established address to request information. If a servicer designates a specific address for receiving information requests, a servicer shall designate the same address for receiving notices of error pursuant to §1024.35(c). A servicer shall provide a written notice to a borrower before any change in the address used for receiving an information request. A servicer that designates an address for receipt of information requests must post the designated address on any Web site maintained by the servicer if the Web site lists any contact address for the servicer.

(c) Acknowledgment of receipt. Within five days (excluding legal public holidays, Saturdays, and Sundays) of a servicer receiving an information request from a borrower, the servicer shall provide to the borrower a written response acknowledging receipt of the information request.

(d) Response to information request. (1) Investigation and response requirements. Except as provided in paragraphs (e) and (f) of this section, a servicer must respond to an information request by either:

   (i) Providing the borrower with the requested information and contact information, including a telephone number, for further assistance in writing; or
   (ii) Conducting a reasonable search for the requested information and providing the borrower with a written notification that states that the servicer has determined that the requested information is not available to the servicer, provides the basis for the servicer’s determination, and provides contact information, including a telephone number, for further assistance.

   (2) Time limits. (i) In general. A servicer must comply with the requirements of paragraph (d)(1) of this section:

      (A) Not later than 10 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives an information request for the identity of, and address or other relevant contact information for, the owner or assignee of a mortgage loan; and
      (B) For all other requests for information, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the information request.

   (ii) Extension of time limit. For requests for information governed by the time limit set forth in paragraph (d)(2)(i)(B) of this section, a servicer may extend the time period for responding by an additional 15 days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the 30-day period, the servicer notifies the borrower of the extension and the reasons for the extension in writing. A servicer may not extend the time period for requests for information governed by paragraph (d)(2)(i)(A) of this section.

   (e) Alternative compliance. A servicer is not required to comply with paragraphs (c) and (d) of this section if the servicer provides the borrower with the information requested and contact information, including a telephone number, for further assistance in writing within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving an information request.

   (f) Requirements not applicable. (1) In general. A servicer is not required to
comply with the requirements of paragraphs (c) and (d) of this section if the servicer reasonably determines that any of the following apply:

(i) **Duplicative information.** The information requested is substantially the same as information previously requested by the borrower for which the servicer has previously complied with its obligation to respond pursuant to paragraphs (c) and (d) of this section.

(ii) **Confidential, proprietary or privileged information.** The information requested is confidential, proprietary or privileged.

(iii) **Irrelevant information.** The information requested is not directly related to the borrower’s mortgage loan account.

(iv) **Overbroad or unduly burdensome information request.** The information request is overbroad or unduly burdensome. An information request is overbroad if a borrower requests that the servicer provide an unreasonable volume of documents or information to a borrower. An information request is unduly burdensome if a diligent servicer could not respond to the information request without either exceeding the maximum time limit permitted by paragraph (d)(2) of this section or incurring costs (or dedicating resources) that would be unreasonable in light of the circumstances. To the extent a servicer can reasonably identify a valid information request in a submission that is otherwise overbroad or unduly burdensome, the servicer shall comply with the requirements of paragraphs (c) and (d) of this section with respect to that requested information.

(v) **Untimely information request.** The information request is delivered to a servicer more than one year after:

(A) Servicing for the mortgage loan that is the subject of the information request was transferred from the servicer receiving the request for information to a transferee servicer; or

(B) The mortgage loan balance was paid in full.

(2) **Notice to borrower.** If a servicer determines that, pursuant to this paragraph (f), the servicer is not required to comply with the requirements of paragraphs (c) and (d) of this section, the servicer shall notify the borrower of its determination in writing not later than five days (excluding legal public holidays, Saturdays, and Sundays) after making such determination. The notice to the borrower shall set forth the basis under paragraph (f)(1) of this section upon which the servicer has made such determination.

(g) **Payment requirement limitations.** (1) **Fees prohibited.** Except as set forth in paragraph (g)(2) of this section, a servicer shall not charge a fee, or require a borrower to make any payment that may be owed on a borrower’s account, as a condition of responding to an information request.

(2) **Fee permitted.** Nothing in this section shall prohibit a servicer from charging a fee for providing a beneficiary notice under applicable State law, if such a fee is not otherwise prohibited by applicable law.

(h) **Servicer remedies.** Nothing in this section shall prohibit a servicer from furnishing adverse information to any consumer reporting agency or pursuing any of its remedies, including initiating foreclosure or proceeding with a foreclosure sale, allowed by the underlying mortgage loan instruments, during the time period that response to an information request notice is outstanding.

**EFFECTIVE DATE NOTE:** At 78 FR 60437, Oct. 1, 2013, §1024.36 was amended by revising paragraph (f)(1)(v)(B), effective Jan. 10, 2014. For the convenience of the user, the revised text is set forth as follows:

§ 1024.37 Force-placed insurance.

(a) Definition of force-placed insurance.

(1) In general. For the purposes of this section, the term “force-placed insurance” means hazard insurance obtained by a servicer on behalf of the owner or assignee of a mortgage loan that insures the property securing such loan.
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(2) Types of insurance not considered force-placed insurance. The following insurance does not constitute “force-placed insurance” under this section:

(i) Hazard insurance required by the Flood Disaster Protection Act of 1973.

(ii) Hazard insurance obtained by a borrower but renewed by the borrower’s servicer as described in §1024.17(k)(1), (2), or (5).

(iii) Hazard insurance obtained by a borrower but renewed by the borrower’s servicer at its discretion, if the borrower agrees.

(b) Basis for charging borrower for force-placed insurance. A servicer may not assess on a borrower a premium charge or fee related to force-placed insurance unless the servicer has a reasonable basis to believe that the borrower has failed to comply with the mortgage loan contract’s requirement to maintain hazard insurance.

(c) Requirements before charging borrower for force-placed insurance. (1) In general. Before a servicer assesses on a borrower any premium charge or fee related to force-placed insurance, the servicer must:

(i) Deliver to a borrower or place in the mail a written notice containing the information required by paragraph (c)(2) of this section at least 45 days before a servicer assesses on a borrower such charge or fee;

(ii) Deliver to the borrower or place in the mail a written notice in accordance with paragraph (d)(1) of this section; and

(iii) By the end of the 15-day period beginning on the date the written notice described in paragraph (c)(1)(ii) of this section was delivered to the borrower or placed in the mail, not have received, from the borrower or otherwise, evidence demonstrating that the borrower has had in place, continuously, hazard insurance coverage that complies with the loan contract’s requirements to maintain hazard insurance.

(2) Content of notice. The notice required by paragraph (c)(1)(i) of this section shall set forth the following information:

(i) The date of the notice;

(ii) The servicer’s name and mailing address;

(iii) The borrower’s name and mailing address;

(iv) A statement that requests the borrower to provide hazard insurance information for the borrower’s property and identifies the property by its physical address;

(v) A statement that the borrower’s hazard insurance is expiring or has expired, as applicable, and that the servicer does not have evidence that the borrower has hazard insurance coverage past the expiration date, and that, if applicable, identifies the type of hazard insurance for which the servicer lacks evidence of coverage;

(vi) A statement that hazard insurance is required on the borrower’s property, and that the servicer has purchased or will purchase, as applicable, such insurance at the borrower’s expense;

(vii) A statement requesting the borrower to promptly provide the servicer with insurance information;

(viii) A description of the requested insurance information and how the borrower may provide such information, and if applicable, a statement that the requested information must be in writing;

(ix) A statement that insurance the servicer has purchased or purchases:

(A) May cost significantly more than hazard insurance purchased by the borrower;

(B) Not provide as much coverage as hazard insurance purchased by the borrower;

(x) The servicer’s telephone number for borrower inquiries; and

(xi) If applicable, a statement advising the borrower to review additional information provided in the same transmittal.

(3) Format. A servicer must set the information required by paragraphs (c)(2)(iv), (vi), and (ix)(A) and (B) in bold text, except that the information about the physical address of the borrower’s property required by paragraph (c)(2)(iv) of this section may be set in regular text. A servicer may use form MS–3A in appendix MS–3 of this part to comply with the requirements of paragraphs (c)(1)(i) and (2) of this section.

(4) Additional information. A servicer may not include any information other
than information required by paragraphs (c)(2) of this section in the written notice required by paragraph (c)(1)(i) of this section. However, a servicer may provide such additional information to a borrower on separate pieces of paper in the same transmittal.

(d) Reminder notice. (1) In general. The notice required by paragraph (c)(1)(ii) of this section shall be delivered to the borrower or placed in the mail at least 15 days before a servicer assesses on a borrower a premium charge or fee related to force-placed insurance. A servicer may not deliver to a borrower or place in the mail the notice required by paragraph (c)(1)(i) of this section until at least 30 days after delivering to the borrower or placing in the mail the written notice required by paragraph (c)(1)(i) of this section.

(2) Content of the reminder notice. (i) Servicer receiving no insurance information. A servicer that receives no hazard insurance information after delivering to the borrower or placing in the mail the notice required by paragraph (c)(1)(i) of this section must set forth in the notice required by paragraph (c)(1)(ii) of this section:

(A) The date of the notice;
(B) A statement that the notice is the second and final notice;
(C) The information required by paragraphs (c)(2)(ii) through (xi) of this section;
(D) The cost of the force-placed insurance, stated as an annual premium, except if a servicer does not know the cost of force-placed insurance, a reasonable estimate shall be disclosed and identified as such.

(ii) Servicer not receiving demonstration of continuous coverage. A servicer that has received hazard insurance information after delivering to a borrower or placing in the mail the notice required by paragraph (c)(1)(i) of this section, but has not received, from the borrower or otherwise, evidence demonstrating that the borrower has had hazard insurance coverage in place continuously, must set forth in the notice required by paragraph (c)(1)(ii) of this section the following information:

(A) The date of the notice;
(B) The information required by paragraphs (c)(2)(ii) through (iv), (x), (xi), and (d)(2)(i)(B) and (D) of this section;
(C) A statement that the servicer has received the hazard insurance information that the borrower provided;
(D) A statement that requests the borrower to provide the information that is missing;
(E) A statement that the borrower will be charged for insurance the servicer has purchased or purchases for the period of time during which the servicer is unable to verify coverage;

(3) Format. A servicer must set the information required by paragraphs (d)(2)(i)(B) and (D) of this section in bold text. A servicer may use form MS–3B in appendix MS–3 of this part to comply with the requirements of paragraphs (d)(1) and (d)(2)(i) of this section. A servicer may use form MS–3C in appendix MS–3 of this part to comply with the requirements of paragraphs (d)(1) and (d)(2)(i) of this section.

(4) Additional information. As applicable, a servicer may not include any information other than information required by paragraph (d)(2)(i) or (ii) of this section in the written notice required by paragraph (c)(1)(ii) of this section. However, a servicer may provide such additional information to a borrower on separate pieces of paper in the same transmittal.

(5) Updating notice with borrower information. If a servicer receives new information about a borrower’s hazard insurance after a written notice required by paragraph (c)(1)(i) of this section has been put into production, the servicer is not required to update such notice based on the new information so long as the notice was put into production a reasonable time prior to the servicer delivering the notice to the borrower or placing the notice in the mail.

(e) Renewing or replacing force-placed insurance. (1) In general. Before a servicer assesses on a borrower a premium charge or fee related to renewing or replacing existing force-placed insurance, a servicer must:

(i) Deliver to the borrower or place in the mail a written notice containing the information set forth in paragraph (e)(2) of this section at least 45 days before assessing on a borrower such charge or fee; and
(ii) By the end of the 45-day period beginning on the date the written notice required by paragraph (e)(1)(i) of this section was delivered to the borrower or placed in the mail, not have received, from the borrower or otherwise, evidence demonstrating that the borrower has purchased hazard insurance coverage that complies with the loan contract’s requirements to maintain hazard insurance.

(iii) Charging a borrower before end of notice period. Notwithstanding paragraphs (e)(1)(i) and (ii) of this section, if not prohibited by State or other applicable law, if a servicer has renewed or replaced existing force-placed insurance and receives evidence demonstrating that the borrower lacked insurance coverage for some period of time following the expiration of the existing force-placed insurance (including during the notice period prescribed by paragraph (e)(1) of this section), the servicer may, promptly upon receiving such evidence, assess on the borrower a premium charge or fee related to renewing or replacing existing force-placed insurance for that period of time.

(2) Content of renewal notice. The notice required by paragraph (e)(1)(i) of this section shall set forth the following information:

(i) The date of the notice;

(ii) The servicer’s name and mailing address;

(iii) The borrower’s name and mailing address;

(iv) A statement that requests the borrower to update the hazard insurance information for the borrower’s property and identifies the borrower’s property by its physical address;

(v) A statement that the servicer previously purchased insurance on the borrower’s property and assessed the cost of the insurance to the borrower because the servicer did not have evidence that the borrower had hazard insurance coverage for the property;

(vi) A statement that:

(A) The insurance the servicer purchased previously has expired or is expiring, as applicable; and

(B) Because hazard insurance is required on the borrower’s property, the servicer intends to maintain insurance on the property by renewing or replacing the insurance it previously purchased;

(vii) A statement informing the borrower:

(A) That insurance the servicer purchases may cost significantly more than hazard insurance purchased by the borrower;

(B) That such insurance may not provide as much coverage as hazard insurance purchased by the borrower; and

(C) The cost of the force-placed insurance, stated as an annual premium, except if a servicer does not know the cost of force-placed insurance, a reasonable estimate shall be disclosed and identified as such.

(viii) A statement that if the borrower purchases hazard insurance, the borrower should promptly provide the servicer with insurance information.

(ix) A description of the requested insurance information and how the borrower may provide such information, and if applicable, a statement that the requested information must be in writing;

(x) The servicer’s telephone number for borrower inquiries; and

(xi) If applicable, a statement advising a borrower to review additional information provided in the same transmission.

(3) Format. A servicer must set the information required by paragraphs (e)(2)(iv), (vi)(B), and (vii)(A) through (C) of this section in bold text, except that the information about the physical address of the borrower’s property required by paragraph (e)(2)(iv) may be set in regular text. A servicer may use form MS-3D in appendix MS-3 of this part to comply with the requirements of paragraphs (e)(1)(i) and (2) of this section.

(4) Additional information. As applicable, a servicer may not include any information other than information required by paragraph (e)(2) of this section in the written notice required by paragraph (e)(1) of this section. However, a servicer may provide such additional information to a borrower on separate pieces of paper in same transmission.

(5) Frequency of renewal notices. Before each anniversary of a servicer purchasing force-placed insurance on a borrower’s property, the servicer shall
§ 1024.38 General servicing policies, procedures, and requirements.

(a) Reasonable policies and procedures. A servicer shall maintain policies and procedures that are reasonably designed to achieve the objectives set forth in paragraph (b) of this section.

(b) Objectives. (1) Accessing and providing timely and accurate information. The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:

(i) Provide accurate and timely disclosures to a borrower as required by this subpart or other applicable law;

(ii) Investigate, respond to, and, as appropriate, make corrections in response to complaints asserted by a borrower;

(iii) Provide a borrower with accurate and timely information and documents in response to the borrower’s requests for information with respect to the borrower’s mortgage loan;

(iv) Provide owners or assignees of mortgage loans with accurate and current information and documents about all mortgage loans they own;

(v) Submit documents or filings required for a foreclosure process, including documents or filings required by a court of competent jurisdiction, that reflect accurate and current information and that comply with applicable law; and

(vi) Upon notification of the death of a borrower, promptly identify and facilitate communication with the successor in interest of the deceased borrower with respect to the property secured by the deceased borrower’s mortgage loan.

(2) Properly evaluating loss mitigation applications. The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:

(i) Provide accurate information regarding loss mitigation options available to a borrower from the owner or assignee of the borrower’s mortgage loan;

(ii) Identify with specificity all loss mitigation options for which borrowers
may be eligible pursuant to any requirements established by an owner or assignee of the borrower’s mortgage loan;

(iii) Provide prompt access to all documents and information submitted by a borrower in connection with a loss mitigation option to servicer personnel that are assigned to assist the borrower pursuant to §1024.40;

(iv) Identify documents and information that a borrower is required to submit to complete a loss mitigation application and facilitate compliance with the notice required pursuant to §1024.41(b)(2)(i)(B); and

(v) Properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options for which the borrower may be eligible pursuant to any requirements established by the owner or assignee of the borrower’s mortgage loan and, where applicable, in accordance with the requirements of §1024.41.

(3) Facilitating oversight of, and compliance by, service providers. The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:

(i) Provide appropriate servicer personnel with access to accurate and current documents and information reflecting actions performed by service providers;

(ii) Facilitate periodic reviews of service providers, including by providing appropriate servicer personnel with documents and information necessary to audit compliance by service providers with the servicer’s contractual obligations and applicable law; and

(iii) Facilitate the sharing of accurate and current information regarding the status of any evaluation of a borrower’s loss mitigation application and the status of any foreclosure proceeding among appropriate servicer personnel, including any personnel assigned to a borrower’s mortgage loan account as described in §1024.40, and appropriate service provider personnel, including service provider personnel responsible for handling foreclosure proceedings.

(4) Facilitating transfer of information during servicing transfers. The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:

(i) As a transferor servicer, timely transfer all information and documents in the possession or control of the servicer relating to a transferred mortgage loan to a transferee servicer in a form and manner that ensures the accuracy of the information and documents transferred and that enables a transferee servicer to comply with the terms of the transferee servicer’s obligations to the owner or assignee of the mortgage loan and applicable law; and

(ii) As a transferee servicer, identify necessary documents or information that may not have been transferred by a transferor servicer and obtain such documents from the transferor servicer.

(iii) For the purposes of this paragraph (b)(4), transferee servicer means a servicer, including a master servicer or a subservicer, that performs or will perform servicing of a mortgage loan and transferor servicer means a servicer, including a master servicer or a subservicer, that transfers or will transfer the servicing of a mortgage loan.

(5) Informing borrowers of the written error resolution and information request procedures. The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer informs borrowers of the procedures for submitting written notices of error set forth in §1024.35 and written information requests set forth in §1024.36.

(c) Standard requirements.

(1) Record retention. A servicer shall retain records that document actions taken with respect to a borrower’s mortgage loan account until one year after the date a mortgage loan is discharged or servicing of a mortgage loan is transferred by the servicer to a transferee servicer.

(2) Servicing file. A servicer shall maintain the following documents and data on each mortgage loan account serviced by the servicer in a manner that facilitates compiling such documents and data into a servicing file within five days:
(i) A schedule of all transactions credited or debited to the mortgage loan account, including any escrow account as defined in §1024.17(b) and any suspense account;

(ii) A copy of the security instrument that establishes the lien securing the mortgage loan;

(iii) Any notes created by servicer personnel reflecting communications with the borrower about the mortgage loan account;

(iv) To the extent applicable, a report of the data fields relating to the borrower's mortgage loan account created by the servicer’s electronic systems in connection with servicing practices; and

(v) Copies of any information or documents provided by the borrower to the servicer in accordance with the procedures set forth in §1024.35 or §1024.41.

§ 1024.39 Early intervention requirements for certain borrowers.

(a) Live contact. A servicer shall establish or make good faith efforts to establish live contact with a delinquent borrower not later than the 36th day of the borrower’s delinquency and, promptly after establishing live contact, inform such borrower about the availability of loss mitigation options if appropriate.

(b) Written notice. (1) Notice required. Except as otherwise provided in this section, a servicer shall provide to a delinquent borrower a written notice with the information set forth in paragraph (b)(2) of this section not later than the 45th day of the borrower’s delinquency. A servicer is not required to provide the written notice more than once during any 180-day period.

(2) Content of the written notice. The notice required by paragraph (b)(1) of this section shall include:

(i) A statement encouraging the borrower to contact the servicer;

(ii) The telephone number to access servicer personnel assigned pursuant to §1024.40(a) and the servicer’s mailing address;

(iii) If applicable, a statement providing a brief description of examples of loss mitigation options that may be available from the servicer;

(iv) If applicable, either application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from the servicer; and

(v) The Web site to access either the Bureau list or the HUD list of homeownership counselors or counseling organizations, and the HUD toll-free telephone number to access homeownership counselors or counseling organizations.

(3) Model clauses. Model clauses MS–4(A), MS–4(B), and MS–4(C), in appendix MS–4 to this part may be used to comply with the requirements of paragraph (a) of this section.

(c) Conflicts with other law. Nothing in this section shall require a servicer to communicate with a borrower in a manner otherwise prohibited by applicable law.

EFFECTIVE DATE NOTES: 1. At 78 FR 60437, Oct. 1, 2013, §1024.39 was amended by revising paragraphs (b)(1) and (3), effective Jan. 10, 2014. For the convenience of the user, the revised text is set forth as follows:

§ 1024.39 Early intervention requirements for certain borrowers.

* * * * *

(b) Written notice. (1) Notice required. Except as otherwise provided in this section, a servicer shall provide to a delinquent borrower a written notice with the information set forth in paragraph (b)(2) of this section not later than the 45th day of the borrower’s delinquency. A servicer is not required to provide the written notice more than once during any 180-day period.

* * * * *

(3) Model clauses. Model clauses MS–4(A), MS–4(B), and MS–4(C), in appendix MS–4 to this part may be used to comply with the requirements of this paragraph (b).

* * * * *

2. At 78 FR 63004, Oct. 23, 2013, §1024.39 was amended by adding paragraph (d), effective Jan. 10, 2014. For the convenience of the user, the added text is set forth as follows:

§ 1024.39 Early intervention requirements for certain borrowers.

* * * * *

(d) Exemptions—(1) Borrowers in bankruptcy. A servicer is exempt from the requirements
of this section for a mortgage loan while the borrower is a debtor in bankruptcy under Title 11 of the United States Code.

(2) Fair Debt Collections Practices Act. A servicer subject to the Fair Debt Collections Practices Act (FDCPA) (15 U.S.C. 1692 et seq.) with respect to a borrower is exempt from the requirements of this section with regard to a mortgage loan for which the borrower has sent a notification pursuant to FDCPA section 805(c) (15 U.S.C. 1692c(c)).

§ 1024.40 Continuity of contact.

(a) In general. A servicer shall maintain policies and procedures that are reasonably designed to achieve the following objectives:

(1) Assign personnel to a delinquent borrower by the time the servicer provides the borrower with the written notice required by §1024.39(b), but in any event, not later than the 45th day of the borrower’s delinquency.

(2) Make available to a delinquent borrower, via telephone, personnel assigned to the borrower as described in paragraph (a)(1) of this section to respond to the borrower’s inquiries, and as applicable, assist the borrower with available loss mitigation options until the borrower has made, without incurring a late charge, two consecutive mortgage payments in accordance with the terms of a permanent loss mitigation agreement.

(3) If a borrower contacts the personnel assigned to the borrower as described in paragraph (a)(1) of this section and does not immediately receive a live response from such personnel, ensure that the servicer can provide a live response in a timely manner.

(b) Functions of servicer personnel. A servicer shall maintain policies and procedures reasonably designed to ensure that servicer personnel assigned to a delinquent borrower as described in paragraph (a) of this section perform the following functions:

(1) Provide the borrower with accurate information about:
   (i) Loss mitigation options available to the borrower from the owner or assignee of the borrower’s mortgage loan;
   (ii) Actions the borrower must take to be evaluated for such loss mitigation options, including actions the borrower must take to submit a complete loss mitigation application, as defined in §1024.41, and, if applicable, actions the borrower must take to appeal the servicer’s determination to deny a borrower’s loss mitigation application for any trial or permanent loan modification program offered by the servicer;
   (iii) The status of any loss mitigation application that the borrower has submitted to the servicer;
   (iv) The circumstances under which the servicer may make a referral to foreclosure; and
   (v) Applicable loss mitigation deadlines established by an owner or assignee of the borrower’s mortgage loan or §1024.41.

(2) Retrieve, in a timely manner:
   (i) A complete record of the borrower’s payment history; and
   (ii) All written information the borrower has provided to the servicer, and if applicable, to prior servicers, in connection with a loss mitigation application;

(3) Provide the documents and information identified in paragraph (b)(2) of this section to other persons required to evaluate a borrower for loss mitigation options made available by the servicer, if applicable; and

(4) Provide a delinquent borrower with information about the procedures for submitting a notice of error pursuant to §1024.35 or an information request pursuant to §1024.36.

§ 1024.41 Loss mitigation procedures.

(a) Enforcement and limitations. A borrower may enforce the provisions of this section pursuant to section 6(f) of RESPA (12 U.S.C. 2605(f)). Nothing in §1024.41 imposes a duty on a servicer to provide any borrower with any specific loss mitigation option. Nothing in §1024.41 should be construed to create a right for a borrower to enforce the terms of any agreement between a servicer and the owner or assignee of a mortgage loan, including with respect to the evaluation for, or offer of, any loss mitigation option or to eliminate any such right that may exist pursuant to applicable law.

(b) Receipt of a loss mitigation application. (1) Complete loss mitigation application. A complete loss mitigation application means an application in connection with which a servicer has received all the information that the servicer requires from a borrower in evaluating
applications for the loss mitigation options available to the borrower. A servicer shall exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application.

(2) Review of loss mitigation application submission. (i) Requirements. If a servicer receives a loss mitigation application 45 days or more before a foreclosure sale, a servicer shall:

(A) Promptly upon receipt of a loss mitigation application, review the loss mitigation application to determine if the loss mitigation application is complete; and

(B) Notify the borrower in writing within 5 days (excluding legal public holidays, Saturdays, and Sundays) after receiving the loss mitigation application that the servicer acknowledges receipt of the loss mitigation application and that the servicer has determined that the loss mitigation application is either complete or incomplete. If a loss mitigation application is incomplete, the notice shall state the additional documents and information the borrower must submit to make the loss mitigation application complete and the applicable date pursuant to paragraph (b)(2)(ii) of this section. The notice to the borrower shall include a statement that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options.

(ii) Time period disclosure. The notice required pursuant to paragraph (b)(2)(i)(B) of this section must state that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options.

(2) Incomplete loss mitigation application evaluation. (i) In general. Except as set forth in paragraph (c)(2)(ii) of this section, a servicer shall not evade the requirement to evaluate a complete loss mitigation application and offer a borrower a loss mitigation option based upon an evaluation of any information provided by a borrower in connection with an incomplete loss mitigation application.

(ii) Reasonable time. Notwithstanding paragraph (c)(2)(i) of this section, if a servicer has exercised reasonable diligence in obtaining documents and information to complete a loss mitigation application, but a loss mitigation application remains incomplete for a significant period of time under the circumstances without further progress by a borrower to make the loss mitigation application complete, a servicer may, in its discretion, evaluate an incomplete loss mitigation application and offer a borrower a loss mitigation option. Any such evaluation and offer is not subject to the requirements of this section and shall not constitute an evaluation of a single complete loss mitigation application for purposes of paragraph (i) of this section.

(d) Denial of loan modification options. If a borrower’s complete loss mitigation application is denied for any trial or permanent loan modification option available to the borrower pursuant to paragraph (c) of this section, a servicer shall state in the notice sent to the borrower pursuant to paragraph (c)(1)(ii) of this section:
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(1) The specific reasons for the servicer’s determination for each such trial or permanent loan modification option; and

(2) If applicable pursuant to paragraph (h) of this section, that the borrower may appeal the servicer’s determination for any such trial or permanent loan modification option, the deadline for the borrower to make an appeal, and any requirements for making an appeal.

(e) Borrower response. (1) In general. Subject to paragraphs (e)(2)(ii) and (iii) of this section, if a complete loss mitigation application is received 90 days or more before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than 14 days after the servicer provides the offer of a loss mitigation option to the borrower. If a complete loss mitigation application is received less than 90 days before a foreclosure sale, but more than 37 days before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than 7 days after the servicer provides the offer of a loss mitigation option to the borrower.

(2) Rejection. (i) In general. Except as set forth in paragraphs (e)(2)(ii) and (iii) of this section, a borrower may deem a borrower that has not accepted an offer of a loss mitigation option no earlier than 14 days after the servicer provides the offer of a loss mitigation option to the borrower. If a complete loss mitigation application is received less than 90 days before a foreclosure sale, but more than 37 days before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than 7 days after the servicer provides the offer of a loss mitigation option to the borrower.

(ii) Trial Loan Modification Plan. A borrower who does not satisfy the servicer’s requirements for accepting a trial loan modification plan, but submits the payments that would be owed pursuant to any such plan within the deadline established pursuant to paragraph (e)(1) of this section, shall be provided a reasonable period of time to fulfill any remaining requirements of the servicer for acceptance of the trial loan modification plan beyond the deadline established pursuant to paragraph (e)(1) of this section.

(iii) Interaction with appeal process. If a borrower makes an appeal pursuant to paragraph (h) of this section, the borrower’s deadline for accepting a loss mitigation option offered pursuant to paragraph (c)(1)(ii) of this section shall be extended until 14 days after the servicer provides the notice required pursuant to paragraph (h)(4) of this section.

(f) Prohibition on foreclosure referral. (1) Pre-foreclosure review period. A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless a borrower’s mortgage loan obligation is more than 120 days delinquent.

(2) Application received before foreclosure referral. If a borrower submits a complete loss mitigation application during the pre-foreclosure review period set forth in paragraph (f)(1) of this section or before a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, a servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

(i) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower’s appeal has been denied;

(ii) The borrower rejects all loss mitigation options offered by the servicer; or

(iii) The borrower fails to perform under an agreement on a loss mitigation option.

(g) Prohibition on foreclosure sale. If a borrower submits a complete loss mitigation application after a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process but more than 37 days before a foreclosure sale, a servicer shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, unless:

(1) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the
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Borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower’s appeal has been denied;

(2) The borrower rejects all loss mitigation options offered by the servicer;

(3) The borrower fails to perform under an agreement on a loss mitigation option.

(h) Appeal process. (1) Appeal process required for loan modification denials. If a servicer receives a complete loss mitigation application 90 days or more before a foreclosure sale or during the period set forth in paragraph (f) of this section, a servicer shall permit a borrower to appeal the servicer’s determination to deny a borrower’s loss mitigation application for any trial or permanent loan modification program available to the borrower.

(2) Deadlines. A servicer shall permit a borrower to make an appeal within 14 days after the servicer provides the offer of a loss mitigation option to the borrower pursuant to paragraph (c)(1)(ii) of this section.

(3) Independent evaluation. An appeal shall be reviewed by different personnel than those responsible for evaluating the borrower’s complete loss mitigation application.

(4) Appeal determination. Within 30 days of a borrower making an appeal, the servicer shall provide a notice to the borrower stating the servicer’s determination of whether the servicer will offer the borrower a loss mitigation option based upon the appeal. A servicer may require that a borrower accept or reject an offer of a loss mitigation option after an appeal no earlier than 14 days after the servicer provides the notice to a borrower. A servicer’s determination under this paragraph is not subject to any further appeal.

(i) Duplicative requests. A servicer is only required to comply with the requirements of this section for a single complete loss mitigation application for a borrower’s mortgage loan account.

(j) Small servicer requirements. A small servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless a borrower’s mortgage loan obligation is more than 120 days delinquent. A small servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process and shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of an agreement on a loss mitigation option.

Effective Date Note: At 78 FR 60437, Oct. 1, 2013, §1024.41 was amended by revising paragraph (b)(2)(ii), adding paragraph (b)(3), revising paragraphs (c)(1)(ii) and (c)(2)(i), adding paragraphs (c)(2)(iii) and (iv), and revising paragraphs (d), (f)(1), (h)(4), and (j), effective Jan. 10, 2014. For the convenience of the user, the added and revised text is set forth as follows:

§ 1024.41 Loss mitigation procedures.

* * * * *

(b) * * *

(2) * * *

(ii) Time period disclosure. The notice required pursuant to paragraph (b)(2)(ii)(B) of this section must include a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete.

(3) Determining Protections. To the extent a determination of whether protections under this section apply to a borrower is made on the basis of the number of days between when a complete loss mitigation application is received and when a foreclosure sale occurs, such determination shall be made as of the date a complete loss mitigation application is received.

(c) * * *

(1) * * *

(ii) Provide the borrower with a notice in writing stating the servicer’s determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage. The servicer shall include in this notice the amount of time the borrower has to accept or reject an offer of a loss mitigation program as provided for in paragraph (e) of this section. If applicable, and a notification, if applicable, that the borrower has the right to appeal the denial of any loan modification option as well as the amount of time the borrower has to file such an appeal and any requirements for making an appeal, as provided for in paragraph (h) of this section.

(2) * * *

(i) In general. Except as set forth in paragraphs (c)(2)(ii) and (iii) of this section, a servicer shall not evade the requirement to evaluate a complete loss mitigation application for all loss mitigation options available
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The following are instructions for completing the HUD–1 settlement statement, required under section 4 of RESPA and 12 CFR part 1024 (Regulation X) of the Bureau of Consumer Financial Protection (Bureau) regulations. This form is to be used as a statement of actual charges and adjustments paid by the borrower and the seller, to be given to the parties in connection with the settlement. The instructions for completion of the HUD–1 are primarily for the benefit of the settlement agents who prepare the statements and need not be transmitted to the parties as an integral part of the HUD–1. There is no objection to the use of the HUD–1 in transactions in which its use is not legally required. Refer to the definitions section of the regulations (12 CFR 1024.2) for required by applicable law for any judicial or non-judicial foreclosure process unless:

(i) A borrower’s mortgage loan obligation is more than 120 days delinquent;

(ii) The foreclosure is based on the borrower’s violation of a due-on-sale clause; or

(iii) The servicer is joining the foreclosure action of a subordinate lienholder.

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Appendix A to Part 1024—Instructions for Completing HUD–1 and HUD–1a Settlement Statements; Sample HUD–1 and HUD–1a Statements

Appendix A to Part 1024—Instructions for Completing HUD–1 and HUD–1a Settlement Statements; Sample HUD–1 and HUD–1a Statements

The following are instructions for completing the HUD–1 settlement statement, required under section 4 of RESPA and 12 CFR part 1024 (Regulation X) of the Bureau of Consumer Financial Protection (Bureau) regulations. This form is to be used as a statement of actual charges and adjustments paid by the borrower and the seller, to be given to the parties in connection with the settlement. The instructions for completion of the HUD–1 are primarily for the benefit of the settlement agents who prepare the statements and need not be transmitted to the parties as an integral part of the HUD–1. There is no objection to the use of the HUD–1 in transactions in which its use is not legally required. Refer to the definitions section of the regulations (12 CFR 1024.2) for

to the borrower by offering a loss mitigation option based upon an evaluation of any information provided by a borrower in connection with an incomplete loss mitigation application.

* * * * *

(ii) Payment forbearance. Notwithstanding paragraph (c)(2)(i) of this section, a servicer may offer a short-term payment forbearance program to a borrower based upon an evaluation of an incomplete loss mitigation application. A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, and shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of a payment forbearance program offered pursuant to this section.

(iv) Facially complete application. If a borrower submits all the missing documents and information as stated in the notice required pursuant to §1026.41(b)(2)(i)(B), or no additional information is requested in such notice, the application shall be considered facially complete. If the servicer later discovers additional information or corrections to a previously submitted document are required to complete the application, the servicer must promptly request the missing information or corrected documents and treat the application as complete for the purposes of paragraphs (f)(2) and (g) of this section until the borrower is given a reasonable opportunity to complete the application. If the borrower completes the application within this period, the application shall be considered complete as of the date it was facially complete, for the purposes of paragraphs (d), (e), (f)(2), (g), and (h) of this section, and as of the date the application was actually complete for the purposes of paragraph (c). A servicer that complies with this paragraph will be deemed to have fulfilled its obligation to provide an accurate notice under paragraph (b)(2)(i)(B).

(d) Denial of loan modification options. If a borrower’s complete loss mitigation application is denied for any trial or permanent loan modification option available to the borrower pursuant to paragraph (c) of this section, a servicer shall state in the notice to the borrower pursuant to paragraph (c)(1)(ii) of this section the specific reason or reasons for the servicer’s determination for each such trial or permanent loan modification option and, if applicable, that the borrower was not evaluated on other criteria.

* * * * *

(f) * *

(1) Pre-foreclosure review period. A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

(i) A borrower’s mortgage loan obligation is more than 120 days delinquent;

(ii) The foreclosure is based on the borrower’s violation of a due-on-sale clause; or

(iii) The servicer is joining the foreclosure action of a subordinate lienholder.
specific definitions of many of the terms that are used in these instructions.

**GENERAL INSTRUCTIONS**

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to the Bureau’s regulations (Regulation X) regarding rules applicable to reproduction of the HUD–1 for the purpose of including customary recitals and information used locally in settlements; for example, a breakdown of payoff figures, a breakdown of the Borrower’s total monthly mortgage payments, check disbursements, a statement indicating receipt of funds applicable for a charge that was included between Borrower and Seller, the date funds are transferred.

The settlement agent shall complete the HUD–1 to itemize all charges imposed upon the Borrower and the Seller by the loan originator and all sales commissions, whether to be paid at settlement or outside of settlement, and any other charges which either the Borrower or the Seller will pay at settlement. Charges for loan origination and title services should not be itemized except as provided in these instructions. For each separately identified settlement service in connection with the transaction, the name of the person ultimately receiving the payment must be shown together with the total amount paid to such person. Items paid to and retained by a loan originator are disclosed as required in the instructions for lines in the 800-series of the HUD–1 (and for per diem interest, in the 900-series of the HUD–1).

As a general rule, charges that are paid for by the seller must be shown in the seller’s column on page 2 of the HUD–1. That charge should also be offset by listing a credit in that amount to the borrower on lines 204–209 on page 1 of the HUD–1, and by a charge to the seller in lines 506–509 on page 1 of the HUD–1. If a loan originator (other than for no-cost loans), real estate agent, other settlement service provider, or other person pays for a charge that was included on the GFE, the charge should be listed in the borrower’s column on page 2 of the HUD–1, identifying the party paying the charge.

Charges paid outside of settlement by the borrower, seller, loan originator, real estate agent, or any other person, must be included on the HUD–1 but marked “P.O.C.” for “Paid Outside of Closing” (settlement) and must not be included in computing totals. However, indirect payments from a lender to a mortgage broker may not be disclosed as P.O.C., and must be included as a credit on Line 802. P.O.C. items must not be placed in the Borrower or Seller columns, but rather on the appropriate line outside the columns. The settlement agent must indicate whether P.O.C. items are paid for by the Borrower, Seller, or some other party by marking the items paid for by whoever made the payment as “P.O.C.” with the party making the payment identified in parentheses, such as “P.O.C. (borrower)” or “P.O.C. (seller)”.

In the case of “no cost” loans where “no cost” encompasses third party fees as well as the upfront payment to the loan originator, the third party services covered by the “no cost” provisions must be itemized and listed in the borrower’s column on the HUD–1A with the charge for the third party service. These itemized charges must be offset with a negative adjusted origination charge on Line 803 and recorded in the columns.

Blank lines are provided in section L for any additional settlement charges. Blank lines are also provided for additional insertions in sections J and K. The names of the recipients of the settlement charges in section L and the names of the recipients of adjustments described in section J or K should be included on the blank lines.

Lines and columns in section J which relate to the Borrower’s transaction may be left blank on the copy of the HUD–1 which will be furnished to the Seller. Lines and columns in section K which relate to the Seller’s transaction may be left blank on the copy of the HUD–1 which will be furnished to the Borrower.

**LINE ITEM INSTRUCTIONS**

Instructions for completing the individual items on the HUD–1 follow.

Section A. This section requires no entry of information.

Section B. Check appropriate loan type and complete the remaining items as applicable.

Section C. This section provides a notice regarding settlement costs and requires no additional entry of information.

Sections D and E. Fill in the names and current mailing addresses and zip codes of the Borrower and the Seller. Where there is more than one Borrower or Seller, the name and address of each one is required. Use a supplementary page if needed to list multiple Borrowers or Sellers.

Section F. Fill in the name, current mailing address and zip code of the Lender.

Section G. The street address of the property being sold should be listed. If there is no street address, a brief legal description or
other location of the property should be inserted. In all cases give the zip code of the property.

Section H. Fill in name, address, zip code and telephone number of settlement agent, and address and zip code of "place of settlement."

Section I. Fill in date of settlement.

Section J. Summary of Borrower's Transaction. Line 101 is for the contract sales price of the property being sold, excluding the price of any items of tangible personal property if Borrower and Seller have agreed to a separate price for such items.

Line 102 is for the sales price of any items of tangible personal property excluded from Line 101. Personal property could include such items as carpets, drapes, stoves, refrigerators, etc. What constitutes personal property varies from state to state. Manufactured homes are not considered personal property for this purpose.

Line 103 is used to record the total charges to Borrower detailed in section L and totaled on Line 1400.

Lines 104 and 105 are for additional amounts owed by the Borrower, such as charges that were not listed on the GFE or items paid by the Seller prior to settlement but reimbursed by the Borrower at settlement. For example, the balance in the Seller's reserve account held in connection with an existing loan, if assigned to the Borrower in a loan assumption case, will be entered here. These lines will also be used when a tenant in the property being sold has not yet paid the rent, which the Borrower will collect, for a period of time prior to the settlement. The lines will also be used to indicate the treatment for any tenant security deposit. The Seller will be credited on Lines 494–495.

Lines 106 through 112 are for items which the Seller had paid in advance, and for which the Borrower must therefore reimburse the Seller. Examples of items for which adjustments will be made may include taxes and assessments paid in advance for an entire year or other period, when settlement occurs prior to the expiration of the year or other period for which they were paid. Additional examples include flood and hazard insurance premiums, if the Borrower is being substituted as an insured under the same policy; mortgage insurance in loan assumption cases; planned unit development or condominium association assessments paid in advance; fuel or other supplies on hand, purchased by the Seller, which the Borrower will use when Borrower takes possession of the property; and ground rent paid in advance.

Line 120 is for the total of Lines 101 through 112.

Line 201 is for any amount paid against the sales price prior to settlement.

Line 202 is for the amount of the new loan made by the Lender when a loan to finance construction of a new structure constructed for sale is used as or converted to a loan to finance purchase. Line 202 should also be used for the amount of the first user loan, when a loan to purchase a manufactured home for resale is converted to a loan to finance purchase by the first user. For other loans covered by 12 CFR part 1024 (Regulation X) which finance construction of a new structure or purchase of a manufactured home, list the sales price of the land on Line 104, the construction cost or purchase price of manufactured home on Line 105 (Line 101 would be left blank in this instance) and amount of the loan on Line 202. The remainder of the form should be completed taking into account adjustments and charges related to the temporary financing and permanent financing and which are known at the date of settlement.

Line 203 is used for cases in which the Borrower is assuming or taking title subject to an existing loan or lien on the property.

Lines 204–209 are used for other items paid by or on behalf of the Borrower. Lines 204–209 should be used to indicate any financing arrangements or other new loan not listed in Line 202. For example, if the Borrower is using a second mortgage or note to finance part of the purchase price, whether from the same lender, another lender or the Seller, insert the principal amount of the loan with a brief explanation on Lines 204–209. Lines 204–209 should also be used where the Borrower receives a credit from the Seller for closing costs, including seller-paid GFE charges. They may also be used in cases in which a Seller (typically a builder) is making an "allowance" to the Borrower for items that the Borrower is to purchase separately.

Lines 210 through 219 are for items which have not yet been paid, and which the Borrower is expected to pay, but which are attributable in part to a period of time prior to the settlement. In jurisdictions in which taxes are paid late in the tax year, most cases will show the proration of taxes in these lines. Other examples include utilities used but not paid for by the Seller, rent collected in advance by the Seller from a tenant for a period extending beyond the settlement date, and interest on loan assumptions.

Line 220 is for the total of Lines 201 through 219.

Lines 301 and 302 are summary lines for the Borrower. Enter total in Line 130 on Line 301. Enter total in Line 220 on Line 302. Line 303 must indicate either the cash required from the Borrower at settlement (the usual case in a purchase transaction), or cash payable to the Borrower at settlement (if, for example, the Borrower's earnest money exceeds the Borrower's cash obligations in the transaction or there is a cash-out refinance). Subtract Line 302 from Line
301 and enter the amount of cash due to or from the Borrower at settlement on Line 303. The appropriate box should be checked. If the Borrower’s earnest money is applied towards the settlement charges for a settlement service, the amount so applied should not be included on Line 303 but instead should be shown on the appropriate line for the settlement service, marked “P.O.C. (Borrower),” and must not be included in computing totals.

Section K. Summary of Seller’s Transaction. Instructions for the use of Lines 101 and 102 and 104–112 above, apply also to Lines 401–412. Line 420 is for the total of Lines 401 through 412.

Line 501 is used if the Seller’s real estate broker or other party who is not the settlement agent has received and holds a deposit against the sales price (earnest money) which exceeds the fee or commission owed to that party. If that party will render the excess deposit directly to the Seller, rather than through the settlement agent, the amount of excess deposit should be entered on Line 501 and the amount of the total deposit (including commissions) should be entered on Line 201.

Line 502 is used to record the total charges to the Seller detailed in section L and totaled on Line 1400. Line 503 is used if the Borrower is assuming or taking title subject to existing liens which are to be deducted from sales price. Lines 504 and 505 are used for the amounts (including any accrued interest) of any first and/or second loans which will be paid as part of the settlement.

Line 506 is used for deposits paid by the Borrower to the Seller or other party who is not the settlement agent. Enter the amount of the deposit in Line 201 on Line 506 unless Line 501 is used or the party who is not the settlement agent transfers all or part of the deposit to the settlement agent, in which case the settlement agent will note in parentheses on Line 507 the amount of the deposit that is being disbursed as proceeds and enter in the column for Line 506 the amount retained by the above-described party for settlement services. If the settlement agent holds the deposit, insert a note in Line 507 which indicates that the deposit is being disbursed as proceeds.

Lines 506 through 508 may be used to list additional liens which must be paid off through the settlement to clear title to the property. Other Seller obligations should be shown on Lines 506–509, including charges that were disclosed on the GFE but that are actually being paid for by the Seller. These Lines may also be used to indicate funds to be held by the settlement agent for the payment of either repairs, or water, fuel, or other utility bills that cannot be prorated between the parties at settlement because the amounts used by the Seller prior to settlement are not yet known. Subsequent disbursement of the actual amount of these post-settlement items to be paid from settlement funds is optional. Any amounts entered on Lines 204–209 including Seller financing arrangements should also be entered on Lines 506–509.

Instructions for the use of Lines 510 through 519 are the same as those for Lines 210 to 219 above. Line 520 is for the total of Lines 501 through 519.

Lines 601 and 602 are summary lines for the Seller. Enter the total in Line 420 on Line 601. Enter the total in Line 520 on Line 602. Line 603 must indicate either the cash required to be paid to the Seller at settlement (the usual case in a purchase transaction), or the cash payable by the Seller at settlement. Subtract Line 602 from Line 601 and enter the amount of cash due to or from the Seller at settlement on Line 603. The appropriate box should be checked.

Section L. Settlement Charges

Line 700 is used to enter the sales commission charged by the sales agent or real estate broker. Lines 701–702 are to be used to state the split of the commission where the settlement agent disburses portions of the commission to two or more sales agents or real estate brokers.

Line 703 is used to enter the amount of sales commission disbursed at settlement. If the sales agent or real estate broker is retaining a part of the deposit against the sales price (earnest money) to apply towards the sales agent’s or real estate broker’s commission, include in Line 703 only that part of the commission being disbursed at settlement and insert a note on Line 704 indicating the amount the sales agent or real estate broker is retaining as a “P.O.C.” item. Line 704 may be used for additional charges made by the sales agent or real estate broker, or for a sales commission charged to the Borrower, which will be disbursed by the settlement agent.

Line 801 is used to record “Our origination charge,” which includes all charges received by the loan originator, except any charge for the specific interest rate chosen (points). This number must not be listed in either the buyer’s or seller’s column. The amount shown in Line 801 must include any amounts received for origination services, including administrative and processing services, performed by or on behalf of the loan originator.

Line 802 is used to record “Your credit or charge (points) for the specific interest rate chosen,” which states the charge or credit adjustment as applied to “Our origination charge,” if applicable. This number must not be listed in either column or shown on page one of the HUD-1.
For a mortgage broker originating a loan in its own name, the amount shown on Line 802 will be the difference between the initial loan amount and the total payment to the mortgage broker. The total payment to the mortgage broker will be the sum of the price paid for the loan by the lender and any other payments to the mortgage broker originating a loan in another entity’s name, the amount shown on Line 802 will be the sum of all payments to the mortgage broker from the lender, including any payments based on the loan amount or loan terms, and any flat rate payments. For a mortgage broker originating a loan in another entity’s name, the amount shown on Line 802 will be the sum of all payments to the mortgage broker from the loan originator. These Lines may also be used to record other third party services required by the loan originator. Any such disclosures must be listed outside the columns.

In either case, when the amount paid to the mortgage broker exceeds the initial loan amount, there is a credit to the borrower and it is entered as a negative amount. When the initial loan amount exceeds the amount paid to the mortgage broker, there is a charge to the borrower and it is entered as a positive amount. For a lender, the amount shown on Line 802 may include any credit or charge (points) to the Borrower. Line 803 is used to record “Your adjusted origination charges,” which states the net amount of the loan origination charges, the sum of the amounts shown in Lines 801 and 802. This amount must be listed in the column as either a positive number (for example, where the origination charge shown in Line 801 exceeds any credit for the interest rate shown in Line 802 or where there is an origination charge in Line 801 and a charge for the interest rate (points) is shown on Line 802) or as a negative number (for example, where the credit for the interest rate shown in Line 802 exceeds the origination charges shown in Line 801).

In the case of “no cost” loans, where “no cost” refers only to the loan originator’s fees, the amounts shown in Lines 801 and 802 should offset, so that the charge shown on Line 803 is zero. Where “no cost” includes third party settlement services, the credit shown in Line 802 will more than offset the amount shown in Line 801. The amount shown in Line 803 will be a negative number to offset the settlement charges paid indirectly through the loan originator.

Lines 804–808 may be used to record each of the “Required services that we select.” Each settlement service provider must be identified by name and the amount paid recorded either inside the columns or as paid to the provider outside closing (“P.O.C.”), as described in the General Instructions.

Line 804 is used to record the appraisal fee. Line 805 is used to record the fee for all credit reports.

Line 806 is used to record the fee for any tax service.

Line 807 is used to record any flood certification fee.

Lines 808 and additional sequentially numbered lines, as needed, are used to record other third party services required by the loan originator. These Lines may also be used to record other required disclosures from the loan originator. Any such disclosures must be listed outside the columns.

Lines 901–904. This series is used to record the items which the Lender requires to be paid at the time of settlement, but which are not necessarily paid to the lender (e.g., FHA mortgage insurance premium), other than reserves collected by the Lender and recorded in the 1000-series.

Line 901 is used if interest is collected at settlement for a part of a month or other period between settlement and the date from which interest will be collected with the first regular monthly payment. Enter that amount here and include the per diem charges. If such interest is not collected until the first regular monthly payment, no entry should be made on Line 901.

Line 902 is used for mortgage insurance premiums due and payable at settlement, including any monthly amounts due at settlement and any upfront mortgage insurance premium, but not including any reserves collected by the Lender and recorded in the 1000-series. If a lump sum mortgage insurance premium paid at settlement is included on Line 902, a note should indicate that the premium is for the life of the loan.

Line 903 is used for homeowner’s insurance premiums that the Lender requires to be paid at the time of settlement, except reserves collected by the Lender and recorded in the 1000-series.

Lines 904 and additional sequentially numbered lines are used to list additional items required by the Lender (except for reserves collected by the Lender and recorded in the 1000-series), including premiums for flood or other insurance. These lines are also used to list amounts paid at settlement for insurance not required by the Lender.

Lines 1000–1007. This series is used for amounts collected by the Lender from the Borrower and held in an account for the future payment of the obligations listed as they fall due. Include the time period (number of months) and the monthly assessment. In many jurisdictions this is referred to as an “escrow”, “impound”, or “trust” account. In addition to the property taxes and insurance listed, some Lenders may require reserves for flood insurance, condominium owners’ association assessments, etc. The amount in line 1001 must be listed in the columns, and the itemizations in lines 1002 through 1007 must be listed outside the columns.

After itemizing individual deposits in the 1000 series, the servicer shall make an adjustment based on aggregate accounting. This adjustment equals the difference between the deposit required under aggregate accounting and the amount actually paid by the borrower. This adjustment based on aggregate accounting is shown on Line 1008.

Entries in Line 1008 must be the difference between the total amount collected by the servicer for deposits required under the 1000-series in aggregate accounting and the amount actually paid by the borrower for these deposits. This adjustment equals the difference between the required deposit amounts and the actual payments made by the borrower for these deposits.
accounting and the sum of the itemized deposits. The computation steps for aggregate accounting are set out in 12 CFR 1024.17(d). The adjustment will always be a negative number or zero (0), except for amounts due to rounding. The settlement agent shall enter the aggregate adjustment amount outside the columns on a final line of the 1000 series of the HUD–1 or HUD–1A statement. Appendix E to this part sets out an example of aggregate analysis.

Lines 1100–1108. This series covers title charges and charges by attorneys and closing or settlement agents. The title charges include a variety of services performed by title companies or others, and include fees directly related to the transfer of title (title examination, title search, document preparation), fees for title insurance, and fees for conducting the closing. The legal charges include fees for attorneys representing the lender, seller, or borrower, and any attorney preparing title work. The series also includes any settlement, notary, and delivery fees related to the services covered in this series. Disbursements to third parties must be broken out in the appropriate lines or in blank lines in the series, and amounts paid to these third parties must be shown outside of the columns if included in Line 1101. Charges not included in Line 1101 must be listed in the columns.

Line 1101 is used to record the total for the category of “Title services and lender’s title insurance.” This amount must be listed in the columns.

Line 1102 is used to record the settlement or closing fee.

Line 1103 is used to record the charges for the owner’s title insurance and related endorsements. This amount must be listed in the columns.

Line 1104 is used to record the lender’s title insurance premium and related endorsements.

Line 1105 is used to record the amount of the lender’s title policy limit. This amount is recorded outside of the columns.

Line 1106 is used to record the amount of the owner’s title policy limit. This amount is recorded outside of the columns.

Line 1107 is used to record the amount of the total title insurance premium, including endorsements, that is retained by the title agent. This amount is recorded outside of the columns.

Line 1108 is used to record the amount of the total title insurance premium, including endorsements, that is retained by the title underwriter. This amount is recorded outside of the columns.

Additional sequentially numbered lines in the 1100-series may be used to itemize title charges paid to other third parties, as identified by name and type of service provided.

Lines 1200–1206. This series covers government recording and transfer charges. Charges paid by the borrower must be listed in the columns as described for lines 1201 and 1203, with itemizations shown outside the columns. Any amounts that are charged to the seller and that were not included on the Good Faith Estimate must be listed in the columns.

Line 1201 is used to record the total “Government recording charges,” and the amount must be listed in the columns.

Line 1202 is used to record, outside of the columns, the itemized recording charges.

Line 1203 is used to record the transfer taxes, and the amount must be listed in the columns.

Line 1204 is used to record, outside of the columns, the amounts for local transfer taxes and stamps.

Line 1205 is used to record, outside of the columns, the amounts for state transfer taxes and stamps.

Line 1206 and additional sequentially numbered lines may be used to record specific itemized third party charges for government recording and transfer services, but the amounts must be listed outside the columns.

Line 1301 and additional sequentially numbered lines must be used to record required services that the borrower can shop for, such as fees for survey, pest inspection, or other similar inspections. These lines may also be used to record additional itemized settlement charges that are not included in a specific category, such as fees for structural and environmental inspections; pre-sale inspections of heating, plumbing or electrical equipment; or insurance or warranty coverage. The amounts must be listed in either the borrower’s or seller's column.

Line 1400 must state the total settlement charges as calculated by adding the amounts within each column.

PAGE 3

Comparison of Good Faith Estimate (GFE) and HUD–1/A Charges

The HUD–1/A is a statement of actual charges and adjustments. The comparison chart on page 3 of the HUD–1 must be prepared using the exact information and amounts for the services that were purchased or provided as part of the transaction, as that information and those amounts are shown on the GFE and in the HUD–1. If a service that was listed on the GFE was not obtained in connection with the transaction, pages 1 and 2 of the HUD–1 should not include any amount for that service, and the estimate on the GFE of the charge for the service should not be included in any amounts shown on the comparison chart on Page 3 of the HUD–1. The comparison chart is comprised of three sections: “Charges That Cannot Increase”, “Charges That Cannot Increase More Than 10%”, and “Charges That Can Change”.

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“Charges That Cannot Increase”. The amounts shown in Blocks 1 and 2, in Line A, and in Block 8 on the borrower’s GFE must be entered in the appropriate line in the Good Faith Estimate column. The amounts shown on Lines 801, 802, 803 and 1203 of the HUD–1/1A must be entered in the corresponding line in the HUD–1/1A column. The HUD–1 column must include any amounts shown on page 2 of the HUD–1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower. If there is a credit in Block 2 of the GFE or Line 802 of the HUD–1/1A, the credit should be entered as a negative number.

“Charges That Cannot Increase More Than 10%”. A description of each charge included in Blocks 3 and 7 on the borrower’s GFE must be entered on separate lines in this section, with the amount shown on the borrower’s GFE for each charge entered in the corresponding line in the Good Faith Estimate column. For each charge included in Blocks 4, 5 and 6 on the borrower’s GFE for which the loan originator selected the provider or for which the borrower selected a provider identified by the loan originator, a description must be entered on a separate line in this section, with the amount shown on the borrower’s GFE for each charge entered in the corresponding line in the Good Faith Estimate column. The loan originator must identify any third party settlement services for which the borrower selected a provider other than one identified by the loan originator so that the settlement agent can include those charges in the appropriate category. Additional lines may be added if necessary. The amounts shown on the HUD–1/1A for each line must be entered in the HUD–1/1A column next to the corresponding line in the Good Faith Estimate column. The amounts shown in Blocks 1 and 2, in Line A, and in Block 8 on the borrower’s GFE must be entered in the appropriate line in the HUD–1/1A column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower. Any third party settlement services for which the borrower selected a provider other than one identified by the loan originator must be included in this section. The amounts shown on the HUD–1/1A for each charge in this section must be entered in the corresponding line in the HUD–1/1A column, along with the appropriate HUD–1/1A line number. The HUD–1/1A column must include any amounts shown on page 2 of the HUD–1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower. Additional lines may be added if necessary.

**LOAN TERMS**

This section must be completed in accordance with the information and instructions provided by the lender. The lender must provide this information in a format that permits the settlement agent to simply enter the necessary information in the appropriate spaces, without the settlement agent having to refer to the loan documents themselves.

**INSTRUCTIONS FOR COMPLETING HUD–1A**

**NOTE:** The HUD–1A is an optional form that may be used for refinancing and subordinate-lien federally related mortgage loans, as well as for any other one-party transaction that does not involve the transfer of title to residential real property. The HUD–1 form may also be used for such transactions, by utilizing the borrower’s side of the HUD–1 and following the relevant parts of the instructions as set forth above. The use of either the HUD–1 or HUD–1A is not mandatory for open-end lines of credit (home-equity plans), as long as the provisions of Regulation Z are followed.

**BACKGROUND**

The HUD–1A settlement statement is to be used as a statement of actual charges and adjustments to be given to the borrower at settlement, as defined in this part. The instructions for completion of the HUD–1A are for the benefit of the settlement agent who prepares the statement; the instructions are not a part of the statement and need not be transmitted to the borrower. There is no objection to using the HUD–1A in transactions in which it is not required, and its use in open-end lines of credit transactions (home-equity plans) is encouraged. It may not be used as a substitute for a HUD–1 in any transaction that has a seller.

Refer to the “definitions” section (§ 1024.2) of 12 CFR part 1024 (Regulation X) for specific definitions of terms used in these instructions.

**GENERAL INSTRUCTIONS**

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to 12 CFR 1024.9 regarding rules for reproduction of the HUD–1A. Additional pages may be attached to the HUD–1A for the inclusion of customary recitals and information used locally.
for settlements or if there are insufficient lines on the HUD-1A. The settlement agent shall complete the HUD-1A in accordance with the instructions for the HUD-1 to the extent possible, including the instructions for disclosing items paid outside closing and for no cost loans.

Blank lines are provided in section L for any additional settlement charges. Blank lines are also provided in section M for recipients of all or portions of the loan proceeds. The names of the recipients of the settlement charges in section L and the names of the recipients of the loan proceeds in section M should be set forth on the blank lines.

**LINE-ITEM INSTRUCTIONS**

**Page 1**

The identification information at the top of the HUD-1A should be completed as follows: The borrower’s name and address is entered in the space provided. If the property securing the loan is different from the borrower’s address, the address or other location information on the property should be entered in the space provided. The loan number is the lender’s identification number for the loan. The settlement date is the date of settlement in accordance with 12 CFR 1024.2, not the end of any applicable rescission period. The name and address of the lender should be entered in the space provided.

**Section L. Settlement Charges.** This section of the HUD-1A is similar to section L of the HUD-1, with minor changes or omissions, including deletion of lines 700 through 704, relating to real estate broker commissions. The instructions for section L in the HUD-1 should be followed as far as possible. Inapplicable charges should be ignored, as should any instructions regarding seller items.

Line 1400 in the HUD-1A is for the total settlement charges charged to the borrower. Enter this total on line 1601. This total should include section L amounts from additional pages, if any are attached to this HUD-1A.

**Section M. Disbursement to Others.** This section is used to list payees, other than the borrower, of all or portions of the loan proceeds (including the lender, if the loan is paying off a prior loan made by the same lender), when the payee will be paid directly out of the settlement proceeds. It is not used to list payees of settlement charges, nor to list funds disbursed directly to the borrower, even if the lender knows the borrower’s intended use of the funds.

For example, in a refinancing transaction, the loan proceeds are used to pay off an existing loan. The name of the lender for the loan being paid off and the pay-off balance would be entered in section M. In a home improvement transaction when the proceeds are to be paid to the home improvement contractor, the name of the contractor and the amount paid to the contractor would be entered in section M. In a consolidation loan, or when part of the loan proceeds is used to pay off other creditors, the name of each creditor and the amount paid to that creditor would be entered in section M. If the proceeds are to be given directly to the borrower and the borrower will use the proceeds to pay off existing obligations, this would not be reflected in section M.

**Section N. Net Settlement.** Line 1600 normally sets forth the principal amount of the loan as it appears on the related note for this loan. In the event this form is used for an open-ended home equity line whose approved amount is greater than the initial amount advanced at settlement, the amount shown on Line 1600 will be the loan amount advanced at settlement. Line 1601 is for all settlement charges that both are included in the totals for lines 1400 and 1602, and are not financed as part of the principal amount of the loan. This is the amount normally received by the lender from the borrower at settlement, which would occur when some or all of the settlement charges were paid in cash by the borrower at settlement, instead of being financed as part of the principal amount of the loan. Failure to include any such amount in line 1601 will result in an error in the amount calculated on line 1604. Items paid outside of closing (P.O.C.) should not be included in Line 1601.

Line 1602 is the total amount from line 1400.

Line 1603 is the total amount from line 1520.

Line 1604 is the amount disbursed to the borrower. This is determined by adding together the amounts for lines 1600 and 1601, and then subtracting any amounts listed on lines 1602 and 1603.

**Page 2**

This section of the HUD-1A is similar to page 3 of the HUD-1. The instructions for page 3 of the HUD-1 should be followed as far as possible. The HUD-1A Column should include any amounts shown on page 1 of the HUD-1A in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by the borrower. Inapplicable charges should be ignored.
A. Settlement Statement (HUD-1)

<table>
<thead>
<tr>
<th>B. Type of Loan</th>
<th>C. Name &amp; Address of Borrower</th>
<th>D. Name &amp; Address of Seller</th>
<th>E. Name &amp; Address of Lender</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Type of Loan</td>
<td>Address</td>
<td>Address</td>
<td>Address</td>
</tr>
</tbody>
</table>

J. Summary of Borrower's Transaction

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>102.</td>
<td>Gross Amount Due from Borrower</td>
<td></td>
</tr>
<tr>
<td>103.</td>
<td>Adjustments for items paid by seller to advance</td>
<td></td>
</tr>
<tr>
<td>104.</td>
<td>Adjustments for items paid by seller to settlement agent</td>
<td></td>
</tr>
</tbody>
</table>

K. Summary of Seller's Transaction

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>401.</td>
<td>Gross Amount Due to Seller</td>
<td></td>
</tr>
<tr>
<td>402.</td>
<td>Adjustments for items paid by seller to advance</td>
<td></td>
</tr>
<tr>
<td>403.</td>
<td>Adjustments for items paid by seller to settlement agent</td>
<td></td>
</tr>
</tbody>
</table>

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and separating the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA-covered transaction with information during the settlement process.
### Settlement Charges

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount/Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>700. Total Real Estate Broker Fees</td>
<td>Gross amount of commission from 700 as follows:</td>
<td></td>
</tr>
<tr>
<td>701. $</td>
<td>to</td>
<td></td>
</tr>
<tr>
<td>702. $</td>
<td>to</td>
<td></td>
</tr>
<tr>
<td>703. Commission paid at settlement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>704.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>800. Items Payable in Connection with Loan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>801. Option price</td>
<td>$ (lines 805#4)</td>
<td></td>
</tr>
<tr>
<td>802. Non-adjusted origination charges</td>
<td>(lines 805#4)</td>
<td></td>
</tr>
<tr>
<td>803. Appraisal fee</td>
<td>(lines 805#4)</td>
<td></td>
</tr>
<tr>
<td>804. Credit report fee</td>
<td>(lines 805#4)</td>
<td></td>
</tr>
<tr>
<td>805. Appraisal fee</td>
<td>(lines 805#4)</td>
<td></td>
</tr>
<tr>
<td>806. Flood certification fee</td>
<td>(lines 805#4)</td>
<td></td>
</tr>
<tr>
<td>807. Minimum loan amount</td>
<td>(lines 805#4)</td>
<td></td>
</tr>
<tr>
<td>808.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>900. Items Required by Lender in the Paid in Advance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>901. Daily interest charge</td>
<td>(lines 902#5)</td>
<td></td>
</tr>
<tr>
<td>902. Mortgage insurance premium</td>
<td>(lines 903#5)</td>
<td></td>
</tr>
<tr>
<td>903. Title insurance</td>
<td>(lines 904#5)</td>
<td></td>
</tr>
<tr>
<td>904.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1000. Reserve Deposit with Lender</td>
<td>Reserve deposit for your escrow account (lines 1001#4)</td>
<td></td>
</tr>
<tr>
<td>1001. Reserve deposit with Lender</td>
<td>Reserve deposit for your escrow account (lines 1001#4)</td>
<td></td>
</tr>
<tr>
<td>1002. Title insurance</td>
<td>Reserve deposit for your escrow account (lines 1001#4)</td>
<td></td>
</tr>
<tr>
<td>1003. Homeowner’s title insurance</td>
<td>Reserve deposit for your escrow account (lines 1001#4)</td>
<td></td>
</tr>
<tr>
<td>1004. Property taxes</td>
<td>Reserve deposit for your escrow account (lines 1001#4)</td>
<td></td>
</tr>
<tr>
<td>1005. Title insurance</td>
<td>Reserve deposit for your escrow account (lines 1001#4)</td>
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</tr>
<tr>
<td>1006. Title insurance</td>
<td>Reserve deposit for your escrow account (lines 1001#4)</td>
<td></td>
</tr>
<tr>
<td>1007. Aggregate adjustment</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>1100. Title Charges</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1101. Title services and lender’s title insurance</td>
<td>(lines 1102#4)</td>
<td></td>
</tr>
<tr>
<td>1102. Settlement on closing day</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>1103. Owner’s title insurance</td>
<td>(lines 1102#4)</td>
<td></td>
</tr>
<tr>
<td>1104. Lender’s title insurance</td>
<td>(lines 1102#4)</td>
<td></td>
</tr>
<tr>
<td>1105. Lender’s title policy loan</td>
<td>(lines 1102#4)</td>
<td></td>
</tr>
<tr>
<td>1106. Owner’s title policy loan</td>
<td>(lines 1102#4)</td>
<td></td>
</tr>
<tr>
<td>1107. Agent’s portion of the total title insurance premium</td>
<td>(lines 1102#4)</td>
<td></td>
</tr>
<tr>
<td>1108. Lender’s portion of the total title insurance premium</td>
<td>(lines 1102#4)</td>
<td></td>
</tr>
<tr>
<td>1200. Government Recording and Transfer Charges</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1201. Government recording charges</td>
<td>(lines 1202#4)</td>
<td></td>
</tr>
<tr>
<td>1202. Record fee</td>
<td>Mortgage $</td>
<td></td>
</tr>
<tr>
<td>1203. Record fee</td>
<td>Title $</td>
<td></td>
</tr>
<tr>
<td>1204. Transfer tax</td>
<td>(lines 1203#4)</td>
<td></td>
</tr>
<tr>
<td>1205. City/County tax stamps</td>
<td>Deed $</td>
<td></td>
</tr>
<tr>
<td>1206. State tax stamps</td>
<td>Deed $</td>
<td></td>
</tr>
<tr>
<td>1207. Deed tax stamps</td>
<td>Deed $</td>
<td></td>
</tr>
<tr>
<td>1208. Deed tax stamps</td>
<td>Deed $</td>
<td></td>
</tr>
<tr>
<td>1209. Deed tax stamps</td>
<td>Deed $</td>
<td></td>
</tr>
<tr>
<td>1300. Additional Settlement Charges</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1301. Escrow services that you can shop for</td>
<td>(lines 1302#4)</td>
<td></td>
</tr>
<tr>
<td>1302.</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>1303.</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>1304.</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>1305.</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>1400. Total Settlement Charges (enter on lines 1005, Sections J and K</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1401.</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>1402.</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>1403.</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>1404.</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>1405.</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>1406.</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>
### Comparison of Good Faith Estimate (GFE) and HUD-1 Charges

<table>
<thead>
<tr>
<th>Charges That Cannot Increase</th>
<th>Good Faith Estimate</th>
<th>HUD-1 Line Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Our origination charge</td>
<td>$851</td>
<td></td>
</tr>
<tr>
<td>Your credit or charge (ignoring the specific interest rate) loaned</td>
<td>$852</td>
<td></td>
</tr>
<tr>
<td>Your adjusted origination charges</td>
<td>$1023</td>
<td></td>
</tr>
<tr>
<td>Transfer taxes</td>
<td></td>
<td>$1003</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Charges That Can Increase</th>
<th>Good Faith Estimate</th>
<th>HUD-1 Line Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government recording charges</td>
<td>$521</td>
<td></td>
</tr>
<tr>
<td>Homeowner’s insurance</td>
<td>$953</td>
<td></td>
</tr>
</tbody>
</table>

**Total Increase between GFE and HUD-1 Charges**

\[
\text{GFE} - \text{HUD-1} = \begin{array}{c}
\text{\$ or } \\
\text{or } \% \\
\end{array}
\]

### Loan Terms

- **Your initial loan amount is**
- **Your loan term is**
- **Your initial monthly amount owed for principal, interest, and any mortgage insurance is**

**Can your interest rate rise?**  
- **Yes.**  
- **No.**

**Even if you make payments on time, can you loan balance rise?**  
- **Yes.**
- **No.**

**Does your loan have a prepayment penalty?**
- **Yes.**
- **No.**

**Does your loan have a balloon payment?**
- **Yes.**
- **No.**

**Total monthly amount owed including escrow account payments**

- You do not have a monthly escrow payment for items, such as property taxes and homeowner’s insurance. You must pay these items directly yourself.
- You have an additional monthly escrow payment of $ that results in a total initial monthly amount owed of $.

*Note: If you have any questions about the Entitlement Charges and Loan Terms listed on this form, please contact your lender.*

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Page 3 of 3  
12 CFR Ch. X (1-1-14 Edition)
### EFFECTIVE DATE NOTE: At 78 FR 80104, Dec. 31, 2013, appendix A to part 1024 was amended under the heading Line Item Instructions, Section J. Summary of Borrower’s Transaction, Line 102, the third sentence is amended by capitalizing “State” wherever it appears; under the heading Line Item Instructions, Section J. Summary of Borrower’s Transaction, Line 102, the third sentence is amended by capitalizing “State” wherever it appears.

#### Table: Comparison of Good Faith Estimate (GFE) and HUD-1 Charges

<table>
<thead>
<tr>
<th>Charges That Cannot Increase</th>
<th>Good Faith Estimate</th>
<th>HUD-1</th>
<th>Charges That Can Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Our single payment charge</td>
<td>$ 0.01</td>
<td></td>
<td>Initial deposit for your escrow account</td>
</tr>
<tr>
<td>Year marketing charges</td>
<td>$ 0.02</td>
<td></td>
<td>Daily interest charges</td>
</tr>
<tr>
<td>Year adjusted origination charges</td>
<td>$ 0.03</td>
<td></td>
<td>Homeowner’s insurance</td>
</tr>
<tr>
<td>Title insurance</td>
<td>$ 0.02</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Title insurance</td>
<td>$ 0.02</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>$ 0.02</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>$ 0.02</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total increase between GFE and HUD-1 charges</td>
<td>$ or %</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Table: Loan Terms

<table>
<thead>
<tr>
<th>Loan Terms</th>
<th>Good Faith Estimate</th>
<th>HUD-1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Your initial loan amount</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Your loan term</td>
<td>years</td>
<td></td>
</tr>
<tr>
<td>Your initial interest rate</td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>Your initial monthly amount owed for principal, interest, and any mortgage insurance</td>
<td>$ includes:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Principal</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Interest</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mortgage Insurance</td>
<td></td>
</tr>
<tr>
<td>Can your interest rate rise?</td>
<td>Yes</td>
<td>No, Yes, a change in the interest rate will be on and can change again after. Every change changes your interest rate can increase or decrease by %. Over the life of the loan, your interest rate is guaranteed to never be lower than % or higher than %.</td>
</tr>
<tr>
<td>Even if you make payments on time, can your loan balance increase?</td>
<td>Yes</td>
<td>No, yes, it is limited to a maximum of $</td>
</tr>
<tr>
<td>Even if your make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?</td>
<td>Yes</td>
<td>No, yes, the interest rate can rise to $ and the monthly amount owed can rise to $</td>
</tr>
<tr>
<td>Does your loan have a prepayment penalty?</td>
<td>Yes</td>
<td>No, yes, your prepayment penalty is $</td>
</tr>
<tr>
<td>Does your loan have a balloon payment?</td>
<td>Yes</td>
<td>No, you have a balloon payment of $ due in years</td>
</tr>
<tr>
<td>Total monthly amount owed including escrow account payments</td>
<td>$ You do not have a monthly escrow payment for items, such as property taxes and homeowner’s insurance. You must pay these items directly and you have an additional monthly escrow payment of $ that results in a total monthly escrow amount owed of $ This includes principal, interest, any mortgage insurance and any items checked below:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Property taxes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Homeowner’s insurance</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td></td>
</tr>
</tbody>
</table>

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.
APPENDIX A TO PART 1024—I NSTRUCTIONS FOR COMPLETING HUD–1 AND HUD–1A SETTLEMENT STATEMENTS

**Loan Terms**

This section must be completed in accordance with the information and instructions provided by the lender. The lender must provide this information in a format that permits the settlement agent to simply enter the necessary information in the appropriate spaces, without the settlement agent having to refer to the loan documents themselves. For reverse mortgages, the initial monthly amount owed for principal, interest, and any mortgage insurance must read “N/A” and the loan term is disclosed as “N/A” when the loan term is conditioned upon the occurrence of a specified event, such as the death of the borrower or the borrower no longer occupying the property for a certain period of time. Additionally, for reverse mortgages the question “Even if you make payments on time, can your loan balance rise?” must be answered as “Yes” and the maximum amount disclosed as “Unknown.”

For reverse mortgages that establish an arrangement for the payment of property taxes, homeowner’s insurance, or other recurring charges through draws from the principal limit, the second box in the “Total monthly amount owed including escrow payments” section must be checked. The blank following the first $ must be completed with “0” and an asterisk, and all items that will be paid using draws from the principal limit, such as for property taxes, must also be indicated. An asterisk must also be placed in this section with the following statement: “Paid by or through draws from the principal limit.” Reverse mortgage transactions are not considered to be balloon transactions for the purposes of the loan terms disclosed on page 3 of the HUD–1.

* * * * *

APPENDIX B TO PART 1024—ILLUSTRATIONS OF REQUIREMENTS OF RESPA

The following illustrations provide additional guidance on the meaning and coverage of the provisions of RESPA. Other provisions of Federal or state law may also be applicable to the practices and payments discussed in the following illustrations.

1. **Facts:** A, a provider of settlement services, provides settlement services at abnormally low rates or at no charge at all to B, a builder, in connection with a subdivision being developed by B. B agrees to refer purchasers of the completed homes in the subdivision to A for the purchase of settlement services in connection with the sale of individual lots by B.

   **Comments:** The rendering of services by A to B at little or no charge constitutes a thing of value given by A to B in return for the referral of settlement services business, and both A and B are in violation of section 8 of RESPA.

2. **Facts:** B, a lender, encourages persons who receive federally related mortgage loans from it to employ A, an attorney, to perform
title searches and related settlement services in connection with their transaction. B and A have an understanding that in return for the referral of this business A provides legal services to B’s employees at abnormally low rates or for no charge.

Comments: Both A and B are in violation of section 8 of RESPA. Similarly, if an attorney referred prospective clients to another attorney, a lender, a real estate broker or any other provider of settlement services, who had referred prospective clients to the attorney, section 8 would be violated by both persons.

3. Facts: A, a real estate broker, obtains all necessary licenses under state law to act as a title insurance agent. A refers individuals who are purchasing homes in transactions in which A participates as a broker to B, an unaffiliated title company, for the purchase of title insurance services. A performs minimal, if any, title services in connection with the issuance of the title insurance policy (such as placing an application with the title company). B pays A a commission (or A retains a portion of the title insurance premium) for the transactions or alternatively B receives a portion of the premium paid directly from the purchaser.

Comments: The payment of a commission or portion of the title insurance premium by B to A, or receipt of a portion of the payment for title insurance under circumstances where no substantial services are being performed by A, is a violation of section 8 of RESPA. It makes no difference whether the payment comes from B or the purchaser. The amount of the payment must bear a reasonable relationship to the services rendered. Here A really is being compensated for a referral of business to B.

4. Facts: A is an attorney who, as a part of his legal representation of clients in residential real estate transactions, orders and reviews title insurance policies for his clients. A enters into a contract with B, a title company, to be an agent of B under a program set up by B. Under the agreement, A agrees to prepare and forward title insurance applications to B, to re-examine the preliminary title commitment for accuracy and if he chooses to attempt to clear exceptions to the title policy before closing. A agrees to assume liability for waiving certain exceptions to title, but never exercises this authority. B performs the necessary title search and examination work, determines insurability of title, prepares documents containing substantive information in title commitments, handles closings for A’s clients and issues title policies. A receives a fee from his client for legal services and an additional fee for his title agent “services” from the client’s title insurance premium to B.

Comments: A and B are violating section 8 of RESPA. Here, A’s clients are being double billed because the work A performs as a “title agent” is that which he already performs for his client in his capacity as an attorney. For A to receive a separate payment as a title agent, A must perform necessary core title work and may not contract out the work. To receive additional compensation as a title agent for this transaction, A must provide his client with core title agent services for which he assumes liability, and which includes at a minimum, the evaluation of the title search to determine insurability of the title, and the issuance of a title commitment where customary, the clearance of underwriting objections, and the actual issuance of the policy or policies on behalf of the title company. A may not be compensated for the mere re-examination of work performed by B. Here, A is not performing these services and may not be compensated as a title agent under section 8(c)(1)(B). Referral fees or splits of fees may not be disguised as title agent commissions when the core title agent work is not performed. Further, because B created the program and gave A the opportunity to collect fees (a thing of value) in exchange for the referral of settlement service business, it has violated section 8 of RESPA.

5. Facts: A, a “mortgage originator,” receives loan applications, funds the loans with its own money or with a wholesale line of credit for which A is liable, and closes the loans in A’s own name. Subsequently, B, a mortgage lender, purchases the loans and compensates A for the value of the loans, as well as for any mortgage servicing rights.

Comments: Compensation for the sale of a mortgage loan and servicing rights constitutes a secondary market transaction, rather than a referral fee, and is beyond the scope of section 8 of RESPA. The Bureau has not considered whether a bona fide transfer of the loan obligation has taken place, the Bureau examines the real source of funding, and the real interest of the named settlement lender.

6. Facts: A, a credit reporting company, places a facsimile transmission machine (FAX) in the office of B, a mortgage lender, so that B can easily transmit requests for credit reports and A can respond. A supplies the FAX machine at no cost or at a reduced rental rate based on the number of credit reports ordered.

Comments: Either situation violates section 8 of RESPA. The FAX machine is a thing of value that A provides in exchange for the referral of business from B. Copying machines, computer terminals, printers, or other like items which have general use to the recipient and which are given in exchange for referrals of business also violate RESPA.

7. Facts: A, a real estate broker, refers title business to B, a company that is a licensed title agent for C, a title insurance company. A owns more than 1% of B. B performs the
title search and examination, makes determinations of insurability, issues the commitment, clears underwriting objections, and issues a policy of title insurance on behalf of C, for which C charges a commission. B pays annual dividends to its owners, including A, based on the relative amount of business each of its owners refers to B.

Comments: The facts involve an affiliated business arrangement. The payment of a commission by C to B is not a violation of section 8 of RESPA if the amount of the commission constitutes reasonable compensation for the services performed by B for C. The payment of a dividend or the giving of any other thing of value by B to A that is based on the amount of business referred to B by A does not meet the affiliated business agreement exemption provisions and such actions violate section 8. Similarly, if the amount of stock held by A in B (or, if B were a partnership, the distribution of partnership profits by B to A) varies based on the amount of business referred or expected to be referred, or if B retained any funds for subsequent distribution to A where such funds were generally in proportion to the amount of business A referred to B relative to the amount referred by other owners, such arrangements would violate section 8. The exemption for controlled business arrangements would not be available because the payments here would not be considered returns on ownership interests. Further, the required disclosure of the affiliated business arrangement and estimated charges have not been provided.

8. Facts: Same as Illustration 7, but B pays annual dividends in proportion to the amount of stock held by its owners, including A, and the distribution of annual dividends is not based on the amount of business referred or expected to be referred.

Comments: If A and B meet the requirements of the affiliated business arrangement exemption there is not a violation of RESPA. Since the payee is a return on ownership interests, A and B will be exempt from section 8 if (1) A also did not require anyone to use the services of B, and (2) A disclosed its ownership interest in B on a separate disclosure form and provided an estimate of B’s charges to each person referred to B (see appendix D of this part) and C does not require anyone to use B’s services and A gives no thing a value to C under the franchise agreement (such as an adjusted level of franchise payment based on the referrals), and B makes no payments to A other than dividends representing a return on ownership interest (rather than, e.g., an adjusted level of payment being based on the referral). Nor may B pay C anything of value for the referral.

9. Facts: A is a franchisor of franchised real estate brokers, owns B, a provider of settlement services, C, a franchisee of A, refers business to B.

Comments: This is an affiliated business arrangement. A, B and C will all be exempt from section 8 if C discloses its franchise relationship with the owner of B on a separate disclosure form and provides an estimate of B’s charges to each person referred to B (see appendix D of this part) and C does not require anyone to use B’s services and A gives no thing a value to C under the franchise agreement (such as an adjusted level of franchise payment based on the referrals), and B makes no payments to A other than dividends representing a return on ownership interest (rather than, e.g., an adjusted level of payment being based on the referral). Nor may B pay C anything of value for the referral.

10. Facts: A is a real estate broker who refers business to its affiliate title company B. A makes all required written disclosures to the homebuyer of the arrangement and estimated charges and the homebuyer is not required to use B. B refers or contracts out business to C who does all the title work and splits the fee with B. B passes its fee to A in the form of dividends, a return on ownership interest.

Comments: The relationship between A and B is an affiliated business arrangement. However, the affiliated business arrangement exemption does not provide exemption between an affiliated entity, B, and a third party, C. Here, B is a mere “shell” and provides no substantive services for its portion of the fee. The arrangement between B and C would be in violation of section 8(a) and (b). Even if B had an affiliate relationship with C, the required exemption criteria have not been met and the relationship would be subject to section 8.

11. Facts: A, a mortgage lender is affiliated with B, a title company, and C, an escrow company and offers consumers a package of mortgage title and escrow services at a discount from the prices at which such services would be sold if purchased separately. Neither A, B, nor C requires consumers to purchase the services of their sister companies and each company sells such services separately and as part of the package. A also pays its employees (e.g., loan officers, secretaries, etc.) a bonus for each loan, title insurance or closing that A’s employees generate for A, B, or C respectively. A pays such employee bonuses out of its own funds and receives no payments or reimbursements for such bonuses from B or C. At or before the time that customers are told by A or its employees about the services offered by B and C and/or the package of services that is available, the customers are provided with an affiliated business disclosure form.

Comments: A’s selling of a package of settlement services at a discount to a settlement service purchaser does not violate section 8 of RESPA. A’s employees are making appropriate affiliated business disclosures and since the services are available separately and as part of a package, there is not “required use” of the additional services. A’s payments of bonuses to its employees for the referral of business to A or A’s affiliates, B and C, are exempt from section 8 under...
Comment. The mortgage broker's fee must be itemized in the Good Faith Estimate and on the HUD–1 Settlement Statement. Other charges which are paid for by the borrower and paid in advance are listed as P.O.C. on the HUD–1 Settlement Statement, and reflect the actual provider charge for such services. Also, any other fee or payment received by the mortgage broker from either the lender or the borrower arising from the initial funding transaction, including a servicing release premium or yield spread premium, is to be noted on the Good Faith Estimate and listed in the 800 series of the HUD–1 Settlement Statement.

12. Facts. A is a mortgage broker who provides origination services to submit a loan to a lender for approval. The mortgage broker charges the borrower a uniform fee for the total origination services, as well as a direct up-front charge for reimbursement of credit reporting, appraisal services or similar charges.

Comment. The mortgage broker’s fee must be itemized in the Good Faith Estimate and on the HUD–1 Settlement Statement. Other charges which are paid for by the borrower and paid in advance are listed as P.O.C. on the HUD–1 Settlement Statement, and reflect the actual provider charge for such services. Also, any other fee or payment received by the mortgage broker from either the lender or the borrower arising from the initial funding transaction, including a servicing release premium or yield spread premium, is to be noted on the Good Faith Estimate and listed in the 800 series of the HUD–1 Settlement Statement.

12. Facts. A is a mortgage broker who provides origination services to submit a loan to a lender for approval. The mortgage broker charges the borrower a uniform fee for the total origination services, as well as a direct up-front charge for reimbursement of credit reporting, appraisal services, or similar charges.

Comment. The mortgage broker’s fee must be itemized in the Good Faith Estimate and on the HUD–1 Settlement Statement. Other charges which are paid for by the borrower and paid in advance are listed as P.O.C. on the HUD–1 Settlement Statement, and reflect the actual provider charge for such services.

APPENDIX C TO PART 1024—INSTRUCTIONS FOR COMPLETING GOOD FAITH ESTIMATE (GFE) FORM

The following are instructions for completing the GFE required under section 5 of RESPA and 12 CFR 1024.7 of the Bureau regulations. The standardized form set forth in this appendix is the required GFE form and must be provided exactly as specified; provided, however, preparers may replace HUD’s OMB approval number when they reproduce the GFE form. The instructions for completion of the GFE are primarily for the benefit of the loan originator who prepares the form and need not be transmitted to the borrower(s) as an integral part of the GFE. The required standardized GFE form must be prepared completely and accurately. A separate GFE must be provided for each loan where a transaction will involve more than one mortgage loan.

GENERAL INSTRUCTIONS

The loan originator preparing the GFE may fill in information and amounts on the form by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Under these instructions, the “form” refers to the required standardized GFE form. Although the standardized GFE is a prescribed form, Blocks 3, 6, and 11 on page 2 may be adapted for use in particular loan situations, so that additional
lines may be inserted there, and unused lines may be deleted.

All fees for categories of charges shall be disclosed in U.S. dollar and cent amounts.

**SPECIFIC INSTRUCTIONS**

**Page 1**

**Top of the Form**—The loan originator must enter its name, business address, telephone number, and email address, if any, on the top of the form, along with the applicant's name, the address or location of the property for which financing is sought, and the date of the GFE.

**Purpose.**—This section describes the general purpose of the GFE as well as additional information available to the applicant.

**Shopping for your loan.**—This section requires no loan originator action.

**Important dates.**—This section states important deadlines after which the loan terms that are the subject of the GFE may not be available to the applicant. In Line 1, the loan originator must state the date and, if necessary, time until which the interest rate for the GFE will be available. In Line 2, the loan originator must state the date until which the estimate of all other settlement charges for the GFE will be available. This date must be at least 10 business days from the date of the GFE. In Line 3, the loan originator must state how many calendar days prior to settlement the interest rate would have to be locked. In Line 4, the loan originator must state the amount and any mortgage insurance" must be entered in the space for the monthly amount owed in this section.

**Summary of your loan.**—In this section, for all loans the loan originator must fill in, where indicated:

1. The initial loan amount;
2. The loan term; and
3. The initial interest rate.

The loan originator must fill in the initial monthly amount owed for principal, interest, and any mortgage insurance. The amount shown must be the greater of: (1) The required monthly payment for principal and interest for the first regularly scheduled payment, plus any monthly mortgage insurance payment; or (2) the accrued interest for the first regularly scheduled payment, plus any monthly mortgage insurance payment.

The loan originator must indicate whether the interest rate can first change, the maximum amount to which the monthly amount owed can rise over the life of the loan. For Federal, state, local, or tribal housing programs that provide payment assistance, any repayment of such program assistance should be excluded from consideration in completing this item. If the loan balance will increase only because escrow items are being paid through the loan balance, the loan originator is not required to check the box indicating that the loan balance can rise.

The loan originator must indicate whether the monthly amount owed for principal, interest, and any mortgage insurance can rise even if the borrower makes payments on time. If the monthly amount owed can rise even if the borrower makes payments on time, the loan originator must indicate the period of time after which the monthly amount owed can rise at the time of the first change, and the maximum amount to which the monthly amount owed can rise over the life of the loan. The amount used for the monthly amount owed must be the greater of: (1) The required monthly payment for principal and interest for that month, plus any monthly mortgage insurance payment; or (2) the accrued interest for that month, plus any monthly mortgage insurance payment.

The loan originator must indicate whether the loan includes a prepayment penalty, and, if so, the maximum amount that it could be.

The loan originator must indicate whether the loan requires a balloon payment and, if so, the amount of the payment and in how many years it will be due.

**Escrow account information.**—The loan originator must indicate whether the loan includes an escrow account for property taxes and other financial obligations. The amount shown in the "Summary of your loan" section for "Your initial monthly amount owed for principal, interest, and any mortgage insurance" must be entered in the space for the monthly amount owed in this section.

**Summary of your settlement charges.**—On this line, the loan originator must state the Adjusted Origination Charges from subtotal A of page 2, the Charges for All Other Settlement Services from subtotal B of page 2, and the Total Estimated Settlement Charges from the bottom of page 2.

**Page 2**

**Understanding your estimated settlement charges.**—This section details 11 settlement cost categories and amounts associated with the mortgage loan. For purposes of determining whether a tolerance has been met, the amount on the GFE should be compared with the total of any amounts shown on the HUD-1 in the borrower's column and any amounts paid outside closing by or on behalf of the borrower.
"Your Adjusted Origination Charges"

Block 1. "Our origination charge."—The loan originator must state here all charges that all loan originators involved in this transaction will receive, except for any charge for the specific interest rate chosen (points). A loan originator may not separately charge any additional fees for getting this loan, including for application, processing, or underwriting. The amount stated in Block 1 is subject to zero tolerance, i.e., the amount may not increase at settlement.

Block 2. "Your credit or charge (points) for the specific interest rate chosen."—For transactions involving mortgage brokers, the mortgage broker must indicate through check boxes whether there is a credit to the borrower for the interest rate chosen on the loan, the interest rate, and the amount of the credit, or whether there is a charge to the borrower for the interest rate chosen on the loan, the interest rate, and the amount of the charge. Only one of the boxes may be checked; a credit and charge cannot occur together in the same transaction.

For transactions without a mortgage broker, the lender may choose not to separately disclose in this block any credit or charge for the interest rate chosen on the loan; however, if this block does not include any positive or negative figure, the lender must check the first box to indicate that "The credit for the interest rate you have chosen" is included in "Our origination charge." (see Block 1 instructions above), must insert the interest rate, and must also insert "0" in Block 2. Only one of the boxes may be checked; a credit and charge cannot occur together in the same transaction.

For a mortgage broker, the credit or charge for the specific interest rate chosen is the net payment to the mortgage broker from the lender (i.e., the sum of all payments to the mortgage broker from the lender, including payments based on the loan amount, a flat rate, or any other computation, and in a table funded transaction, the loan amount less the price paid for the loan by the lender). When the net payment to the mortgage broker from the lender is positive, there is a credit to the borrower and it is entered as a positive amount in Block 2 of the GFE. When the net payment to the mortgage broker from the lender is negative, there is a charge to the borrower and it is entered as a negative amount in Block 2 of the GFE. If there is no net payment (i.e., the credit or charge for the specific interest rate chosen is zero), the mortgage broker must insert "0" in Block 2 and may check either the box indicating there is a credit of "0" or the box indicating there is a charge of "0".

The amount stated in Block 2 is subject to zero tolerance while the interest rate is locked, i.e., any credit for the interest rate chosen cannot decrease in absolute value terms and any charge for the interest rate chosen cannot increase. (NOTE: An increase in the credit is allowed since this increase is a reduction in cost to the borrower. A decrease in the credit is not allowed since it is an increase in cost to the borrower.)

Line A. "Your Adjusted Origination Charges."—The loan originator must add the numbers in Blocks 1 and 2 and enter this subtotal at highlighted Line A. The subtotal at Line A will be a negative number if there is a credit in Block 2 that exceeds the charge in Block 1. The amount stated in Line A is subject to zero tolerance while the interest rate is locked.

In the case of "no cost" loans, where "no cost" refers only to the loan originator's fees, Line A must show a zero charge as the adjusted origination charge. In the case of "no cost" loans where "no cost" encompasses third party fees as well as the upfront payment to the loan originator, all of the third party fees listed in Block 3 through Block 11 to be paid for by the loan originator (or borrower, if any) must be itemized and listed on the GFE. The credit for the interest rate chosen must be large enough that the total for Line A will result in a negative number to cover the third party fees.

"Your Charges for All Other Settlement Services"

There is a 10 percent tolerance applied to the sum of the prices of each service listed in Block 3, Block 4, Block 5, Block 6, and Block 7, where the loan originator requires the use of a particular provider or the borrower uses a provider selected or identified by the loan originator. Any services in Block 4, Block 5, or Block 6 for which the borrower selects a provider other than one identified by the loan originator are not subject to any tolerance and, at settlement, would not be included in the sum of the charges on which the 10 percent tolerance is based. Where a loan originator permits a borrower to shop for third party settlement services, the loan originator must provide the borrower with a written list of settlement services providers at the time of the GFE, on a separate sheet of paper.

Block 3. "Required services that we select."—In this block, the loan originator must identify each third party settlement service required and selected by the loan originator (excluding title services), along with the estimated price to be paid to the provider of each service. Examples of such third party settlement services might include provision of credit reports, appraisals, flood checks, tax services, and any upfront mortgage insurance premium. The loan originator must identify the specific required services and provide an estimate of the price of each service. Loan originators are also required to add...
the individual charges disclosed in this block and place that total in the column of this block. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 4. “Title services and lender’s title insurance.”—In this block, the loan originator must state the estimated total charge for third party settlement service providers for all closing services, regardless of whether the providers are selected or paid for by the borrower, seller, or loan originator. The loan originator must also include any lender’s title insurance premiums, when required, regardless of whether the provider is selected or paid for by the borrower, seller, or loan origination. All fees for title searches, examinations, and endorsements, for example, would be included in this total. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 5. “Owner’s title insurance.”—In this block, for all purchase transactions the loan originator must provide an estimate of the charge for the owner’s title insurance and related endorsements, regardless of whether the providers are selected or paid for by the borrower, seller, or loan originator. For non-purchase transactions, the loan originator may enter “NA” or “Not Applicable” in this block. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 6. “Required services that you can shop for.”—In this block, the loan originator must identify each third party settlement service required by the loan originator where the borrower is permitted to shop for and select the settlement service provider (excluding title services), along with the estimated charge to be paid to the provider of each service. The loan originator must identify the specific required services (e.g., survey, pest inspection) and provide an estimate of the charge of each service. The loan originator must also add the individual charges disclosed in this block and place the total in the column of this block. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 7. “Government recording charge.”—In this block, the loan originator must estimate the state and local government fees for recording the loan and title documents that can be expected to be charged at settlement. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 8. “Transfer taxes.”—In this block, the loan originator must estimate the sum of all state and local government fees on mortgaged and some sales that can be expected to be charged at settlement, based upon the proposed loan amount or sales price and on the property address. A zero tolerance applies to the sum of these estimated fees.

Block 9. “Initial deposit for your escrow account.”—In this block, the loan originator must estimate the amount that it will require the borrower to place into a reserve or escrow account at settlement to be applied to recurring charges for property taxes, homeowner’s and other similar insurance, mortgage insurance, and other periodic charges. The loan originator must indicate through check boxes if the reserve or escrow account will cover future payments for all tax, all hazard insurance, and other obligations that the loan originator requires to be paid as they fall due. If the reserve or escrow account includes some, but not all, property taxes or hazard insurance, or if it includes mortgage insurance, the loan originator should check “other” and then list the items included.

Block 10. “Daily interest charges.”—In this block, the loan originator must estimate the total amount that will be due at settlement for the daily interest on the loan from the date of settlement until the first day of the first period covered by scheduled mortgage payments. The loan originator must also indicate how this total amount is calculated by providing the amount of the interest charges per day and the number of days used in the calculation, based on a stated projected closing date.

Block 11. “Homeowner’s insurance.”—The loan originator must indicate which charges cannot increase at closing. This section informs the applicant about which categories of settlement charges can increase at closing, and by how much, and which categories of settlement charges cannot increase at closing. This section requires no loan originator action.
“Using the tradeoff table.”—This section is designed to make borrowers aware of the relationship between their total estimated settlement charges on one hand, and the interest rate and resulting monthly payment on the other hand. The loan originator must complete the left hand column using the loan amount, interest rate, monthly payment figure, and the total estimated settlement charges from page 1 of the GFE. The loan originator, at its option, may provide the borrower with the same information for two alternative loans, one with a higher interest rate, if available, and one with a lower interest rate, if available, from the loan originator. The loan originator should list in the tradeoff table only alternative loans for which it would presently issue a GFE based on the same information the loan originator considered in issuing this GFE. The alternative loans must use the same loan amount and be otherwise identical to the loan in the GFE. The alternative loans must have, for example, the identical number of payment periods; the same margin, index, and adjustment schedule if the loans are adjustable rate mortgages; and the same requirements for prepayment penalty and balloon payments. If the loan originator fills in the tradeoff table, the loan originator must show the borrower the loan amount, alternative interest rate, alternative monthly payment, the change in the monthly payment from the loan in this GFE to the alternative loan, the change in the total settlement charges from the loan in this GFE to the alternative loan, and the total settlement charges for the alternative loan. If these options are available, an applicant may request a new GFE, and a new GFE must be provided by the loan originator.

“Using the shopping chart.”—This chart is a shopping tool to be provided by the loan originator for the borrower to complete, in order to compare GFEs.

“If your loan is sold in the future.”—This section requires no loan originator action.
### Good Faith Estimate (GFE)

<table>
<thead>
<tr>
<th>Name of Originator</th>
<th>Borrower</th>
<th>Property Address</th>
<th>Date of GFE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Purpose**

This GFE gives you an estimate of your settlement charges and loan terms if you are approved for this loan. For more information, see HUD's Special Information Booklet on settlement charges, your Truth-in-Lending Disclosures, and other consumer information at www.hud.gov/respa. If you decide you would like to proceed with this loan, contact us.

**Shopping for your loan**

Only you can shop for the best loan for you. Compare this GFE with other loan offers, so you can find the best loan. Use the shopping chart on page 3 to compare all the offers you receive.

**Important dates**

1. The interest rate for this GFE is available through ________________. After this time, the interest rate, some of your loan Origination Charges, and the monthly payment shown below can change until you lock your interest rate.

2. This estimate for all other settlement charges is available through ________________.

3. After you lock your interest rate, you must go to settlement within ________________ days (your rate lock period) to receive the locked interest rate.

4. You must lock the interest rate at least ________________ days before settlement.

**Summary of your loan**

<table>
<thead>
<tr>
<th>Your initial loan amount is</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Your loan term is</td>
<td>years</td>
</tr>
<tr>
<td>Your initial interest rate is</td>
<td>%</td>
</tr>
<tr>
<td>Your initial monthly amount owed for principal, interest, and any mortgage insurance is</td>
<td>$ per month</td>
</tr>
</tbody>
</table>

**Can your interest rate rise?**

- □ No
- □ Yes, it can rise to a maximum of ________________%.

**Even if you make payments on time, can your loan balance rise?**

- □ No
- □ Yes, it can rise to a maximum of ________________.

**Escrow account information**

Some lenders require an escrow account to hold funds for paying property taxes or other property-related charges in addition to your monthly amount owed of ________________.

**Do we require you to have an escrow account for your loan?**

- □ No, you do not have an escrow account. You must pay these charges directly when due.
- □ Yes, you have an escrow account. It may or may not cover all of these charges. Ask us.

**Summary of your settlement charges**

<table>
<thead>
<tr>
<th>A</th>
<th>Your Adjusted Origination Charges (See page 2)</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>B</td>
<td>Your Charges for All Other Settlement Services (See page 2)</td>
<td>$</td>
</tr>
<tr>
<td>A + B</td>
<td>Total Estimated Settlement Charges</td>
<td>$</td>
</tr>
</tbody>
</table>

Good Faith Estimate (HUD-GFE)
### Understanding your estimated settlement charges

#### Your Adjusted Origination Charges

1. **Our origination charge**
   - This charge is for getting this loan for you.

2. **Your credit or charge (points) for the specific interest rate chosen**
   - The credit or charge for the interest rate of ____ % is included in “Our origination charge.” (See item 1 above.)
   - You receive a credit of $____ for this interest rate of ____ %.
   - This credit reduces your settlement charges.
   - You pay a charge of $____ for this interest rate of ____ %.
   - This charge (points) increases your total settlement charges.
   - The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.

#### Your Charges for All Other Settlement Services

3. **Required services that we select**
   - These charges are for services we require to complete your settlement.
   - We will choose the providers of these services.

<table>
<thead>
<tr>
<th>Service</th>
<th>Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4. **Title services and lender’s title insurance**
   - This charge includes the services of a title or settlement agent, for example, and title insurance to protect the lender, if required.

5. **Owner’s title insurance**
   - You may purchase an owner’s title insurance policy to protect your interest in the property.

6. **Required services that you can shop for**
   - These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below.

<table>
<thead>
<tr>
<th>Service</th>
<th>Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

7. **Government recording charges**
   - These charges are for state and local fees to record your loan and title documents.

8. **Transfer taxes**
   - These charges are for state and local taxes on mortgages and home sales.

9. **Initial deposit for your escrow account**
   - This charge is held in an escrow account to pay future recurring charges on your property and includes: [ ] all property taxes, [ ] all insurance, and [ ] other [______].

10. **Daily interest charges**
    - This charge is for the daily interest on your loan from the day of your settlement until the first day of the next month or the first day of your normal mortgage payment cycle. This amount is $____ per day for ____ days if your settlement is ____.

11. **Homeowner’s insurance**
    - This charge is for the insurance you must buy for the property to protect from a loss, such as fire.

<table>
<thead>
<tr>
<th>Policy</th>
<th>Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Calculation

- **A** Your Adjusted Origination Charges $____
- **B** Your Charges for All Other Settlement Services $____
- **A + B** Total Estimated Settlement Charges $____

---

This Good Faith Estimate (GFE) is to help you understand the costs associated with your mortgage loan. The numbers provided are estimates and may not include all charges.

Good Faith Estimate (HUD-4020) 2
Instructions

Understanding which charges can change at settlement

This GFE estimates your settlement charges. At your settlement, you will receive a HUD-1, a form that lists your actual costs. Compare the charges on the HUD-1 with the charges on this GFE. Charges can change if you select your own provider and do not use the companies we identify. (See below for details.)

- Your origination charge
- Your credit or charge (points) for the specific interest rate chosen (after you lock in your interest rate)
- Your adjusted origination charge (after you lock in your interest rate)
- Transfer taxes

The total of these charges can increase up to 10% at settlement.

- Required services that you select
- Title services and lender's title insurance (if we select them or you use companies we identify)
- Owner's title insurance (if you use companies we identify)
- Required services that you can shop for (if you use companies we identify)
- Government recording charges

Three charges can change at settlement:

- Required services that you can shop for (if you do not use companies we identify)
- Title services and lender's title insurance (if you do not use companies we identify)
- Owner's title insurance (if you do not use companies we identify)
- Initial deposit for your escrow account
- Daily interest charges
- Homeowners' insurance

Using the tradeoff table

In this GFE, we offered you this loan with a particular interest rate and estimated settlement charges. However:

- If you want to choose this same loan with lower settlement charges, then you will have a higher interest rate.
- If you want to choose this same loan with a lower interest rate, then you will have higher settlement charges.

If you would like to choose an available option, you must ask us for a new GFE.

Loan originators have the option to complete this table. Please ask for additional information if the table is not completed.

<table>
<thead>
<tr>
<th>Loan in this GFE</th>
<th>Same loan with lower settlement charges</th>
<th>Same loan with a lower interest rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Your initial loan amount</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Your initial interest rate</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Your initial monthly amount owed</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Change in the monthly amount owed from this GFE</td>
<td>No change</td>
<td>You will pay $ more every month</td>
</tr>
<tr>
<td>Change in the amount you will pay at settlement with this interest rate</td>
<td>No change</td>
<td>Your settlement charges will be reduced by $</td>
</tr>
<tr>
<td>How much your total estimated settlement charges will be</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

*For an adjustable rate loan, the comparisons above are for the total interest rate before adjustments are made.

Using the shopping chart

Use this chart to compare GFEs from different loan originators. Fill in the information by using a different column for each GFE you receive. By comparing loan offers, you can shop for the best loan.

<table>
<thead>
<tr>
<th>This loan</th>
<th>Loan 2</th>
<th>Loan 3</th>
<th>Loan 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loan originator name</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Initial loan amount</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Loan term</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Initial interest rate</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Initial monthly amount owed</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rate lock period</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Can interest rate change?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Can loan balance rise?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Can monthly amount owed rise?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prepayment penalty?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balloon payment?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Estimated Settlement Charges</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If your loan is sold in the future

Some lenders may sell your loan after settlement. Any fees lenders receive in the future cannot change the loan you receive or the charges you paid at settlement.

Good Faith Estimate (HUD-GFE)
APPENDIX C TO PART 1024—INSTRUCTIONS FOR COMPLETING GOOD FAITH ESTIMATE (GFE) FORM

Summary of your loan.—In this section, for all loans the loan originator must fill in, where indicated:

(i) The initial loan amount;

(ii) The loan term; and

(iii) The initial interest rate.

For reverse mortgage transactions:

(i) The initial loan amount disclosed on the GFE is the amount of the initial principal limit of the loan;

(ii) The loan term is disclosed as “N/A” when the loan term is conditioned upon the occurrence of a specified event, such as the death of the borrower or the borrower no longer occupying the property for a certain period of time; and

(iii) The initial interest rate is the interest rate indicated on the legal obligation.

The loan originator must indicate whether the monthly amount owed for principal, interest, and any mortgage insurance. The amount shown must be the greater of: (1) The required monthly payment for principal and interest for the first regularly scheduled payment, plus any monthly mortgage insurance payment; or (2) the accrued interest for the first regularly scheduled payment, plus any monthly mortgage insurance payment. For reverse mortgage transactions where there are no regular payment periods, the loan originator must disclose “Not Applicable” or “N/A” for the initial monthly amount owed for principal, interest, and any mortgage insurance.

The loan originator must indicate whether the monthly amount owed can rise over the life of the loan. For Federal, State, local, or tribal housing programs that provide payment assistance, any repayment of such program assistance should be excluded from consideration in completing this item. If the loan balance will increase only because escrow items are being paid through the loan balance, the loan originator is not required to check the box indicating that the loan balance can rise. For reverse mortgage transactions, the loan originator must indicate that the loan balance can rise even if the borrower makes payments on time and the maximum amount to which the loan balance can rise must be disclosed as “Unknown.”

The loan originator must indicate whether the monthly amount owed for principal, interest, and any mortgage insurance can rise even if the borrower makes payments on time. If the monthly amount owed can rise even if the borrower makes payments on time, the loan originator must indicate the period of time after which the monthly amount owed can first change, the maximum amount to which the monthly amount owed can rise at the time of the first change, and the maximum amount to which the monthly amount owed can rise over the life of the loan. The amount used for the monthly amount owed must be the greater of: (1) The required monthly payment for principal and interest for that month, plus any monthly mortgage insurance payment; or (2) the accrued interest for that month, plus any
monthly mortgage insurance payment. For reverse mortgage transactions, the loan originator must disclose that the monthly amount owed for principal, interest, and any mortgage insurance cannot rise.

The loan originator must indicate whether the loan includes a prepayment penalty, and, if so, the maximum amount that it could be.

The loan originator must indicate whether the loan requires a balloon payment and, if so, the amount of the payment and in how many years it will be due. Reverse mortgage transactions are not considered to be balloon transactions for the purposes of this disclosure on the GFE.

* * * * *

APPENDIX D TO PART 1024—AFFILIATED BUSINESS ARRANGEMENT DISCLOSURE STATEMENT FORMAT NOTICE

To: ______________________________

From: ______________________________

(ENTITY MAKING STATEMENT)

Property: ______________________________

Date: ______________________________

This is to give you notice that [REFERRING PARTY] has a business relationship with [SETTLEMENT SERVICES PROVIDER(S)]. [Describe the nature of the relationship between the referring party and the provider(s), including percentage of ownership interest, if applicable.] Because of this relationship, this referral may provide [REFERRING PARTY] a financial or other benefit.

[A.] Set forth below is the estimated charge or range of charges for the settlement services listed. You are NOT required to use the listed provider(s) as a condition for [SETTLEMENT OF YOUR LOAN] [OR] [PURCHASE, SALE, OR REFINANCE OF THE SUBJECT PROPERTY]. THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

(provider and settlement service)

[CHARGE OR RANGE OF CHARGES]

[B.] Set forth below is the estimated charge or range of charges for the settlement services of an attorney, credit reporting agency, or real estate appraiser that we, as your lender, will require you to use, as a condition of your loan on this property, to represent our interests in the transaction.

(provider and settlement service)

[CHARGE OR RANGE OF CHARGES]

ACKNOWLEDGMENT

I/we have read this disclosure form, and understand that referring party is referring me/us to purchase the above-described settlement service(s) and may receive a financial or other benefit as the result of this referral.

Signature

[INSTRUCTIONS TO PREPARER:] [Use paragraph A for referrals other than those by a lender to an attorney, a credit reporting agency, or a real estate appraiser that a lender is requiring a borrower to use to represent the lender’s interests in the transaction. Use paragraph B for those referrals to an attorney, credit reporting agency, or real estate appraiser that a lender is requiring a borrower to use to represent the lender’s interests in the transaction. When applicable, use both paragraphs. Specific timing rules for delivery of the affiliated business disclosure statement are set forth in 12 CFR 1024.15(b)(1) of Regulation X. These INSTRUCTIONS TO PREPARER should not appear on the statement.]

APPENDIX E TO PART 1024—ARITHMETIC STEPS

1. EXAMPLE ILLUSTRATING AGGREGATE ANALYSIS

Assumptions

Disbursements:

- $360 for school taxes disbursed on September 20
- $1,200 for county property taxes: $500 disbursed on July 25
- $700 disbursed on December 10

Cushion: One-sixth of estimated annual disbursements

Settlement: May 15

First Payment: July 1

<table>
<thead>
<tr>
<th>STEP 1—INITIAL TRIAL BALANCE</th>
<th>Aggregate</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>pmt</td>
<td>disb</td>
<td>bal</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Jun</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Jul</td>
<td>130</td>
<td>500</td>
</tr>
<tr>
<td>Aug</td>
<td>130</td>
<td>0</td>
</tr>
<tr>
<td>Sep</td>
<td>130</td>
<td>360</td>
</tr>
<tr>
<td>Oct</td>
<td>130</td>
<td>0</td>
</tr>
<tr>
<td>Nov</td>
<td>130</td>
<td>0</td>
</tr>
<tr>
<td>Dec</td>
<td>130</td>
<td>700</td>
</tr>
<tr>
<td>Jan</td>
<td>130</td>
<td>0</td>
</tr>
<tr>
<td>Feb</td>
<td>130</td>
<td>0</td>
</tr>
<tr>
<td>Mar</td>
<td>130</td>
<td>0</td>
</tr>
<tr>
<td>Apr</td>
<td>130</td>
<td>0</td>
</tr>
<tr>
<td>May</td>
<td>130</td>
<td>0</td>
</tr>
</tbody>
</table>
### STEP 1—I NITIAL TRIAL BALANCE—Continued

<table>
<thead>
<tr>
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<th>disb</th>
<th>bal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jun</td>
<td>130</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

### STEP 2—ADJUSTED TRIAL BALANCE

[Increase monthly balances to eliminate negative balances]

<table>
<thead>
<tr>
<th>Aggregate</th>
<th>pmt</th>
<th>disb</th>
<th>bal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jun</td>
<td>0</td>
<td>0</td>
<td>780</td>
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<td>Jul</td>
<td>130</td>
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</tr>
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</tr>
<tr>
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<td>130</td>
<td>700</td>
<td>0</td>
</tr>
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</tr>
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<td>May</td>
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</tr>
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<td>Jun</td>
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### STEP 3—TRIAL BALANCE WITH CUSHION—Continued

<table>
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<tr>
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<th>disb</th>
<th>bal</th>
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</thead>
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<td>0</td>
<td>700</td>
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<tr>
<td>Nov</td>
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<td>0</td>
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</tr>
<tr>
<td>Dec</td>
<td>130</td>
<td>700</td>
<td>260</td>
</tr>
<tr>
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</tr>
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</tr>
<tr>
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</tbody>
</table>

### II. EXAMPLE ILLUSTRATING SINGLE-ITEM ANALYSIS

**Assumptions**

- **Disbursements:**
  - $360 for school taxes disbursed on September 20
  - $1,200 for county property taxes: $500 disbursed on July 25; $700 disbursed on December 10
  - Cushion: One-sixth of estimated annual disbursements

- **Settlement:** May 15
- **First Payment:** July 1

### STEP 1—INITIAL TRIAL BALANCE

<table>
<thead>
<tr>
<th>Single-item</th>
<th>pmt</th>
<th>disb</th>
<th>bal</th>
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</thead>
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<tr>
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### STEP 2—ADJUSTED TRIAL BALANCE

[Increase monthly balances to eliminate negative balances]

<table>
<thead>
<tr>
<th>Single-item</th>
<th>pmt</th>
<th>disb</th>
<th>bal</th>
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</thead>
<tbody>
<tr>
<td><strong>Taxes</strong></td>
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<td>Oct</td>
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<td>0</td>
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590
STEP 2—ADJUSTED TRIAL BALANCE—Continued

[Increase monthly balances to eliminate negative balances]

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<thead>
<tr>
<th>Month</th>
<th>Taxes</th>
<th>School taxes</th>
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<tbody>
<tr>
<td></td>
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STEP 3—TRIAL BALANCE WITH CUSHION

<table>
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<th>Taxes</th>
<th>School taxes</th>
</tr>
</thead>
<tbody>
<tr>
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<td>0</td>
</tr>
<tr>
<td>Jun</td>
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</tbody>
</table>

APPENDIX MS—MORTGAGE SERVICING

APPENDIX MS–1 TO PART 1024

[SAMPLE LANGUAGE; USE BUSINESS STATIONERY OR SIMILAR HEADING]

[Date]

SERVICING DISCLOSURE STATEMENT NOTICE TO FIRST LIEN MORTGAGE LOAN APPLICANTS: THE RIGHT TO COLLECT YOUR MORTGAGE LOAN PAYMENTS MAY BE TRANSFERRED

You are applying for a mortgage loan covered by the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 et seq.). RESPA gives you certain rights under Federal law. This statement describes whether the servicing for this loan may be transferred to a different loan servicer. “Servicing” refers to collecting your principal, interest, and escrow payments, if any, as well as sending any monthly or annual statements, tracking account balances, and handling other aspects of your loan. You will be given advance notice before a transfer occurs.

Servicing Transfer Information

[We may assign, sell, or transfer the servicing of your loan while the loan is outstanding.]

[or]

[We do not service mortgage loans of the type for which you applied. We intend to assign, sell, or transfer the servicing of your mortgage loan before the first payment is due.]

[INSTRUCTIONS TO PREPARATOR: INSERT THE DATE AND SELECT THE Appropriate LANGUAGE UNDERSERVING TRANSFER INFORMATION.] The model format may be annotated with further information that clarifies or enhances the model language.]
APPENDIX MS–2 TO PART 1024

(Sample language; use business stationery or similar heading)

NOTICE OF ASSIGNMENT, SALE, OR TRANSFER OF SERVICING RIGHTS

You are hereby notified that the servicing of your mortgage loan, that is, the right to collect payments from you, is being assigned, sold or transferred from [enter the name of the servicer] to [enter the name of the new servicer] effective [enter the effective date].

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present servicer send you this notice at least 15 days before the effective date of transfer, or at closing. Your new servicer must also send you this notice no later than 15 days after this effective date or at closing. (In this case, all necessary information is combined in this one notice).

Your present servicer is [enter the name of the present servicer]. If you have any question relating to the transfer of servicing from your present servicer call [enter the name of an individual or department here] between ___ a.m. and ___ p.m. on the following days.

This is a [toll-free] or [collect call] number.

Your new servicer will be [enter the name of the new servicer].

The business address for your new servicer is [enter the address].

The [toll-free] [collect call] telephone number of your new servicer is [enter the number]. If you have any question relating to the transfer of servicing to your new servicer call [enter the name of an individual or department here] at [toll free or collect call telephone number] between ___ a.m. and ___ p.m. on the following days.

The date that your present servicer will stop accepting payments from you is [enter the date]. The date that your new servicer will start accepting payments from you is [enter the date]. Send all payments due on or after that date to your new servicer.

[Use the paragraph if appropriate; otherwise omit.] The transfer of servicing rights may affect the term of or the continued availability of mortgage life or disability insurance or any other type of optional insurance in the following manner:

You should also be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 U.S.C. 2605) gives you certain consumer rights. If you send a "qualified written request" to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgment within 20 Business Days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and your reasons for the request. (If you want to send a "qualified written request" regarding the servicing of your loan, it must be sent to this address: [enter the address]).

Not later than 60 Business Days after receiving your request, your servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During this 60-Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request. However, this does not prevent the servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

A Business Day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that section. You should seek legal advice if you believe your rights have been violated.

INSTRUCTIONS TO PREPARER: Delivery means placing the notice in the mail, first class postage prepaid, prior to 15 days before the effective date of transfer (transferor) or prior to 15 days after the effective date of transfer (transferee). However, this notice may be sent not more than 30 days after the
effective date of the transfer of servicing rights if certain emergency business situations occur. See 12 CFR §1024.21(d)(1)(ii). “Lender” may be substituted for “present servicer” to your name. These instructions should not appear on the format.

PRESENT SERVICER
[Signature not required]

Date
[and/or]

FUTURE SERVICER
[Signature not required]

Date

EFFECTIVE DATE NOTE: At 78 FR 10886, Feb. 14, 2013, appendix MS–2 to part 1024 was revised, effective Jan. 10, 2014. For the convenience of the user, the revised text is set forth as follows:

APPENDIX MS–2 TO PART 1024
NOTICE OF SERVICING TRANSFER
The servicing of your mortgage loan is being transferred, effective [Date]. This means that after this date, a new servicer will be collecting your mortgage loan payments from you. Nothing else about your mortgage loan will change.

[Name of present servicer] is now collecting your payments. [Name of present servicer] will stop accepting payments received from you after [Date].

[Name of new servicer] will collect your payments going forward. Your new servicer will start accepting payments received from you on [Date].

SEND ALL PAYMENTS DUE ON OR AFTER [DATE] TO [NAME OF NEW SERVICER] AT THIS ADDRESS: [NEW SERVICER ADDRESS].

If you have any questions for either your present servicer, [Name of present servicer] or your new servicer [Name of new servicer], about your mortgage loan or this transfer, please contact them using the information below:

Current Servicer:
[Name of present servicer] (Individual or Department)
[Address]
[Telephone Number]

New Servicer:
[Name of new servicer] (Individual or Department)
[Address]
[Telephone Number]

[Use this paragraph if appropriate; otherwise omit.] Important note about insurance: If you have mortgage life or disability insurance or any other type of optional insurance, the transfer of servicing rights may affect your insurance in the following way:

You should do the following to maintain coverage:

Under Federal law, during the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer on or before its due date may not be treated by the new servicer as late, and a late fee may not be imposed on you.

[NAME OF PRESENT SERVICER]

Date
[and] [or]

[NAME OF NEW SERVICER]

Date

APPENDIX MS–3 TO PART 1024
MODEL FORCE-PLACED INSURANCE NOTICE FORMS

Table of Contents
MS–3(A)—Model Form for Force-Placed Insurance Notice Containing Information Required By §1024.37(c)(2)
MS–3(B)—Model Form for Force-Placed Insurance Notice Containing Information Required By §1024.37(d)(2)(i)
MS–3(C)—Model Form for Force-Placed Insurance Notice Containing Information Required By §1024.37(d)(2)(ii)
MS–3(D)—Model Form for Renewal or Replacement of Force-Placed Insurance Notice Containing Information Required By to §1024.37(e)(2)

MS–3(A)—MODEL FORM FOR FORCE-PLACED INSURANCE NOTICE CONTAINING INFORMATION REQUIRED BY §1024.37(C)(2)

[Name and Mailing Address of Servicer]
[Date of Notice]

[Borrower’s Name]
[Borrower’s Mailing Address]

Subject: PLEASE PROVIDE INSURANCE INFORMATION FOR [Property Address]

Dear [Borrower’s Name]:

Our records show that your [hazard] [Insurance Type] insurance [is expiring] [expired], and we do not have evidence that you have obtained new coverage. BECAUSE [Hazard] [Insurance Type] INSURANCE IS REQUIRED ON YOUR PROPERY, [WE BOUGHT INSURANCE FOR YOUR PROPERTY] [WE PLAN TO BUY INSURANCE FOR YOUR PROPERTY]. You must pay us for any period during which the insurance we buy is in effect but you do not have insurance.

You should immediately provide us with your insurance information. [Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

The insurance we [bought] [buy]:
Subject: SECOND AND FINAL NOTICE — PLEASE PROVIDE INSURANCE INFORMATION FOR [Property Address]

Dear [Borrower’s Name]:

This is your second and final notice that our records show that your [hazard] Insurance [Type] insurance [is expiring] [expired], and we do not have evidence that you have obtained new coverage. Because [hazard] [Insurance Type] insurance is required on your property, we [bought insurance for your property] [we plan to buy insurance for your property]. You must pay us for any period during which the insurance we buy is in effect but you do not have insurance.

You should immediately provide us with your insurance information. [Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

The insurance we [bought] [buy]:
• [Costs $[premium charge]] [Will cost an estimated $[premium charge]] annually, which may be more expensive than insurance you can buy yourself.
• May not provide as much coverage as an insurance policy you can buy yourself.

The insurance we buy:
• [Costs $[premium charge]] [Will cost an estimated $[premium charge]] annually, which may be more expensive than insurance you can buy yourself.

Because we did not have evidence that you had [hazard] [Insurance Type] insurance on the property listed above, we bought insurance on your property and added the cost to your mortgage loan account.

The policy that we bought [expired] [is scheduled to expire]. Because [hazard] [Insurance Type] insurance is required on your property, we intend to maintain insurance on your property by renewing or replacing the insurance we bought.

The insurance we buy:
• [Costs $[premium charge]] [Will cost an estimated $[premium charge]] annually, which may be more expensive than insurance you can buy yourself.

May not provide as much coverage as an insurance policy you can buy yourself.

If you buy [hazard] [Insurance Type] insurance, you should immediately provide us with your insurance information.

[Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

MS–3(C)—MODEL FORM FOR FORCE-PLACED INSURANCE NOTICE CONTAINING INFORMATION REQUIRED BY §1024.37(D)(2)(II)

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower’s Name]

[Borrower’s Mailing Address]

Subject: SECOND AND FINAL NOTICE—PLEASE PROVIDE INSURANCE INFORMATION FOR [Property Address]

Dear [Borrower’s Name]:

We received the insurance information you provided, but we are unable to verify coverage from [Date Range].

Please provide us with insurance information for [Date Range] immediately.

We will charge you for insurance we [bought] [plan to buy] for [Date Range] unless we can verify that you have insurance coverage for [Date Range].

The insurance we [bought] [buy]:
• Costs $[premium charge]] [Will cost an estimated $[premium charge]] annually, which may be more expensive than insurance you can buy yourself.

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

MS–3(D)—MODEL FORM FOR RENEWAL OR REPLACEMENT OF FORCE-PLACED INSURANCE NOTICE CONTAINING INFORMATION REQUIRED BY §1024.37(E)(2)

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower’s Name]

[Borrower’s Mailing Address]

Subject: Please update insurance information for [Property Address]

Dear [Borrower’s Name]:

Because we did not have evidence that you had [hazard] [Insurance Type] insurance on the property listed above, we bought insurance on your property and added the cost to your mortgage loan account.

The policy that we bought [expired] [is scheduled to expire]. Because [hazard] [Insurance Type] insurance is required on your property, we intend to maintain insurance on your property by renewing or replacing the insurance we bought.

The insurance we buy:
• [Costs $[premium charge]] [Will cost an estimated $[premium charge]] annually, which may be more expensive than insurance you can buy yourself.

May not provide as much coverage as an insurance policy you can buy yourself.

If you buy [hazard] [Insurance Type] insurance, you should immediately provide us with your insurance information.

[Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

Effective Date Notes: 1. At 78 FR 10886, Feb. 14, 2013, appendix MS–3 was added, effective Jan. 18, 2014.
2. At 78 FR 60438, Oct. 1, 2013, appendix MS–3 was amended by revising the entry for MS–3(D) in the table of contents at the beginning of the appendix, and revising the heading of
APPENDIX MS–3 TO PART 1024

* * * * *

APPENDIX MS–4—MODEL CLAUSES FOR THE WRITTEN EARLY INTERVENTION NOTICE

MS–4(A)—STATEMENT ENCOURAGING THE BORROWER TO CONTACT THE SERVICER AND ADDITIONAL INFORMATION ABOUT LOSS MITIGATION OPTIONS (§ 1024.39(B)(2)(I), (II) AND (IV))

Call us today to learn more about your options and instructions for how to apply. [The longer you wait, or the further you fall behind on your payments, the harder it will be to find a solution.]

[Servicer Name]
[Servicer Address]
[Servicer Telephone Number]
[For more information, visit [Servicer Web site] [and/or] [Email Address].]

MS–4(B)—AVAILABLE LOSS MITIGATION OPTIONS (§ 1024.39(B)(2)(III))

[If you need help, the following options may be possible (most are subject to lender approval):]

• [Refinance your loan with us or another lender:]
• [Modify your loan terms with us:]
• [Payment forbearance temporarily gives you more time to pay your monthly payment:]
• [If you are not able to continue paying your mortgage, you may be able to sell your home and use the proceeds to pay off your current loan.]

MS–4(C)—HOUSING COUNSELORS (§ 1024.39(B)(2)(V))

For help exploring your options, the Federal government provides contact information for housing counselors, which you can access by contacting [the Consumer Financial Protection Bureau at [Bureau Housing Counselor List Web site]] [The Department of Housing and Urban Development at [HUD Housing Counselor List Web site]] or by calling [HUD Housing Counselor List Telephone Number].

SUPPLEMENT I TO PART 1024—OFFICIAL BUREAU INTERPRETATIONS

Introduction

1. Official status. This commentary is the primary vehicle by which the Bureau of Consumer Financial Protection issues official interpretations of Regulation X. Good faith compliance with this commentary affords protection from liability under section 19(b) of the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. 2617(b).

2. Requests for official interpretations. A request for an official interpretation shall be in writing and addressed to the Associate Director, Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. A request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents. Except in unusual circumstances, such official interpretations will not be issued separately but will be incorporated in the official commentary to this part, which will be amended periodically. No official interpretations will be issued approving financial institutions’ forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

3. Unofficial oral interpretations. Unofficial oral interpretations may be provided at the discretion of Bureau staff. Written requests for such interpretations should be sent to the address set forth for official interpretations. Unofficial oral interpretations provide no protection under section 19(b) of RESPA. Ordinarily, staff will not issue unofficial oral interpretations on matters adequately covered by this part or the official Bureau interpretations.

4. Rules of construction. (a) Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. In most cases, illustrative lists are introduced by phrases such as “including, but not limited to,” “among other things,” “for example,” or “such as.”

(b) Throughout the commentary, reference to “this section” or “this paragraph” means the section or paragraph in the regulation that is the subject of the comment.

5. Comment designations. Each comment in the commentary is identified by a number and the regulatory section or paragraph that the comment interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of
the comments to §1024.37(c)(1) are further divided by subparagraph, such as comment 37(c)(1)(i)–1. In other cases, comments have more general application and are designated, for example, as comment 40(a)–1. This introduction may be cited as comments I–1 through I–5.

**SUBPART A—GENERAL PROVISIONS [RESERVED]**

**SUBPART B—MORTGAGE SETTLEMENT AND ESCROW ACCOUNTS [RESERVED]**

**Section 1024.17 Escrow Accounts**

17(k) Timely payments.
17(k)(5) Timely payment of hazard insurance.
17(k)(5)(ii) Ability to disburse funds.
17(k)(5)(ii)(A) When inability exists.

1. **Examples of reasonable basis to believe that a policy has been cancelled or not renewed.** The following are examples of where a servicer has a reasonable basis to believe that a borrower’s hazard insurance policy has been cancelled or not renewed for reasons other than the nonpayment of premium charges:

- A borrower notifies a servicer that the borrower has cancelled the hazard insurance coverage, and the servicer has not received notification of other hazard insurance coverage.
- A servicer receives a notification of cancellation or non-renewal from the borrower’s insurance company before payment is due on the borrower’s hazard insurance.
- A servicer does not receive a payment notice by the expiration date of the borrower’s hazard insurance policy.

17(k)(5)(ii)(C) Recoupment for advances.

1. A servicer that advances the premium payment to be disbursed from an escrow account may advance the payment on a month-to-month basis, if permitted by State or other applicable law and accepted by the borrower’s hazard insurance company.

**SUBPART C—MORTGAGE SERVICING**

§1024.30—Scope

30(b) Exemptions.

1. **Exemption for Farm Credit System institutions.** Pursuant to 12 CFR 617.7000, certain servicers may be considered “qualified lenders” only with respect to loans discounted or pledged pursuant to 12 U.S.C. 2015(b)(1). To the extent a servicer, as defined in RESPA, services a mortgage loan that has not been discounted or pledged pursuant to 12 U.S.C. 2015(b)(1), and is not subject to the requirements set forth in 12 CFR 617, the servicer may be required to comply with the requirements of §§1024.30 through 41 with respect to that mortgage loan.

§1024.31—Definitions

**Loss mitigation application.**

1. **Borrower’s representative.** A loss mitigation application is deemed to be submitted by a borrower if the loss mitigation application is submitted by an agent of the borrower. Servicers may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower’s behalf.

**Loss mitigation option.**

1. **Types of loss mitigation options.** Loss mitigation options include temporary and long-term relief, including options that allow borrowers who are behind on their mortgage payments to remain in their homes or to leave their homes without a foreclosure, such as, without limitation, refinancing, trial or permanent modification, repayment of the amount owed over an extended period of time, forbearance of future payments, short-sale, deed-in-lieu of foreclosure, and loss mitigation programs sponsored by a locality, a State, or the Federal government.

2. **Available through the servicer.** A loss mitigation option available through the servicer refers to an option for which a borrower may apply, even if the borrower ultimately does not qualify for such option.

**Qualified written request.**

1. A qualified written request is a written notice a borrower provides to request a servicer either correct an error relating to the servicing of a mortgage loan or to request information relating to the servicing of the mortgage loan. A qualified written request is not required to include both types of requests. For example, a qualified written request may request information relating to the servicing of a mortgage loan but not assert that an error relating to the servicing of a loan has occurred.

2. A qualified written request is just one form that a written notice of error or information request may take. Thus, the error resolution and information request requirements in §§1024.35 and 1024.36 apply as set forth in those sections irrespective of whether the servicer receives a qualified written request.

**Service provider.**

1. Service providers may include attorneys retained to represent a servicer or an owner or assignee of a mortgage loan in a foreclosure proceeding, as well as other professionals retained to provide appraisals or inspections of properties.

§1024.23—Mortgage Servicing Transfers

33(a) Servicing disclosure statement.

1. **Terminology.** Although the servicing disclosure statement must be clear and conspicuous pursuant to §1024.32(a)(1), §1024.33(a)(1) does not set forth any specific rules for the format of the statement, and
§ 1024.33(c)(1). A servicer mailing the notice of transfer must deliver the notice to the mailing address or addresses listed by the borrower in the mortgage loan documents, unless the borrower has notified the servicer of a new address or addresses pursuant to § 1024.34(b)(1). A servicer is not required to credit funds in an escrow account against the failure to transfer accurately and timely.
information relating to the servicing of a borrower’s mortgage loan account to a transferee servicer is an error for purposes of §1024.35.

2. Unreasonable basis. For purposes of §1024.35(b)(5), a servicer lacks a reasonable basis to impose fees that are not bona fide, such as:
   i. A late fee for a payment that was not late;
   ii. A charge imposed by a service provider for a service that was not actually rendered;
   iii. A default property management fee for borrowers that are not in a delinquency status that would justify the charge; or
   iv. A charge for force-placed insurance in a circumstance not permitted by §1024.37.

35(c) Contact information for borrowers to assert errors.  
1. Exclusive address not required. A servicer is not required to designate a specific address that a borrower must use to assert an error. If a servicer does not designate a specific address that a borrower must use to assert an error, a servicer must respond to a notice of error received by any office of the servicer.

2. Notice of an exclusive address. A notice establishing an address that a borrower must use to assert an error may be included with a different disclosure, such as on a notice of transfer, periodic statement, or coupon book. The notice is subject to the clear and conspicuous requirement in §1024.32(a)(1). If a servicer establishes an address that a borrower must use to assert an error, a servicer must provide that address to the borrower in any communication in which the servicer provides the borrower with contact information for assistance from the servicer.

3. Multiple offices. A servicer may designate multiple office addresses for receiving notices of errors. However, a servicer is required to comply with the requirements of §1024.35 with respect to a notice of error received at any such designated address regardless of whether that specific address was provided to a specific borrower asserting an error. For example, a servicer may designate an address to receive notices of error for borrowers located in California and a separate address to receive notices of errors for borrowers located in Texas. If a borrower located in California asserts an error through the address used by the servicer for borrowers located in Texas, the servicer is still considered to have received a notice of error and must comply with the requirements of §1024.35.

4. Internet intake of notices of error. A servicer may, but need not, establish a process for receiving notices of error through online intake methods. Any such online intake process shall be in addition to, and not in lieu of, any process for receiving notices of error by mail. The process or processes established by the servicer for receiving notices of error through an online intake method shall be the exclusive online intake process or processes for receiving notices of error. A servicer is not required to provide a separate notice to a borrower to establish a specific online intake process as an exclusive online process for receiving such notices of error.

35(e) Response to notice of error.  
35(e)(1) Investigation and response requirements.  
Paragraph 35(e)(1)(i).

1. Notices alleging multiple errors; separate responses permitted. A servicer may respond to a notice of error that alleges multiple errors through either a single response or separate responses that address each asserted error.

Paragraph 35(e)(1)(ii).

1. Different or additional errors; separate responses permitted. A servicer may provide the response required by §1024.35(e)(1)(i) for different or additional errors identified by the servicer in the same notice that responds to errors asserted by the borrower pursuant to §1024.35(e)(1)(i) or in a separate response that addresses the different or additional errors identified by the servicer.

35(e)(3) Time limits.  
35(e)(3)(i) In general.  

1. Foreclosure sale timing. If a servicer cannot comply with its obligations pursuant to §1024.35(e) by the earlier of a foreclosure sale or 30 days after receipt of the notice of error, a servicer may cancel or postpone a foreclosure sale, in which case the servicer would meet the time limit in §1024.35(e)(3)(i)(B) by complying with the requirements of §1024.35(e) before the earlier of 30 days after receipt of the notice of error (excluding legal public holidays, Saturdays, and Sundays) or the date of the rescheduled foreclosure sale.  
1. Notices alleging multiple errors; extension of time. A servicer may treat a notice of error that alleges multiple errors as separate notices of error and may extend the time period for responding to each asserted error for which an extension is permissible under §1024.35(e)(3)(i).

35(e)(4) Copies of documentation.  
1. Types of documents to be provided. A servicer is required to provide only those documents actually relied upon by the servicer to determine that no error occurred. Such documents may include documents reflecting information entered in a servicer’s collection system. For example, in response to an asserted error regarding payment allocation, a servicer may provide a printed screen-capture showing amounts credited to principal, interest, escrow, or other charges in the servicer’s system for the borrower’s mortgage loan account.  
35(g) Requirements not applicable.  
35(g)(1) In general.  
Paragraph 35(g)(1)(i).
1. *New and material information.* A dispute between a borrower and a servicer with respect to whether information was previously reviewed by a servicer or with respect to whether a servicer properly determined that information reviewed was not material to its determination of the existence of an error, does not itself constitute new and material information.

Paragraph 35(g)(1)(ii).

1. *Examples of overbroad notices of error.* The following are examples of notices of error that are overbroad:

i. Assertions of errors regarding substantially all aspects of a mortgage loan, including errors relating to all aspects of mortgage origination, mortgage servicing, and foreclosure, as well as errors relating to the crediting of substantially every borrower payment and escrow account transaction.

ii. Assertions of errors in the form of a judicial action complaint, subpoena, or discovery request that purports to require servicers to respond to each numbered paragraph; and

iii. Assertions of errors in a form that is not reasonably understandable or is included with voluminous tangential discussion or requests for information, such that a servicer cannot reasonably identify from the notice of error any error for which §1024.35 requires a response.

35(h) *Payment requirements prohibited.*

1. *Borrower obligation to make payments.* Section 1024.35(h) prohibits a servicer from requiring a borrower to make a payment that may be owed on a borrower’s account as a prerequisite to investigating or responding to a notice of error submitted by a borrower, but does not alter or otherwise affect a borrower’s obligation to make payments owed pursuant to the terms of a mortgage loan. For example, if a borrower makes a monthly payment in February for a mortgage loan, but asserts an error relating to the borrower’s acceptance of the February payment, §1024.35(h) does not alter a borrower’s obligation to make a monthly payment that the borrower owes for March. A servicer, however, may not require that a borrower make the March payment as a condition for complying with its obligations under §1024.35 with respect to the notice of error on the February payment.

§1024.36—Requests for Information

36(a) *Information request.*

1. *Borrower’s representative.* An information request is submitted by a borrower if the information request is submitted by an agent of the borrower. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower’s behalf, for example, by requiring that a person that claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower’s behalf. Upon receipt of such documentation, the servicer shall treat the request for information as having been submitted by the borrower.

2. *Owner or assignee of a mortgage loan.* A servicer complies with §1024.36(d) by responding to an information request for the owner or assignee of a mortgage loan by identifying the person on whose behalf the servicer receives payments from the borrower. Although investors or guarantors, including among others the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, may be exposed to risks related to the mortgage loans held by a trust either in connection with an investment in securities issued by the trust or the issuance of a guaranty agreement to the trust, such investors or guarantors are not the owners or assignees of the mortgage loans solely as a result of their roles as such. In certain circumstances, however, a party such as a guarantor may assume multiple roles for a securitization transaction. For example, the Federal National Mortgage Association may act as trustee, master servicer, and guarantor in connection with a securitization transaction in which a trust owns a mortgage loan subject to a request. In this example, because the Federal National Mortgage Association is the owner of the trust that owns the mortgage loan, a servicer complies with §1024.36(d) by responding to a borrower’s request for information regarding the owner or assignee of the mortgage loan by providing the name of the trust, and the name, address, and appropriate contact information for the Federal National Mortgage Association as the trustee. The following examples identify the owner or assignee for different forms of mortgage loan ownership:

i. A servicer services a mortgage loan that is owned by the servicer, or an affiliate of the servicer, in portfolio. The servicer therefore receives the borrower’s payments on behalf of itself or its affiliate. A servicer complies with §1024.36(d) by responding to a borrower’s request for information regarding the owner or assignee of the mortgage loan with the name, address, and appropriate contact information for the servicer or the affiliate, as applicable.

ii. A servicer services a mortgage loan that has been securitized. In general, in a securitization transaction, a special purpose vehicle, such as a trust, is the owner or assignee of a mortgage loan. Thus, the servicer receives the borrower’s payments on behalf of the trust. If a securitization transaction is structured such that a trust is the owner or assignee of a mortgage loan and the trust is administered by an appointed trustee, a
servicer complies with §1024.36(d) by responding to a borrower’s request for information regarding the owner or assignee of the mortgage loan by providing the borrower with the name of the trust and the name, address, and appropriate contact information for the trustee. Assume, for example, a mortgage loan is owned by Mortgage Loan Trust, Series ABC–1, and providing the name, address, and appropriate contact information for XYZ Trust Company as the trustee.

The servicer complies with §1024.36(d) by responding to a borrower’s request for information regarding the owner or assignee of the mortgage loan by identifying the owner as Mortgage Loan Trust, Series ABC–1, and providing the name, address, and appropriate contact information for XYZ Trust Company as the trustee.

36(b) Contact information for borrowers to request information.

1. Exclusive address not required. A servicer is not required to designate a specific address that a borrower must use to request information. If a servicer does not designate a specific address that a borrower must use to request information, a servicer must respond to an information request received by any office of the servicer.

2. Notice of an exclusive address. A notice establishing an address that a borrower must use to request information may be included with a different disclosure, such as on a notice of transfer, periodic statement, or coupon book. The notice is subject to the clear and conspicuous requirement in §1024.32(a)(1). If a servicer establishes an address that a borrower must use to request information, a servicer must provide that address to the borrower in any communication through reasonable business efforts.

3. Multiple offices. A servicer may designate multiple office addresses for receiving information requests. However, a servicer is required to comply with the requirements of §1024.36 with respect to an information request received at any such address regardless of whether that specific address was provided to a specific borrower requesting information. For example, a servicer may designate an address to receive information requests for borrowers located in California and a separate address to receive information requests for borrowers located in Texas. If a borrower located in California requests information through the address used by the servicer for borrowers located in Texas, the servicer is still considered to have received an information request and must comply with the requirements of §1024.36.

4. Internet intake of information requests. A服务商 may, but need not, establish a process for receiving information requests through email, Web site form, or other online intake methods. Any such online intake process shall be in addition to, and not in lieu of, any process for receiving information requests by mail. The process or processes established by the servicer for receiving information requests through an online intake method shall be the exclusive online intake process or processes for receiving information requests. A servicer is not required to provide a separate notice to a borrower to establish a specific online intake process as an exclusive online process for receiving information requests.

36(d) Response to information request.

36(d)(1) Investigation and response requirements.

Paragraph 36(d)(1)(i).

1. Information not available. Information is not available if:
   i. The information is not in the servicer’s control or possession, or
   ii. The information cannot be retrieved in the ordinary course of business through reasonable efforts.

2. Examples. The following examples illustrate when information is available (or not available) to a servicer under §1024.36(d)(1)(i):

i. A borrower requests a copy of a telephonic communication with a servicer. The servicer’s personnel have access in the ordinary course of business to audio recording files with organized recordings or transcripts of borrower telephone calls and can identify the communication referred to by the borrower through reasonable business efforts. The information requested by the borrower is available to the servicer.

ii. A borrower requests information stored on electronic back-up media. Information on electronic back-up media is not accessible by the servicer’s personnel in the ordinary course of business without undertaking extraordinary efforts to identify and restore the information from the electronic back-up media. The information requested by the borrower is not available to the servicer.

iii. A borrower requests information stored at an offsite document storage facility. A servicer has a right to access documents at the offsite document storage facility and servicer personnel can access those documents through reasonable efforts in the ordinary course of business. The information requested by the borrower is available to the servicer assuming that the information can be found within the offsite documents with reasonable efforts.

36(f) Requirements not applicable.

36(f)(1) In general.

Paragraph 36(f)(1)(i).

1. A borrower’s request for a type of information that can change over time is not substantially the same as a previous information request for the same type of information if the subsequent request covers a different period than the prior request.

Paragraph 36(f)(1)(ii).
1. Confidential, proprietary or privileged information. A request for confidential, proprietary or privileged information of a servicer is not an information request for which the servicer is required to comply with the requirements of §1024.36(c) and (d). Confidential, proprietary or privileged information may include information requests relating to, for example:

i. Information regarding management or profitability of a servicer, including information provided to investors in the servicer;

ii. Compensation, bonuses, or personnel actions relating to servicer personnel, including personnel responsible for servicing a borrower’s mortgage loan account;

iii. Records of examination reports, compliance audits, borrower complaints, and internal investigations or external investigations; or

iv. Information protected by the attorney-client privilege.

Paragraph 36(f)(1)(iii).

Examples of irrelevant information. The following are examples of irrelevant information:

i. Information that relates to the servicing of mortgage loans other than a borrower’s mortgage loan, including information reported to the owner of a mortgage loan regarding individual or aggregate collections for mortgage loans owned by that entity;

ii. The servicer’s training program for servicing personnel;

iii. The servicer’s servicing program guide; or

iv. Investor instructions or requirements for servicers regarding criteria for negotiating or approving any program with a borrower, including any loss mitigation option.

Paragraph 36(f)(1)(iv).

Examples of overbroad or unduly burdensome requests for information. The following are examples of requests for information that are overbroad or unduly burdensome:

i. Requests for information that seek documents relating to substantially all aspects of mortgage origination, mortgage servicing, mortgage sale or securitization, and foreclosure, including, for example, requests for all mortgage loan file documents, recorded mortgage instruments, servicing information and documents, and sale or securitization information and documents;

ii. Requests for information that are not reasonably understandable or are included with voluminous tangential discussion or assertions of errors;

iii. Requests for information that purport to require servicers to provide information in specific formats, such as in a transcript, letter form in a columnar format, or spreadsheet, when such information is not ordinarily stored in such format; and

iv. Requests for information that are not reasonably likely to assist a borrower with the borrower’s account, including, for example, a request for copies of the front and back of all physical payment instruments (such as checks, drafts, or wire transfer confirmations) that show payments made by the borrower to the servicer and payments made by a servicer to an owner or assignee of a mortgage loan.

§1024.37—Force-Placed Insurance

37(a) Definition of force-placed insurance.

37(a)(2) Types of insurance not considered force-placed insurance.

Paragraph 37(a)(2)(iii).

1. Servicer’s discretion. Hazard insurance paid by a servicer at its discretion refers to circumstances in which a servicer pays a borrower’s hazard insurance even though the servicer is not required by §1024.17(k)(1), (2), or (5) to do so.

37(b) Basis for charging force-placed insurance.

1. Reasonable basis to believe. Section §1024.37(b) prohibits a servicer from assessing on a borrower a premium charge or fee related to force-placed insurance unless the servicer has a reasonable basis to believe that the borrower has failed to comply with the loan contract’s requirement to maintain hazard insurance. Information about a borrower’s hazard insurance received by a servicer from the borrower, the borrower’s insurance provider, or the borrower’s insurance agent, may provide a servicer with a reasonable basis to believe that the borrower has either complied with or failed to comply with the loan contract’s requirement to maintain hazard insurance. If a servicer receives no such information, the servicer may satisfy the reasonable basis to believe standard if the servicer acts with reasonable diligence to ascertain a borrower’s hazard insurance status and does not receive from the borrower, or otherwise have evidence of insurance coverage as provided in §1024.37(c)(1)(iii). A servicer that complies with the notification requirements set forth in §1024.37(c)(1)(i) and (ii) has acted with reasonable diligence.

37(c) Requirements before charging borrower for force-placed insurance.

37(c)(1) In general.

1. Assessing premium charge or fee. Subject to the requirements of §1024.37(c)(1)(i) through (iii), if not prohibited by State or other applicable law, a servicer may charge a borrower for force-placed insurance the servicer purchased, retroactive to the first day of any period of time in which the borrower did not have hazard insurance in place.

Paragraph 37(c)(1)(i).

1. Extension of time. Applicable law, such as State law or the terms and conditions of a borrower’s insurance policy, may provide for an extension of time to pay the premium on a borrower’s hazard insurance after the due date. If a premium payment is made within
such time, and the insurance company accepts the payment with no lapse in insurance coverage, then the borrower’s hazard insurance is deemed to have had hazard insurance coverage continuously for purposes of §1024.37(c)(1)(ii).

2. Evidence demonstrating insurance. As evidence of continuous hazard insurance coverage that complies with the loan contract’s requirements, a servicer may require a copy of the borrower’s hazard insurance policy declaration page, the borrower’s insurance certificate, the borrower’s insurance policy, or other similar forms of written confirmation. A servicer may reject evidence of hazard insurance coverage submitted by the borrower if neither the borrower’s insurance provider nor insurance agent provides confirmation of the insurance information submitted by the borrower, or if the terms and conditions of the borrower’s hazard insurance policy do not comply with the borrower’s loan contract requirements.

Paragraph 37(c)(2)(i).

1. Identifying type of hazard insurance. If the terms of a mortgage loan contract requires a borrower to purchase both a homeowners’ insurance policy and a separate hazard insurance policy to insure against loss resulting from hazards not covered under the borrower’s homeowners’ insurance policy, a servicer must disclose whether it is the borrower’s homeowners’ insurance policy or the separate hazard insurance policy for which it requires evidence of coverage to comply with §1024.37(c)(2)(v).

37(d) Reminder notice.

37(d)(1) In general.

1. When a servicer is required to deliver or place in the mail the written notice pursuant to §1024.37(d)(1), the content of the reminder notice will be different depending on the insurance information the servicer has received from the borrower. For example:

i. Assume that, on June 1, the servicer places in the mail the written notice required by §1024.37(c)(1)(i) to Borrower A. The servicer does not receive any insurance information from Borrower A. The servicer must deliver to Borrower A or place in the mail a reminder notice with the information required by §1024.37(d)(2)(i), at least 30 days after June 1 and at least 15 days before charging Borrower A for force-placed insurance it obtains for the period between June 10 and June 15.

ii. Assume the same example, except that Borrower A provides the servicer with insurance information on June 16, but the servicer cannot verify that Borrower A has hazard insurance in place continuously based on the information Borrower A provided (e.g., the servicer cannot verify that Borrower A had coverage between June 16 and June 15). The servicer must either deliver to Borrower A or place in the mail a reminder notice, with the information required by in §1024.37(d)(2)(i), at least 30 days after June 1 and at least 15 days before charging Borrower A for force-placed insurance it obtains for the period between June 10 and June 15.

37(d)(2) Content of reminder notice.

37(d)(2)(i) Servicer receiving no insurance information.

Paragraph 37(d)(2)(i).

1. Reasonable estimate of the cost of force-placed insurance. Differences between the amount of the estimated cost disclosed under §1024.37(d)(2)(i)(D) and the actual cost later assessed to the borrower are permissible, so long as the estimated cost is based on the information reasonably available to the servicer at the time the disclosure is provided. For example, a mortgage investor’s requirements may provide that the amount of coverage for force-placed insurance depends on the borrower’s delinquency status (the number of days the borrower’s mortgage payment is past due). The amount of coverage affects the cost of force-placed insurance. A servicer that provides an estimate of the cost of force-placed insurance based on the borrower’s delinquency status at the time the disclosure is made complies with §1024.37(d)(2)(i)(D).

37(d)(2)(iv) Updating notice with borrower information.

1. Reasonable time. A servicer may have to prepare the written notice required by §1024.37(c)(1)(ii) in advance of delivering or placing the notice in the mail. If the notice has already been put into production, the servicer is not required to update the notice with new insurance information received about the borrower so long as the written notice was put into production within a reasonable time prior to the servicer delivering or placing the notice in the mail. For purposes of §1024.37(d)(4), five days (excluding legal holidays, Saturdays, and Sundays) is a reasonable time.

37(e) Renewal or replacing force-placed insurance.

37(e)(1) In general.

1. For purposes of §1024.37(e)(1), as evidence that the borrower has purchased hazard insurance coverage that complies with the loan contract’s requirements, a servicer may require a borrower to provide a form of written confirmation as described in comment 37(c)(1)(ii)-2, and may reject evidence of coverage submitted by the borrower for the reasons described in comment 37(c)(1)(i)-2.

37(e)(1)(iii) Charging before end of notice period.

1. Example. Section 1024.37(e)(1)(ii) permits a servicer to assess on a borrower a premium charge or fee related to renewing or replacing existing force-placed insurance promptly after the servicer receives evidence demonstrating that the borrower lacked hazard insurance coverage in compliance with the loan contract’s requirements to maintain hazard insurance for any period of time following the expiration of the existing force-
placed insurance. To illustrate, assume that on January 2, the servicer sends the notice required by §1024.37(e)(1)(1). At 12:01 a.m. on January 12, the existing force-placed insurance policy purchased by the borrower’s property expires and the servicer replaces the expired force-placed insurance policy with a new policy. On February 5, the servicer receives evidence demonstrating the borrower has hazard insurance effective since 12:01 a.m. on January 31. The servicer may charge the borrower for force-placed insurance covering the period from 12:01 a.m. January 12 to 12:01 a.m. January 31, as early as February 5.

Paragraph 37(g)(2).

1. Period of overlapping insurance coverage. Section 1024.37(g)(2) requires a servicer to refund to a borrower all force-placed insurance premium charges and related fees paid by the borrower for any period of overlapping insurance coverage and remove from the borrower’s account all force-placed insurance charges and related fees for such period. A period of overlapping insurance coverage means the period of time during which the force-placed insurance purchased by a servicer and the hazard insurance purchased by a borrower were in effect at the same time.

Section 1024.38—General Servicing Policies, Procedures, and Requirements

38(a) Reasonable policies and procedures.

1. Policies and procedures. A servicer may determine the specific policies and procedures it will adopt and the methods by which it will implement those policies and procedures so long as they are reasonably designed to achieve the objectives set forth in §1024.38(b). A servicer has flexibility to determine such policies and procedures and methods in light of the size, nature, and scope of the servicer’s operations, including, for example, the volume and aggregate unpaid principal balance of mortgage loans serviced, the credit quality, including the default risk, of the mortgage loans serviced, and the servicer’s history of consumer complaints.

2. Procedures used. The term “procedures” refers to the actual practices followed by a servicer for achieving the objectives set forth in §1024.38(b).

38(b) Objectives.

38(b)(1) Accessing and providing timely and accurate information.

Paragraph 38(b)(1)(i)(i).

1. Errors committed by service providers. A servicer’s policies and procedures must be reasonably designed to provide for promptly obtaining information from service providers to facilitate achieving the objective of correcting errors resulting from actions of service providers, including obligations arising pursuant to §1024.35.

Paragraph 38(b)(1)(iv).

1. Accurate and current information for owners or assignees of mortgage loans relating to loan modifications. The relevant current information to owners or assignees of mortgage loans includes, among other things, information about a servicer’s evaluation of borrowers for loss mitigation options and a servicer’s agreements with borrowers on loss mitigation options, including loan modifications. Such information includes, for example, information regarding the date, terms, and features of loan modifications, the components of any capitalized arrears, the amount of any servicer advances, and any assumptions regarding the value of a property used in evaluating any loss mitigation options.

38(b)(2) Properly evaluating loss mitigation applications.

Paragraph 38(b)(2)(i).

1. Means of identifying all available loss mitigation options. Servicers must develop policies and procedures that are reasonably designed to enable servicer personnel to identify all loss mitigation options available for mortgage loans currently serviced by the mortgage servicer. For example, a servicer’s policies and procedures must be reasonably designed to address how a servicer specifically identifies, with respect to each owner or assignee, all of the loss mitigation options that the servicer may consider when evaluating any borrower for a loss mitigation option and the criteria that should be applied by a servicer when evaluating a borrower for such options. In addition, a servicer’s policies and procedures must be reasonably designed to determine in advance how the servicer will apply that threshold to those mortgage loans). A servicer’s policies and procedures must also be reasonably designed to ensure that such information is readily accessible to the servicer personnel involved with loss mitigation, including personnel made available to the borrower as described in §1024.40.

Paragraph 38(b)(2)(v).
1. Owner or assignee requirements. A servicer must have policies and procedures reasonably designed to evaluate a borrower for a loss mitigation option consistent with any owner or assignee requirements, even where the requirements of §1024.41 may be inapplicable. For example, an owner or assignee may require that a servicer implement certain procedures to re-evaluate a borrower who has demonstrated a material change in the borrower’s financial circumstances for a loss mitigation option after the servicer’s initial evaluation. A servicer must have policies and procedures reasonably designed to implement these requirements even if such loss mitigation evaluations may not be required pursuant to §1024.41.

38(b)(4) Facilitating transfer of information during servicing transfers.

Paragraph 38(b)(4)(i).

1. Electronic document transfers. A transferee servicer’s policies and procedures may provide for transferring documents and information electronically, provided that the transfer is conducted in a manner that is reasonably designed to ensure the accuracy of the information and documents transferred and that enables a transferee servicer to comply with its obligations to the owner or assignee of the loan and with applicable law. For example, a transferor servicer must have policies and procedures reasonably designed to ensure that data can be properly and promptly boarded by a transferee servicer’s electronic systems and that all necessary documents and information are available to, and can be appropriately identified by, a transferee servicer.

2. Loss mitigation documents. A transferee servicer’s policies and procedures must be reasonably designed to ensure that the transfer includes any information reflecting the current status of discussions with a borrower regarding loss mitigation options, any agreements entered into with a borrower on a loss mitigation option, and any analysis by a servicer with respect to potential recovery from a non-performing mortgage loan, as appropriate.

Paragraph 38(b)(4)(ii).

1. Missing loss mitigation documents and information. A transferee servicer must have policies and procedures reasonably designed to ensure, in connection with a servicing transfer, that the transferee servicer receives information regarding any loss mitigation discussions with a borrower, including any copies of loss mitigation agreements. Further, the transferee servicer’s policies and procedures must address obtaining any such missing information or documents from a transferor servicer before attempting to obtain such information from a borrower. For example, assume a servicer receives documents or information from a transferee servicer indicating that a borrower has made payments consistent with a trial or permanent loan modification but has not received information about the existence of a trial or permanent loan modification agreement. The servicer must have policies and procedures reasonably designed to identify whether any such loan modification agreement exists with the transferee servicer and to obtain any such agreement from the transferee servicer.

38(b)(5) Informing borrowers of written error resolution and information request procedures.

1. Manner of informing borrowers. A servicer may comply with the requirement to maintain policies and procedures reasonably designed to inform borrowers of the procedures for submitting written notices of error set forth in §1024.35 and written information requests set forth in §1024.36 by informing borrowers, through a notice (mailed or delivered electronically) or a Web site. For example, a servicer may comply with §1024.38(b)(5) by including in the periodic statement required pursuant to §1024.41 a brief statement informing borrowers that borrowers have certain rights under Federal law related to resolving errors and requesting information about their account, and that they may learn more about their rights by contacting the servicer, and a statement directing borrowers to a Web site that provides a description of the procedures set forth in §§1024.35 and 1024.36. Alternatively, a servicer may also comply with §1024.38(b)(5) by including a description of the procedures set forth in §§1024.35 and 1024.36 in the written notice required by §1024.35(c) and §1024.36(b).

2. Oral complaints and requests. A servicer’s policies and procedures must be reasonably designed to provide information to borrowers who are not satisfied with the resolution of a complaint or request for information submitted orally about the procedures for submitting written notices of error set forth in §1024.35 and for submitting written requests for information set forth in §1024.36.

38(c) Standard requirements.

38(c)(1) Record retention.

1. Methods of retaining records. Retaining records that document actions taken with respect to a borrower’s mortgage loan account does not necessarily mean actual paper copies of documents. The records may be retained by any method that reproduces the records accurately (including computer programs) and that ensures that the servicer can easily access the records (including a contractual right to access records possessed by another entity).

38(c)(2) Servicing file.

1. Timing. A servicer complies with §1024.38(c)(2) if it maintains information in a manner that facilitates compliance with
§1024.38(c)(2) beginning on or after January 10, 2014. A servicer is not required to comply with §1024.38(c)(2) with respect to information created prior to January 10, 2014. For example, if a mortgage loan was originated on January 1, 2013, a servicer is not required by §1024.38(c)(2) to maintain information regarding transactions credited or debited to that mortgage loan account in any particular manner for payments made prior to January 10, 2014. However, for payments made on or after January 10, 2014, a servicer must maintain such information in a manner that facilitates compiling such information into a servicing file within five days.

2. Borrower requests for servicing file. Section 1024.38(c)(2) does not confer upon any borrower an independent right to access information contained in the servicing file. Upon receipt of a borrower's request for a servicing file, a servicer shall provide the borrower with a copy of the information contained in the servicing file for the borrower's mortgage loan, subject to the procedures and limitations set forth in §1024.36.

Paragraph 38(c)(2)(iv).
1. Report of data fields. A report of the data fields relating to a borrower's mortgage loan account is created by the servicer's electronic systems in connection with servicing practices means a report listing the relevant data fields by name, populated with any specific data relating to the borrower's mortgage loan account. Examples of data fields relating to a borrower's mortgage loan account created by the servicer's electronic systems in connection with servicing practices include fields used to identify the terms of the borrower's mortgage loan, fields used to identify the occurrence of automated or manual collection calls, fields reflecting the evaluation of a borrower for a loss mitigation option, fields used to identify the owner or assignee of a mortgage loan, and any credit reporting history.

§1024.39—Early Intervention Requirements for Certain Borrowers

39(a) Live contact.
1. Delinquency. A borrower is delinquent for purposes of §1024.39 as follows:
   i. Delinquency begins on the day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid, even if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee. For example, if a payment due date is January 1 and the amount due is not fully paid during the 36-day period after January 1, the servicer must establish or make good faith efforts to establish live contact not later than 36 days after January 1—i.e., by February 6.
   ii. A borrower who is performing as agreed under a loss mitigation option designed to bring the borrower current on a previously missed payment is not delinquent for purposes of §1024.39.
   iii. During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage loan, a borrower is delinquent for purposes of §1024.39 if the transferee servicer learns that the borrower has made a timely payment that has been misdirected to the transferor servicer or the transferee servicer documents its files accordingly. See §1024.33(c)(1) and comment 38(c)(1)-2.
   iv. A servicer need not establish live contact with a borrower unless the borrower is delinquent during the 36 days after a payment due date. If the borrower satisfies a payment in full before the end of the 36-day period, the servicer need not establish live contact with the borrower. For example, if a borrower misses a January 1 due date but makes that payment on February 1, a servicer need not establish or make good faith efforts to establish live contact by February 6.

2. Establishing live contact. Live contact provides servicers an opportunity to discuss the circumstances of a borrower’s delinquency. Live contact with a borrower includes telephoning or conducting an in-person meeting with the borrower, but not leaving a recorded phone message. A servicer may, but need not, rely on live contact established at the borrower’s initiative to satisfy the live contact requirement in §1024.39(a). Good faith efforts to establish live contact consist of reasonable steps under the circumstances to reach a borrower and may include telephoning the borrower on more than one occasion or sending written or electronic communication encouraging the borrower to establish live contact with the servicer.

3. Promptly inform if appropriate.
1. Servicer’s determination. It is within a servicer’s reasonable discretion to determine whether informing a borrower about the availability of loss mitigation options is appropriate under the circumstances. The following examples demonstrate when a servicer has made a reasonable determination regarding the appropriateness of providing information about loss mitigation options.
   A. A servicer provides information about the availability of loss mitigation options to a borrower who notifies a servicer during live contact of a material adverse change in the borrower’s financial circumstances that is likely to cause the borrower to experience a long-term delinquency for which loss mitigation options may be available.
   B. A servicer does not provide information about the availability of loss mitigation options to a borrower who has missed a January 1 payment and notified the servicer that full late payment will be transmitted to the servicer by February 15.
ii. Promptly inform. If appropriate, a servicer may inform borrowers about the availability of loss mitigation options orally, in writing, or through electronic communication, but the servicer must provide such information promptly after the servicer establishes live contact. A servicer need not notify a borrower about any particular loss mitigation options at this time; if appropriate, a servicer need only inform borrowers generally that loss mitigation options may be available. If appropriate, a servicer may satisfy the requirement in §1024.39(a) to inform a borrower about loss mitigation options by providing the written notice required by §1024.39(b)(1), but the servicer must provide such notice promptly after the servicer establishes live contact.

4. Borrower’s representative. Section 1024.39 does not prohibit a servicer from satisfying the requirements §1024.39 by establishing live contact with and, if applicable, providing information about loss mitigation options to a person authorized by the borrower to communicate with the servicer on the borrower’s behalf. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of the borrower has authority from the borrower to act on the borrower’s behalf, for example, by requiring a person that claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower’s behalf.

39(b) Written notice.

1. Notice required. For guidance on the circumstances under which a borrower is delinquent for purposes of §1024.39, see comment 39(a)–1. For example, if a payment due date is January 1 and the payment remains unpaid during the 45-day period after January 1, the servicer must provide the written notice within 45 days after January 1—i.e., by February 15. However, if a borrower satisfies a late payment in full before the end of the 45-day period, the servicer need not provide the written notice. For example, if a borrower misses a January 1 due date but makes that payment on February 1, a servicer need not provide the written notice by February 15.

2. Frequency of the written notice. A servicer need not provide the written notice under §1024.39(a) more than once during a 180-day period beginning on the date on which the written notice is provided. For example, a borrower misses a payment due on March 1. The amount due is not fully paid during the 45 days after March 1 and the servicer provides the written notice within 45 days after March 1—i.e., by April 15. If the borrower subsequently fails to make a payment due April 1 and the amount due is not fully paid during the 45 days after April 1, the servicer need not provide the written notice again during the 180-day period beginning on April 15.


4. Relationship to §1024.39(a). The written notice required under §1024.39(b)(1) must be provided even if the servicer provided information about loss mitigation and foreclosure previously during an oral communication with the borrower under §1024.39(a).

39(b)(2) Content of the written notice.

1. Minimum requirements. Section 1024.39(b)(2) contains minimum content requirements for the written notice. A servicer may provide additional information that the servicer determines would be helpful or which may be required by applicable law or the owner or assignee of the mortgage loan.

2. Format. Any color, number of pages, size and quality of paper, size and type of print, and method of reproduction may be used, and the owner or assignee of the mortgage loan may provide additional information that the servicer determines would be helpful or which may be required by applicable law or the owner or assignee of the mortgage loan.

39(b)(2)(iv) by directing the borrower to the servicer for more detailed information on how to apply for loss mitigation options. For example, if the servicer offers several loan modification programs, the servicer may provide a generic description of “loan modification.”
inform the borrower how to obtain more information about loss mitigation options. However, to expedite the borrower’s timely application for any loss mitigation options, servicers may provide more detailed instructions, such as by listing representative documents the borrower should make available to the servicer (such as tax filings or income statements), and an estimate of how quickly the servicer expects to evaluate a completed application and make a decision on loss mitigation options. Servicers may also supplement the written notice required by §1024.39(b)(1) with a loss mitigation application form.

§1024.39(b)(1) with a loss mitigation application form.

§ 1024.39—Continuity of Contact

40(a) In general.

1. Delinquent borrower. A borrower is not considered delinquent if the borrower has re-financed the mortgage loan, paid off the mortgage loan, brought the mortgage loan current by paying all amounts owed in arrears, or if title to the borrower’s property has been transferred to a new owner through, for example, a deed-in-lieu of foreclosure, a sale of the borrower’s property, including, as applicable, a short sale, or a foreclosure sale. For purposes of responding to a borrower’s inquiries and assisting a borrower with loss mitigation options, the term “borrower” includes a person authorized by the borrower to act on the borrower’s behalf. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower’s behalf, for example by requiring that a person who claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower’s behalf.

2. Assignment of personnel. A servicer has discretion to determine whether to assign a single person or a team of personnel to respond to a delinquent borrower. The personnel a servicer assigns to the borrower as described in §1024.40(a)(1) may be single-purpose or multi-purpose personnel. Single-purpose personnel are personnel whose primary responsibility is to respond to a delinquent borrower’s inquiries, and as applicable, assist the borrower with available loss mitigation options. Multi-purpose personnel can be personnel that do not have a primary responsibility at all, or personnel for whom responding to a delinquent borrower’s inquiries, and as applicable, assisting the borrower with available loss mitigation options is not the personnel’s primary responsibility. If the delinquent borrower files for bankruptcy, a servicer may assign personnel with specialized knowledge in bankruptcy law to assist the borrower.

3. Delinquency. For purposes of §1024.40(a), delinquency begins on the day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid, even if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee. See the example set forth in comment 39(a)-1.i.

§1024.40—Continuity of Contact

41(b) Receipt of a loss mitigation application.

41(b)(1) Complete loss mitigation application.

1. In general. A servicer has flexibility to establish its own application requirements and to decide the type and amount of information it will require from borrowers applying for loss mitigation options.

2. When an inquiry or prequalification request becomes an application. A servicer is encouraged to provide borrowers with information about loss mitigation programs. If in giving information to the borrower, the borrower expresses an interest in applying for a loss mitigation option and provides information the servicer would evaluate in connection with a loss mitigation application, the servicer’s inquiry or prequalification request has become a loss mitigation application. A loss mitigation application is considered expansively and includes any “prequalification” for a loss mitigation option. For example, if a borrower requests that a servicer determine if the borrower is “prequalified” for a loss mitigation program by evaluating the borrower against preliminary criteria to determine eligibility for a loss mitigation option, the request constitutes a loss mitigation application.

3. Examples of inquiries that are not applications. The following examples illustrate situations in which only an inquiry has taken place and no loss mitigation application has been submitted:

i. A borrower calls to ask about loss mitigation options and servicer personnel explain the loss mitigation options available to the borrower and the criteria for determining the borrower’s eligibility for any such loss mitigation option. The borrower does not, however, provide any information that a servicer would consider for evaluating a loss mitigation application.

ii. A borrower calls to ask about the process for applying for a loss mitigation option but the borrower does not provide any information that a servicer would consider for evaluating a loss mitigation application.
requirements regarding the documents and information necessary for a loss mitigation application, the servicer must act with reasonable diligence to collect information necessary to make a determination regarding the borrower. Further, a servicer must request information necessary to make a loss mitigation application complete promptly after receiving the loss mitigation application. § 1024.41(c)(1) does not require that an evaluation meet any standard other than the requirements of § 1024.41(c)(1)(i) if the servicer makes a determination regarding the borrower’s eligibility for a loss mitigation program. A servicer meets the requirement for the program is the basis for the denial.

3. Offer of a non-home retention option. A servicer’s offer of a non-home retention option may be conditional upon receipt of further information not in the borrower’s possession and necessary to establish the parameters of a servicer’s offer. For example, a servicer complies with the requirement for evaluating the borrower for a short sale option if the servicer offers the borrower the opportunity to enter into a listing or marketing period agreement but indicates that specifics of an acceptable short sale transaction may be subject to further information obtained from an appraisal or title search.

4(c)(2) Incomplete loss mitigation application evaluation.

4(c)(2)(i) In general.

1. Offer of a loss mitigation option without an evaluation of a loss mitigation application. Nothing in § 1024.41(c)(2)(i) prohibits a servicer from offering loss mitigation options to a borrower who has not submitted an incomplete loss mitigation application. Further, nothing in § 1024.41(c)(2)(i) prohibits a servicer from offering a loss mitigation option to a borrower who has submitted an incomplete loss mitigation application where the offer of the loss mitigation option is not based on any evaluation of information submitted by the borrower in connection with such loss mitigation application. For example, if a servicer offers trial loan modification programs to all borrowers who become 150 days delinquent without an application or consideration of any information provided by a borrower in connection with a loss mitigation application, the servicer’s offer of any such program does not violate § 1024.41(c)(2)(i).
servicer is not required to comply with §1024.41 with respect to any such program, because the offer of the loss mitigation option is not based on an evaluation of a loss mitigation application.

2. Servicer discretion. Although a review of a borrower’s incomplete loss mitigation application is within a servicer’s discretion, and is not required by §1024.41, a servicer may be required separately, in accordance with policies and procedures maintained pursuant to §1024.36(d)(2)(i)(C), to properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options available to the borrower pursuant to any requirements established by the owner or assignee of the borrower’s mortgage loan. Such evaluation may be subject to requirements applicable to loss mitigation applications otherwise considered incomplete pursuant to §1024.41.

41(c)(2)(ii) Reasonable time. A significant period of time under the circumstances includes consideration of the timing of the foreclosure process. For example, if a borrower is less than 50 days before a foreclosure sale, an application remaining incomplete for 15 days may be a more significant period of time under the circumstances than if the borrower is still less than 120 days delinquent on a mortgage loan obligation.

41(d) Denial of loan modification options. Paragraph 41(d)(1).

1. Investor requirements. If a trial or permanent loan modification option is denied because of a requirement of an owner or assignee of a mortgage loan, the specific reasons in the notice provided to the borrower must identify the owner or assignee of the mortgage loan and the requirement that is the basis of the denial. A statement that the denial of a loan modification option is based on an investor requirement, without additional information specifically identifying the relevant investor or guarantor and the specific applicable requirement, is insufficient. However, where an owner or assignee has established an evaluation criteria that sets an order ranking for evaluation of loan modification options (commonly known as a waterfall) and a borrower has qualified for a particular loan modification option in the ranking established by the owner or assignee, it is sufficient for the servicer to inform the borrower, with respect to other loan modification options ranked below any such option offered to a borrower, that the investor's requirements include the use of such a ranking and that an offer of a loan modification option necessarily results in a denial for any other loan modification options below the option for which the borrower is eligible in the ranking.

2. Net present value calculation. If a trial or permanent loan modification is denied because of a net present value calculation, the specific reasons in the notice provided to the borrower must include the inputs used in the net present value calculation.

3. Other notices. A servicer may combine other notices required by applicable law, including, without limitation, a notice with respect to an adverse action required by Regulation B (12 CFR 1096 et seq.) or a notice required pursuant to the Fair Credit Reporting Act, with the notice required pursuant to §1024.41(d), unless otherwise prohibited by applicable law.

4. Determination not to offer a loan modification option constitutes a denial. A servicer’s determination not to offer a borrower a loan modification available to the borrower constitutes a denial of the borrower for that loan modification option, notwithstanding whether a servicer offers a borrower a different loan modification option or other loss mitigation option.

41(f) prohibition on foreclosure referral.
41(f)(1) Pre-foreclosure review period.

1. First notice or filing required by applicable law. The first notice or filing required by applicable law refers to any document required to be filed with a court, entered into a land record, or provided to a borrower as a requirement for proceeding with a judicial or non-judicial foreclosure process. Such notices or filings include, for example, a foreclosure complaint, a notice of default, a notice of election and demand, or any other notice that is required by applicable law in order to pursue acceleration of a mortgage loan obligation or sale of a property securing a mortgage loan obligation.

41(g) prohibition on foreclosure sale.

1. Dispositive motion. The prohibition on a servicer moving for judgment or order of sale includes making a dispositive motion for foreclosure judgment, such as a motion for default judgment, judgment on the pleadings, or summary judgment, which may directly result in a judgment of foreclosure or order of sale. A servicer that has made any such motion before receiving a complete loss mitigation application has not moved for a foreclosure judgment or order of sale if the servicer takes reasonable steps to avoid a ruling on such motion or issuance of such order prior to completing the procedures required by §1024.41, notwithstanding whether any such action successfully avoids a ruling on a dispositive motion or issuance of an order of sale.

2. Proceeding with the foreclosure process. Nothing in §1024.41(g) prevents a servicer from proceeding with the foreclosure process, including any publication, arbitration, or mediation requirements established by applicable law, when the first notice or filing for a foreclosure proceeding occurred before a servicer receives a complete loss mitigation application so long as any such steps in
the foreclosure process do not cause or directly result in the issuance of a foreclosure judgment or order of sale, or the conduct of a foreclosure sale, in violation of §1024.41.

3. Interaction with foreclosure counsel. A servicer is responsible for promptly instructing foreclosure counsel retained by the servicer not to proceed with filing for foreclosure judgment or order of sale, or to conduct a foreclosure sale, in violation of §1024.41(g) when a servicer has received a complete loss mitigation application, which may include instructing counsel to move for a continuance with respect to the deadline for filing a dispositive motion.

4. Loss mitigation applications submitted 37 days or less before foreclosure sale. Although a servicer is not required to comply with the requirements in §1024.41 with respect to a loss mitigation application submitted 37 days or less before a foreclosure sale, a servicer is required separately, in accordance with policies and procedures maintained pursuant to §1024.39(b)(2)(vi) to properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options available to the borrower pursuant to any requirements established by the owner or assignee of the borrower’s mortgage loan. Such evaluation may be subject to requirements applicable to a review of a loss mitigation application submitted by a borrower 37 days or less before a foreclosure sale.

Paragraph 41(g)(3).

1. Short sale listing period. An agreement for a short sale transaction, or other similar loss mitigation option, typically includes marketing or listing periods during which a servicer will allow a borrower to market a short sale transaction. A borrower is deemed to be performing under an agreement on a short sale, or other similar loss mitigation option, during the term of a marketing or listing period.

2. Short sale agreement. If a borrower has not obtained an approved short sale transaction at the end of any marketing or listing period, a servicer may determine that a borrower has failed to perform under an agreement on a short sale, or other similar loss mitigation option. An approved short sale transaction is a short sale transaction that has been approved by all relevant parties, including the servicer, other affected lienholders, or insurers, if applicable, and the servicer has received proof of funds or financing, unless circumstances otherwise indicate that an approved short sale transaction is not likely to occur.

41(h) Appeal process.

Paragraph 41(h)(3).

1. Supervisory personnel. The appeal may be evaluated by supervisory personnel that are responsible for oversight of the personnel that conducted the initial evaluation, as long as the supervisory personnel were not directly involved in the initial evaluation of the borrower’s complete loss mitigation application.

APPENDIX MS—MORTGAGE SERVICING MODEL FORMS AND CLAUSES

1. In general. This appendix contains model forms and clauses for mortgage servicing disclosures required by §§1024.33, 37, and 39. Each of the model forms is designated for uses in a particular set of circumstances as indicated by the title of that model form or clause. Although use of the model forms and clauses is not required, servicers using them appropriately will be in compliance with disclosure requirements of §§1024.33, 37, and 39.

To use the forms appropriately, information required by regulation must be set forth in the disclosures.

2. Permissible changes. Servicers may make certain changes to the format or content of the forms and clauses and may delete any disclosures that are inapplicable without losing the protection from liability so long as those changes do not affect the substance, clarity, or meaningful sequence of the forms and clauses. Servicers making revisions to that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

1. Use of “borrower” and “servicer” instead of pronouns.
APPENDIX MS-3—Model Force-Placed Insurance Notice Forms

1. Where the model forms MS–3(A), MS–3(B), MS–3(C), and MS–3(D) use the term “hazard insurance,” the servicer may substitute “hazard insurance” with “homeowners’ insurance” or “property insurance.”

APPENDIX MS-4—Model Clauses for the Written Early Intervention Notice

1. Model MS–4(A). These model clauses illustrate how a servicer may provide its contact information, how a servicer may request that the borrower contact the servicer, and how the servicer may inform the borrower how to obtain additional information about loss mitigation options, as required by §1024.39(b)(2)(i), (ii), and (iv).

2. Model MS–4(B). These model clauses illustrate how the servicer may inform the borrower of loss mitigation options that may be available, as required by §1024.39(b)(2)(iii), if applicable. A servicer may include clauses describing particular loss mitigation options to the extent such options are available. Model MS–4(B) does not contain sample clauses for all loss mitigation options that may be available. The language in the model clauses contained in square brackets is optional; a servicer may comply with the disclosure requirements of §1024.39(b)(2)(iii) by using language substantially similar to the language in the model clauses, providing additional detail about the options, or by adding or substituting applicable loss mitigation options for options not represented in these model clauses, provided the information disclosed is accurate and clear and conspicuous.

3. Model MS–4(C). These model clauses illustrate how a servicer may provide contact information for housing counselors, as required by §1024.39(b)(2)(v). A servicer may, at its option, provide the Web site and telephone number for either the Bureau’s or the Department of Housing and Urban Development’s housing counselors list, as provided by paragraphs §1024.39(b)(2)(v).

78 FR 10867, Feb. 14, 2013

Effective Date Notes: 1. At 78 FR 10867, Feb. 14, 2013, supplement 1 to part 1024 was added, effective Jan. 10, 2014.

2. At 78 FR 44717, July 24, 2013, supplement 1 to part 1024 was amended by adding subpart A, effective Jan. 10, 2014. For the convenience of the user, the added text is set forth as follows:

SUPPLEMENT I TO PART 1024—OFFICIAL BUREAU INTERPRETATIONS

§1024.5—Coverage of RESPA

5(c) Relation to State laws.

Paragraph 5(c)(1).

1. State laws that are inconsistent with the requirements of RESPA or Regulation X may be preempted by RESPA or Regulation X. State laws that give greater protection to consumers are not inconsistent with and are not preempted by RESPA or Regulation X. In addition, nothing in RESPA or Regulation X should be construed to preempt the entire field of regulation of the practices covered by RESPA or Regulation X, including the regulations in Subpart C with respect to mortgage servicers or mortgage servicing.

3. At 78 FR 60438, Oct. 1, 2013, supplement 1 to part 1024 was amended under Section 1024.17—Escrow Accounts, the heading for 17(k)(5)(ii) is revised.; under Section 1024.33—Mortgage Servicing Transfers: under Paragraph 33(a) Servicing Disclosure Statement, paragraph 1 is revised; under Paragraph 33(c)(1) Payments not considered late, paragraph 2 is revised; under Section 1024.35—Error Resolution Procedures, Paragraph 35(c), paragraph 2 is revised.; under Section 1024.36—Request for Information, Paragraph 36(b), paragraph 2 is revised; under Section 1024.38—General Servicing Policies, Procedures and Requirements, Paragraph 38(b)(5), paragraph 3 is added; the heading for Section 1024.41 is revised; under Section 1024.41—Loss Mitigation Procedures: Paragraphs 41(b)(2), 41(b)(3), 41(c)(2)(iii), and 41(c)(2)(iv) are added; the heading for paragraphs 41(c) is revised.

iii. Under newly designated 41(c), paragraph (c)(2)(i) is added; the heading Paragraph 41(d)(1) is removed; under paragraph 41(d), paragraph 3 is redesignated as Paragraph 41(c)(1), paragraph 4, and paragraph 4 is redesignated as paragraph 3; under paragraph 41(d), paragraph 4 is added; under paragraph 41(f), new paragraph 1 is added, effective Jan. 10, 2014. For the convenience of the user, the added and revised text is set forth as follows:

SUPPLEMENT I TO PART 1024—OFFICIAL BUREAU INTERPRETATIONS

* * * * *
Section 1024.17—Escrow Accounts

17(k)(5)(ii) Inability to disburse funds.

Section 1024.33—Mortgage Servicing Transfers

33(a) Servicing disclosure statement.

1. Terminology. Although the servicing disclosure statement must be clear and conspicuous pursuant to §1024.32(a), §1024.33(a) does not set forth any specific rules for the format of the statement, and the specific language of the servicing disclosure statement in appendix MS–1 is not required to be used. The model format may be supplemented with additional information that clarifies or enhances the model language.

33(c) Borrower payments during transfer of servicing.

33(c)(1) Payments not considered late.

1. * * *

2. Compliance with §1024.39. A transferee servicer’s compliance with §1024.39 during the 60-day period beginning on the effective date of a servicing transfer does not constitute treating a payment as late for purposes of §1024.33(c)(1).

Section 1024.35—Error Resolution Procedures

35(c) Contact information for borrowers to assert errors.

2. Notice of an exclusive address. A notice establishing an address that a borrower must use to assert an error may be included with a different disclosure, such as a notice of transfer. The notice is subject to the clear and conspicuous requirement in §1024.32(a)(1). If a servicer establishes an address that a borrower must use to request information, a servicer must provide that address to the borrower in the following contexts:

i. The written notice designating the specific address, required pursuant to §1024.33(c) and §1024.36(b).

ii. Any periodic statement or coupon book required pursuant to 12 CFR 1024.41.

iii. Any Web site the servicer maintains in connection with the servicing of the loan.

iv. Any notice required pursuant to §§1024.39 or .41 that includes contact information for assistance.

36(b) Contact information for borrowers to request information.

2. Notice of an exclusive address. A notice establishing an address that a borrower must use to request information may be included with a different disclosure, such as a notice of transfer. The notice is subject to the clear and conspicuous requirement in §1024.32(a)(1). If a servicer establishes an address that a borrower must use to request information, a servicer must provide that address to the borrower in the following contexts:

i. The written notice designating the specific address, required pursuant to §1024.33(c) and §1024.36(b).

ii. Any periodic statement or coupon book required pursuant to 12 CFR 1024.41.

iii. Any Web site the servicer maintains in connection with the servicing of the loan.

iv. Any notice required pursuant to §§1024.39 or .41 that includes contact information for assistance.

38(b) Objectives.

38(b)(5) Informing Borrowers of the Written Error Resolution and Information Request Procedures.

3. Notices of error incorrectly sent to addresses associated with submission of loss mitigation applications or the continuity of contact. A servicer’s policies and procedures must be reasonably designed to ensure that if a borrower incorrectly submits an assertion of an error to any address given to the borrower in connection with submission of a loss mitigation application or the continuity of contact pursuant to §1024.40, the servicer will inform the borrower of the procedures for submitting written notices of error set forth in
§ 1024.35, including the correct address. Alternatively, the servicer could redirect such notices to the correct address.

* * * * *

Section 1024.41—Loss Mitigation Procedures

41(b) Receipt of loss mitigation application.

41(b)(1) Complete loss mitigation application.

* * * * *

4. Diligence requirements. Although a servicer has flexibility to establish its own requirements regarding the documents and information necessary for a loss mitigation application, the servicer must act with reasonable diligence to collect information needed to complete the application. Further, a servicer must request information necessary to make a loss mitigation application complete promptly after receiving the loss mitigation application. Reasonable diligence includes, without limitation, the following actions:

i. A servicer requires additional information from the applicant, such as an address or a telephone number to verify employment; the servicer contacts the applicant promptly to obtain such information after receiving a loss mitigation application;

ii. Servicing for a mortgage loan is transferred to a servicer and the borrower makes an incomplete loss mitigation application to the transferee servicer after the transfer; the transferee servicer reviews documents provided by the transferor servicer to determine if information required to make the loss mitigation application complete is contained within documents transferred by the transferee servicer to the servicer; and

iii. A servicer offers a borrower a payment forbearance program based on an incomplete loss mitigation application; the servicer notifies the borrower that he or she is being offered a payment forbearance program based on an evaluation of an incomplete application, and that the borrower has the option of completing the application to receive a full evaluation of all loss mitigation options available to the borrower. If a servicer provides such a notification, the borrower remains in compliance with the payment forbearance program, and the borrower does not request further assistance, the servicer could suspend reasonable diligence efforts until near the end of the payment forbearance program. Near the end of the program, and prior to the end of the forbearance period, it may be necessary for the servicer to contact the borrower to determine if the borrower wishes to complete the application and proceed with a full loss mitigation evaluation.

* * * * *

41(b)(2) Review of loss mitigation application submission.

41(b)(2)(i) Requirements.

Paragraph 41(b)(2)(i)(B).

1. Later discovery of additional information required to evaluate application. Even if a servicer has informed a borrower that an application is complete (or notified the borrower of specific information necessary to complete an incomplete application), if the servicer determines, in the course of evaluating the loss mitigation application submitted by the borrower, that additional information or a corrected version of a previously submitted document is required, the servicer must promptly request the additional information or corrected document from the borrower pursuant to the reasonable diligence obligation in § 1024.41(b)(1). See § 1024.41(c)(2)(iv) addressing facially complete applications.

41(b)(2)(ii) Time period disclosure.

1. Reasonable date. Section 1024.41(b)(2)(ii) requires that a notice informing a borrower that a loss mitigation application is incomplete must include a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete. In determining a reasonable date, a servicer should select the deadline that preserves the maximum borrower rights under § 1024.41 based on the milestones listed below, except when doing so would be impracticable to permit the borrower sufficient time to obtain and submit the type of documentation needed. Generally, it would be impracticable for a borrower to obtain and submit documents in less than seven days. In setting a date, the following milestones should be considered (if the date of a foreclosure sale is not known, a servicer may use a reasonable estimate of the date for which a foreclosure sale may be scheduled):

i. The date by which any document or information submitted by a borrower will be considered stale or invalid pursuant to any requirements applicable to any loss mitigation option available to the borrower;

ii. The date that is the 120th day of the borrower’s delinquency;

iii. The date that is 90 days before a foreclosure sale;

iv. The date that is 38 days before a foreclosure sale.

41(b)(3) Determining Protections.

1. Foreclosure sale not scheduled. If no foreclosure sale has been scheduled as of the date that a complete loss mitigation application is received, the application is considered to have been received more than 90 days before any foreclosure sale.

2. Foreclosure sale re-scheduled. The protections under § 1024.41 that have been determined to apply to a borrower pursuant to § 1024.41(b)(3) remain in effect thereafter.
even if a foreclosure sale is later scheduled or rescheduled.

41(c) Evaluation of loss mitigation applications.

* * * * *

41(c)(2) Incomplete loss mitigation application evaluation.

* * * * *

41(c)(2)(iv) Face complete application.

1. Short-term payment forbearance program.
The exemption in §1024.41(c)(2)(iv) applies to short-term payment forbearance programs. A payment forbearance program is a loss mitigation option for which a servicer allows a borrower to forgo making certain payments or portions of payments for a period of time. A short-term payment forbearance program allows the forbearance of payments due over periods of no more than six months. Such a program would be short-term regardless of the amount of time a servicer allows the borrower to make up the missing payments.

2. Payment forbearance and incomplete applications. Section 1024.41(c)(2)(ii) allows a servicer to offer a borrower a short-term payment forbearance program based on an evaluation of an incomplete loss mitigation application. Such an incomplete loss mitigation application is still subject to the other obligations in §1024.41, including the obligation in §1024.41(b)(2) to review the application to determine if it is complete, the obligation in §1024.41(b)(1) to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application (see comment 41(b)(1)–4.iii), and the obligation to provide the borrower with the §1024.41(b)(1)(B) notice that the servicer acknowledges the receipt of the application and has determined the application is incomplete.

3. Payment forbearance and complete applications. Even if a servicer offers a borrower a payment forbearance program based on an evaluation of an incomplete loss mitigation application, the servicer must still comply with all the requirements in §1024.41 if the borrower completes his or her loss mitigation application.

41(c)(2)(iv) Face complete application.

1. Reasonable opportunity. Section 1024.41(c)(2)(iv) requires a servicer to treat a face complete application as complete for the purposes of paragraphs (f)(2) and (g) until the borrower has been given a reasonable opportunity to complete the application. A reasonable opportunity requires the servicer to notify the borrower of what additional information or corrected documents are required, and to afford the borrower sufficient time to gather the information and documentation necessary to complete the application and submit it to the servicer. The amount of time that is sufficient for this purpose will depend on the facts and circumstances.

2. Borrower fails to complete the application. If the borrower fails to complete the application within the timeframe provided under §1024.41(c)(2)(iv), the application shall be considered incomplete.

41(d) Denial of loan modification options.

* * * * *

4. Reasons listed. A servicer is required to disclose the actual reason or reasons for the denial. If a servicer’s systems establish a hierarchy of eligibility criteria and reach the first criterion that causes a denial but do not evaluate the borrower based on additional criteria, a servicer complies with the rule by providing only the reason or reasons with respect to which the borrower was actually evaluated and rejected as well as notification that the borrower was not evaluated on other criteria. A servicer is not required to determine or disclose whether a borrower would have been denied on the basis of additional criteria if such criteria were not actually considered.

41(f) Prohibition on foreclosure referral.

1. Prohibited activities. Section 1024.41(f) prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process under certain circumstances. Whether a document is considered the first notice or filing is determined on the basis of foreclosure procedure under the applicable State law.

i. Where foreclosure procedure requires a court action or proceeding, a document is considered the first notice or filing if it is the earliest document required to be filed with a court or other judicial body to commence the action or proceeding (e.g., a complaint, petition, order to docket, or notice of hearing).

ii. Where foreclosure procedure does not require an action or court proceeding, such as under a power of sale, a document is considered the first notice or filing if it is the earliest document required to be recorded or published to initiate the foreclosure process.

iii. Where foreclosure procedure does not require any court filing or proceeding, and also does not require any document to be recorded or published, a document is considered the first notice or filing if it is the earliest document that establishes, sets, or schedules a date for the foreclosure sale.

iv. A document provided to the borrower but not initially required to be filed, recorded, or published is not considered the first notice or filing on the sole basis that the document must later be included as an attachment accompanying another document that is required to be filed, recorded, or published to carry out a foreclosure.
4. At 78 FR 63004, Oct. 23, 2013, supplement 1 to part 1024 was amended under Section 1024.39—Early intervention requirements for certain borrowers: the heading Paragraph 39(c) and paragraph 1 is removed; the heading 39(d)(1) Borrowers in bankruptcy and paragraphs 1, 2, and 3 are added, effective Jan. 10, 2014. For the convenience of the user, the added and revised text is set forth as follows:

**SUPPLEMENT I TO PART 1024—OFFICIAL BUREAU INTERPRETATIONS**

**SUBPART C—MORTGAGE SERVICING**

Section 1024.39—Early intervention requirements for certain borrowers

39(d)(1) Borrowers in bankruptcy.

1. Commencing a case. The requirements of §1024.39 do not apply once a petition is filed under Title 11 of the United States Code, commencing a case in which the borrower is a debtor.

2. Obligation to resume early intervention requirements. i. With respect to any portion of the mortgage debt that is not discharged, a servicer must resume compliance with §1024.39 after the first delinquency that follows the earliest of any of three potential outcomes in the borrower’s bankruptcy case: the case is dismissed, the case is closed, or the borrower receives a discharge under 11 U.S.C. 727, 1141, 1228, or 1328. However, this requirement to resume compliance with §1024.39 does not require a servicer to communicate with a borrower in a manner that would be inconsistent with applicable bankruptcy law or a court order in a bankruptcy case. To the extent permitted by such law or court order, a servicer may adapt the requirements of §1024.39 in any manner believed necessary.

ii. Compliance with §1024.39 is not required for any portion of the mortgage debt that is discharged under applicable provisions of the U.S. Bankruptcy Code. If the borrower’s bankruptcy case is revived—for example if the court reinstates a previously dismissed case, reopens the case, or revokes a discharge—the servicer is again exempt from the requirement in §1024.39.

3. Joint obligors. When two or more borrowers are joint obligors with primary liability on a mortgage loan subject to §1024.39, the exemption in §1024.39(d)(1) applies if any of the borrowers is in bankruptcy. For example, if a husband and wife jointly own a home, and the husband files for bankruptcy, the servicer is exempt from complying with §1024.39 as to both the husband and the wife.

PART 1025 [RESERVED]
FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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915 Regulation at 73 FR 55715 confirmed .............. 51459
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