We Have a Compliance Violation - Now What Do We Do ?

Community Bankers for Compliance

4th Quarter 2023

This publication is designed to provide information in regard to the subject matter covered. It is provided with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert assistance is required, the services of a professional competent in the area of special need should be sought.

© Copyright 2023
Young & Associates, Inc.
All rights reserved

131 East Main Street • P.O. Box 711 • Kent, OH 44240 | P 330.678.0524 • F 330.678.6219

Table of Contents

Lending Errors **1**

Section 1: Regulation X: Real Estate Settlement Procedures Act (RESPA) 2
Section 2: Flood 7
Section 3: Regulation B: Equal Credit Opportunity Act 15
Section 4: Consumer Protection (Insurance). 23
Section 5: Regulation C: Home Mortgage Disclosure Act 24
Section 6: Regulation O: Loans to Insiders 30
Section 7: Servicemembers Civil Relief Act 33
Section 8: Regulation Z 34
Section 9: Regulation P: Privacy of Consumer Financial Information 55
Section 10: Regulation BB Community Reinvestment Act 57
Section 11: Fair Credit Reporting Act 58

PMI **60**

Section 1: PMI 61

Deposit Errors **64**

Section 1: Regulation DD: Truth in Savings 65
Section 2: Regulation CC: Expediated Funds Availability Act 71
Section 3: Regulation E Electronic Fund Transfers 75
Section 4: Regulation D: Reserve Requirements for Depository Institutions 81

General Questions **82**

Section 1: Record Retention 83
Section 2: Credit Practices Rule 84

Marketing **85**

Section 1: Marketing 86

Lending Errors

Section 1: Regulation X: Real Estate Settlement Procedures Act (RESPA)

1. **Is it accurate to state that mortgages taken on residential properties, such as the business owner's primary or secondary home, that are loans for business, agricultural, or commercial purposes are exempt from RESPA?**

   Also, are one- to four-family rental properties exempt from RESPA? The loan would be considered as business purpose for purchasing or refinancing for updating/repairs to the properties. I have been reading mixed information regarding the treatment of rental properties as covered by RESPA and being exempt.

   Answer: Generally, the loan purpose determines exemption, not the collateral by itself. RESPA exempts loans that are primarily for business or commercial purposes and relies on the definitions and guidance in Regulation Z for making this determination.

   Credit extended for some business or agricultural purpose (e.g., working/operating capital, acquire some business/agricultural equipment or inventory, etc.) that is secured by a one- to four-family dwelling is exempt from RESPA.

   Credit extended to acquire, improve, or maintain rental property (regardless of the number of housing units) that is not owner-occupied is deemed to be for business purposes and would not be covered under RESPA.

   If the owner occupies one unit (or will within the coming year), then coverage depends on the total number of units for credit extended to acquire, improve, or maintain rental property. Such credit extended to acquire the rental property is deemed to be for business purposes if it contains more than two housing units. Credit extended to improve or maintain the rental property is deemed to be for business purposes if it contains more than four housing units.

2. **Have a question about a home equity term loan. We have a customer that is three years in on a five year term loan and actually there are two individuals on the loan. One of them had a stroke and is a nursing home and is incapacitated and the other one is struggling with income. We're wondering, it's a TRID loan, so escrow is on the loan currently. Wondering the ramifications of doing some type of workout where we remove the escrow payment and had him just pay P and I so he could get the thing paid off.**

   Answer: Review the note, escrow agreement, and other loan documents. There are no compliance regulations that speak to their question, but there are potential safety and soundness issues if taxes and/or insurance remain unpaid. Also, you should consult your legal counsel and see if there are any state law implications.

3. **If our annual escrow analysis shows a shortage greater than one month's escrow**

payment, our notice states, "The shortage will be collected over a period of 12 months. If you prefer, you can pay the shortage before DD/MM/YYYY." There is also an escrow shortage payment notice attached that the customer can send in with the shortage payment. Would this be a violation of Regulation X?

Answer: You need to remove the statement advising the borrower that, if they choose, they may pay the entire shortage amount by some set date. The bank may accept such lump sum payments from borrowers but is prohibited from stating anything to "provide the option" to the borrower – it must be their idea. The latest update of the Escrow Accounts: Deficiencies, Shortages, and Surpluses section of the CFPB's Mortgage Servicing FAQs includes a question and answer exactly on point with this question.

4. **We are currently having to force place insurance with a customer who has a loan collateralized by three properties. One is a commercial property and the other two are one to four family dwellings.**

   It is investor type loan where the individual buys properties and then leases them out. The main collateral piece is the commercial property. We are struggling with what to do with the commercial property, regarding the amount of insurance to place for that particular property. In other words, should we just round out the remaining due on our outstanding principal balance after the one to four family required replacement values are in place, or should we insure that property for its full replacement cost value?

   Answer: There is a rule for hazard insurance inside RESPA. However, this looks like strictly commercial property rather than owner occupied, so those rules would not apply.

   As a result, there are no compliance rules here at all. However you should check with your attorney about the risk that you might experience if you do not fully insure each property. Banks being sued when there is a loss and the bank only insured its loan balance. And so you should be guided by what your attorney tells you regarding what level of insurance might be required.

5. **On the initial escrow disclosure, no payments are being taken until next year. Taxes haven't been assessed and per notes in the convo log, the HOI isn't due until Sept 2024.**

   I looked at the documents in the file. I am not sure where the insurance due date of September 2024 is coming from since the policy is for 06/2023-06/2024. Therefore, this will not be an issue for Loan Servicing, because we are set to pay in June of 2024 in our software; however, the Initial Escrow shows a total disbursement, but not the month it will be disbursed. Not sure if we would want that redisclosed for RESPA? I am not sure how they did this, because the CD shows it being paid at closing in June.

   Answer: There is no redisclosure requirement/option within RESPA. It is a violation, and they will have to live with that. The only way to make sure that the math works out in the escrow account is to do a short year statement and reset the escrow payment amount.

If they would like to redisclose, regardless of the regulation, then they will probably have a retroactive increase in the payment amount, because the initial disclosure did not take into account the correct payment month. So to really keep the account straight, they would not only have to redisclosure, but have the customer make an additional payment for the amount that they're shortening the account each month due to the error.

So since the error and violation already occurred, and a short year statement will fix it going forward, at least until taxes are due, it seems to be to be the most expedient way to deal with the situation. It fixes it for the customer with a minimum amount of pain. I'm not sure that it is 100% the right answer, but probably the best bank can do for the moment.

The bank should also talk to the customer about putting additional amounts into escrow voluntarily. Otherwise when taxes are due, their escrow payment will go through the roof.

6. **We have a consumer real estate loan that we escrow for the property taxes and insurance. We did their annual escrow account analysis in August 2022. Now, we are paying their taxes and see that their tax bill has increased by $1,300 from the last bill paid. We did not have this new tax information until the bill came.**

   Is it allowable or advisable to do a new escrow account analysis so the system will refigure the escrow payment using the higher tax bill?

   Answer: Yes, it is allowed, but not required. If the bank decides to do another analysis, it will have to issue a short-year escrow account statement to cover any time since the last escrow account statement (after the August analysis). This will also reset the escrow computation year, so that annual escrow account analyses will occur in October instead of August each year.

   An alternative course of action is inaction. Do nothing at this time, allowing a deficiency to occur, and make any necessary adjustments at the time of the next annual escrow account analysis next August. Either course of action is permitted. The choice of response is up to the bank.

7. **I have a title company that has a lump sum fee called an escrow service fee. It's like $1,950. They don't charge other fees like a settlement fee and wire fees and the such. Is this a prepaid finance charge? If it is, I am exceeding my HOEPA points and fee limit. This is the first time I have seen a title company do a lump sum fee like this.**

   Answer: The name of the fee does not govern whether you can exclude it from the FC. What the fee is for is what drives it.

   The actual service or services for which the fee is paid govern whether the fee is a finance charge or not (subject to all the smoke & mirrors in Reg Z saying that for some types of loans this is not a FC or letting you itemize & disclose some to exclude them, etc.). The bank needs to quiz the title company to find out what services this lump sum fee covers – ideally in writing. Then, they can go down the list and see what may be excluded and what

may not. Reg Z (or its Commentary) permits a lender to include an entire lump sum fee in its disclosed FC if some part of it is a FC and the lender chooses not to break it up. As we can see here, that may make things operationally easier (not having to disclose a laundry list of services & charges, instead just one), but that choice also has its downside as this banker notes – by including the entire lump sum in the FC, their loan(s) will fall into the HOEPA category because of its impact on the "points and fees" total.

Trying to hide behind the name of the fee is not a good strategy. What happens when the examiner says, "OK, you call it an 'escrow service fee,' but what services does this actually pay for? What's covered?" An honest answer to that question (which is what should be given, of course) will cause problems with the exam.

8. **I have a few questions regarding Regulation B. Are commitment letters required on business-purpose loans (not secured by a dwelling)? Are loan officers required to ask marital status on business-purpose loans? Are they required to ask marital status for any loans? I see a lot of "the creditor may inquire of" in this regulation.**

   Answer: No, commitment letters are not required for business-purpose, or any, loan transactions. Regulation B allows oral, as well as written, notice of action taken for business-purpose applications (while requiring written notice for consumer-purpose transactions). That said, use of written notices – such as commitment letters (or denial notices, when the news is not positive) – is a best practice, clearly documenting when notice is given and what applicants are told.

   Marital status is a prohibited information request for any individual, unsecured credit, whether for business or consumer purposes. For any joint or secured credit, it is a permitted inquiry – because lenders may need this information in determining their rights to any collateral (but is still permitted on applications for joint unsecured credit). The only loans/applications for which requesting marital status is required are those "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."

9. **Is it possible for a consumer residential mortgage to add a true escrow account to an existing loan? I know there are certain rules that must be followed when removing escrow from a loan, however, I've never had a customer want to add it to an existing loan when we weren't already in the process of refinancing. I wasn't sure if there were any TRID rules that would govern this.**

   I feel like the paperwork would be relatively easy to complete with a simple modification/change in terms form showing the customer requesting this, and to complete the initial escrow account disclosure form.

   Answer: Certainly, this can be done. The regulation requires an initial escrow disclosure. Check with your attorney regarding any modification documents.

   Please be aware that "mid-stream" escrow accounts are a little difficult to handle, as they

tend to need adjustment more often for the first change.

1. **Just wanted to confirm that flood insurance would not be required for a commercial mortgage with the property in a flood zone without a residential building. It is a campground that has two pavilions (cement floors with roofs and picnic tables and a third building that houses restrooms. The property is a peninsula surrounded by a river.**

   Answer: The exemption only applies to "Any structure that is a part of any residential property but is detached from the primary residential structure of such property and does not serve as a residence."

   The exemption does not include detached structures for which there is a commercial, agricultural, or other business use. In this scenario, if the campground is used for business purpose, it would not qualify for the flood insurance exemption.

   They cannot use the exemption, and any insurable buildings need to be insured. It may well only be the bathrooms, as pavilions usually don't have walls. You need two walls and a roof for it to be insurable.

2. **When is the effective date of a National Flood Insurance Program (NFIP) for a property that has a current mortgage on it had an effective flood policy? Is it 30 days or some shorter time period?**

   This policy ended up canceled due to nonpayment (payment was received after the reinstatement date). The insurance agent has applied for a new flood insurance policy for the property. The declaration page we just received shows an effective date 30 days from the date of application. Would the fact there is a mortgage on the property and that mortgage is the reason behind the need for flood insurance be an exception to the NFIP standard 30 day waiting period?

   Answer: No, that is not one of the allowed exceptions to the standard 30-day waiting period. The 30-day waiting period applies in the situation you described.

   The only exceptions permitted to this waiting period are:

   - If the flood insurance is purchased while making, increasing, extending, or renewing a covered mortgage loan.

   - If the Federal Emergency Management Agency (FEMA) revises a flood map such that a building is now identified as being in a Special Flood Hazard Area (SFHA) when it had previously been outside any SFHA. For the first 13 months after such a map revision, the waiting period is shortened to one day.

   - If privately owned property experiences flooding after a wildfire, if a property is impacted by damage from flooding that originates on federal land, the federal land

had been burned by a wildfire, and the policy is purchased no later than 60 days after the wildfire-containment date. Here again, the waiting period is shortened to one day

3. **Our collateral is a UCC filed on all Business Assets. The borrower is leasing a new building that is in a flood zone. Our borrower does not own the building. Is there any requirement for flood insurance?**

   Answer: Flood FAQs, Section XIII: Other Security Interests FAQs. The answer is no, the bank is not required to obtain flood insurance.

   (2022 – REVISED FAQ) If the loan request is to finance inventory stored in a building located within an SFHA, but the building is not security for the loan, is flood insurance required?

   Answer: No. The Act and the Regulation provide that a lender shall not make, increase, extend, or renew a designated loan, that is, a loan secured by a building or mobile home located or to be located in an SFHA, "unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan." In this example, the loan is not a designated loan because it is not secured by a building or mobile home; rather, the collateral is the inventory alone.

   That being said, any assets that are in this building could be involved in a flood. So, the issue really is not a regulatory issue as much as it is safety and soundness. There's no question that flood insurance is not required, however, collateral that is at risk may not be the best possible situation for the bank.

4. **In regards to flood documentation upon extending a loan. With a LOL in place within the last 7 years, once we confirm that current flood cert is good, do we need to generate yet another "Notice of SFH and Availability of Federal Disaster Relief Assistance" form for client to sign, or does the original one suffice?**

   Answer: Per the revised Flood Q & As (see below), the bank would need to provide a new Notice of Special Flood Hazards for the borrower to sign.

   (2022 – REVISED FAQ) Can a lender rely on a previous Notice of Special Flood Hazards if it is less than seven years old, and it is the same property, same borrower, and same lender?

   Answer: The Regulation does not waive the requirement to provide the Notice of Special Flood Hazards to the borrower. Although subsequent transactions by the same lender with respect to the same property are the functional equivalent of a renewal and do not require a new determination, the lender must still provide a new Notice of Special Flood Hazards to the borrower.

5. **We had a flood certification come back saying that the property in question was**

not in a flood zone; however, the water isn't over the structure itself but is partially covering the driveway. This is a bit concerning to us. Typically, when our flood certifications come back as not in a flood zone, we don't think twice and move on. However, we haven't had a flood map come back where the water is showing so closely to the structure before without being in a flood zone.

The potential borrowers have obtained flood insurance on this property to be effective the day of closing, without our request.

My question is should we request a new flood certification, or just require the borrowers to continue their flood insurance coverage?

Answer: The decision about whether to require flood insurance is up to you if the building is not in a flood zone. Certainly, if the building is near a flood zone, you have to consider flood insurance. If the building is in a flood zone, of course you have no choice, and flood insurance is required.

In the case presented, it would appear that your customer has decided that flood insurance is a great idea. We concur with that point of view, as a great many flood insurance claims are for buildings that are outside the mandatory zones. We would recommend that you require flood insurance as condition of the loan. As the customer has already decided to do so, this probably will not create any conflict with the customer, and will end up being in everyone's best interests.

You certainly could go back to the flood company, explain the circumstances and get additional information from them. You want to make sure that everything is well documented to save difficulties with examiners later on.

Remember if you decide that you're going to make this a loan requirement, the flood notice has to be given.

6. **There are two loans. Loan #1 is in a flood zone and secured by the building and has flood insurance with no contents. Subsequent to this mortgage/security interest in Loan #1, loan #2 was taken for business assets to include equipment, inventory, etc. Our quality control department remembered that loan #1 had flood insurance. Would flood insurance for contents be required on Loan #2, as this is a separate loan? Our procedures would not have done a flood search on Loan #2 since not secured by property.**

   Answer: This is from the FDIC flood insurance FAQ training:

   When is contents insurance required?

   Contents insurance is required when:

   1. Contents are taken as collateral; AND

2. The bank also takes the building where the contents are located as collateral; AND

3. The building is located in a special flood hazard area.

Examples - Building or Contents Coverage?

Example 1: Collateral = GBSA (no flood insurance required)

Example 2: Collateral = Mortgage on building in SFHA (flood insurance required on building only, not the contents)

Example 3: Collateral = GBSA and Mortgage on building in SFHA and contents are in the building (flood insurance required on building and contents)

GBSA = General Business Security Agreement

SFHA = Special Flood Hazard Area

Flood insurance or contents required. Neither the reg or the FAQ say it has to be the same loan. Presumption is that the bank should be aware (better be) of when its collateral building is in an SFHA. (Many commercial loans will be cross-collateralized, although it is not necessary.)

7. **A force placed flood insurance letter was sent to a customer. However, the flood clerk failed to obtain the force place policy. It has been six plus months since the original letter was sent to the customer. Do we send another letter and start policy today or can the policy be backdated? During the time with no coverage, shouldn't the bank pay for the policy during that time if it is backdated? Any advise would be very helpful.**

Answer: The Bank is not required to send an additional 45-day letter. If the borrower did not purchase the insurance within the 45-days of the first letter, the bank must force place it and they may force place retroactively back to the date it was required (policy lapse, etc.) and charge the borrower.

[FORCE PLACEMENT Q&A 9] When may a lender or its servicer charge the borrower for the cost of force-placed insurance? A lender, or a servicer acting on its behalf, may force place flood insurance and charge the borrower for the cost of premiums and fees incurred by the lender or servicer in purchasing the flood insurance on the borrower's behalf at any time starting from the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount. The lender or servicer would not have to wait 45 days after providing notification to force place insurance.156 Lenders that monitor loans secured by property located in an SFHA for continuous flood insurance coverage can minimize any gaps in coverage and any charge to the borrower for coverage for a timeframe prior to the lender's or its servicer's date of discovery and force placement. If a lender or its servicer, despite its monitoring efforts, discovers a loan with no or insufficient coverage, for example,

due to a remapping, it may charge the borrower for premiums and fees incurred by the lender or servicer for a force-placed flood insurance policy purchased on the borrower's behalf, including premiums and fees for coverage, beginning on the date of no or insufficient coverage, provided that the policy was effective as of the date of the insufficient coverage. When a lender or its servicer purchases a policy on the borrower's behalf, the lender or its servicer may not charge for premiums and fees for coverage beginning on the date of lapse or insufficient coverage if that policy purchased on the borrower's behalf did not provide coverage for the borrower prior to purchase. A lender's or servicer's frequent need to purchase policies on a borrower's behalf having coverage that precedes the date of purchase may, depending upon the facts and circumstances, indicate that there are weaknesses within the lender's or servicer's compliance management system.

I would also recommend that they look at their loan tickler process. Someone should have caught this within the 45-day period. This error subjects the bank to penalties assessed by their regulators since it went on for 6 months. This is probably something that they could be fined for, and there is no way to avoid that except to make it clear to the regulators that systems are now in place to prevent this happening again.

8. **I know this disclosure has to be acknowledged by the customer or sent to the customer via certified mail at least 10 days prior to the loan closing. But, what if this is a HELOC and the customer already has flood insurance for their existing 1st mortgage. Does this notice still need to be acknowledged 10 days prior to closing or could the disclosure just be signed at closing?**

   (2022 – REVISED FAQ) When should a lender provide the Notice of Special Flood Hazards to the borrower?

   Answer: As required by the Regulation, a lender must provide the Notice of Special Flood Hazards to the borrower within a reasonable time before the completion of the transaction. What constitutes "reasonable" notice will necessarily vary according to the circumstances of particular transactions. A lender should bear in mind, however, that a borrower should receive timely notice to ensure that (1) the borrower has the opportunity to become aware of the borrower's responsibilities under the Act; and (2) where applicable, the borrower can purchase flood insurance before completion of the loan transaction. The Agencies generally regard 10 calendar days as a "reasonable" time interval.

   There does not appear to be an exception for your situation.

9. **Someone is asking about flood insurance requirements for this property. A small portion of the deck is in the flood zone. It seems to me that since it's attached to the building, it's considered to be in a flood zone and flood insurance would be required.**

   Answer: If part of the structure is in – as in this case – then flood insurance is required. Plus, when a structure is right on the edge of the flood zone like this, there is some not-insignificant likelihood that the structure will be directly affected by flooding that may occur. So, it is prudent to make sure flood insurance is obtained – protecting both the borrower and the lender.

10. **We have a commercial loan that has business assets (inventory of the business) as collateral but not the building. The business has flood insurance for the assets. The commercial loan just renewed, and the compliance officer said we should we get a flood determination. If so. Why? Because we are only using the business assets (inventory) as collateral and not the building?**

    Yes the assets (loan a) appear that they are housed in loan b (building). There are two separate loans. One loan is just business assets (inventory) and a completely separate loan is the building. They both have flood insurance but curious if we need a flood determination on loan A since it's just business assets and not a physical location.

    Answer: The question centers on whether a flood hazard determination is required for Loan A since it is secured only be personal property (inventory). The short answer is "no," though it would seem prudent to keep a copy of the SFHDF from Loan B in the Loan A file also.

    Loan B (the building) has flood insurance but not for Loan A (inventory). The customer hopefully has flood insurance on that inventory. Having a fresh determination in the file is a great idea, but not required.

11. **We are working on a loan for our borrowers to purchase a primary residence. I just pulled the flood determination and found that part of the property is in the flood zone. However, the residential structure is not in the flood zone, only an older storage shed.**

    Do we need to place flood insurance on the storage shed? Or is there an exemption for detached structures in this case?

    Answer: Generally, any insurable building located in a special flood hazard area (zone A) that secures a bank's loan must be covered by flood insurance. However, there is an exception for "Any structure that is a part of any residential property but is detached from the primary residential structure of such property and does not serve as a residence." So, if this shed does not serve as a residence and is not used for a commercial purpose, it may be exempted from the mandatory flood insurance purchase requirement.

12. **We are acquiring a bank. We have found some instances in which we cannot find proof of continuous flood coverage in their flood files. In some cases the bank would discard the previous year's flood declarations page without saving an electronic copy after receiving the current year's copy.**

    To be clear, we do not believe the bank actually had coverage gaps. Our concern is during an exam, would our examiner (FDIC) potentially cite us for the lack of evidence? Would it be more important to ensure flood coverage records are complete going forward post-acquisition? We have considered reaching out to the various insurance agents to try to get past coverage records, but we are unsure if we can dedicate the resources unless it is absolutely necessary.

Answer: The bank does need to make sure flood insurance records are complete, especially going forward. We cannot speak to what examiners might or might not cite. You should contact your exam team to see if they think you need to reach out to the various insurance agents for prior records.

13. **How does the bank handle a real estate loan with force-place flood insurance when the note balloons? Does the customer have to get their own insurance before the bank can renew the balloon?**

    Answer: No. The bank may send the customer a notice encouraging them to get their own flood insurance because it may give them better coverage, etc. In the past, the bank would not have been able to rely on force-placed coverage as adequate flood coverage to allow it to make/renew/extend a loan. However, in May 2022, the agencies updated the Interagency Questions and Answers Regarding Flood Insurance and one of the Q&A in this document (number 13) states that lenders now may rely on force-place flood insurance when refinancing, increasing, etc. an existing loan that has such coverage.

14. **Our bank is refinancing a loan to a hotel. When we made the first loan, the flood determination said the property is not located in a flood zone. However, when processing the refinance application, our new flood hazard determination vendor states that the deck attached to the property is in a flood zone, but not the hotel itself. We are still working to verify that this is correct. If the flood hazard determination vendor concludes that the deck is in a flood zone but the hotel is not, is flood insurance required for the entire structure?**

    Answer: The first flood hazard determination vendor missed this one. The Federal Emergency Management Administration (FEMA) has consistently required such a structure to be covered by flood insurance. In fact, in its old *Mandatory Purchase Guidelines* publication, FEMA made very clear that "[e]ven though a portion of real property on which a building is located may lie within an SFHA, the purchase and notice requirements do not apply unless the building itself, or some part of the building, is in the SFHA. However, even if that part of the building within the SFHA is not subject to coverage (e.g., a deck), the entire building is considered to be in the SFHA."

    So, if the final determination is that the deck (or any other part of the hotel) is located in the special flood hazard area, flood insurance is required on the hotel, the whole hotel structure.

15. **Regarding the use of a previous flood determination, do you see any difference in reusing a determination if the first one did not include life of loan vs. having included life of loan on the initial pull?**

    Answer: While life of loan is not required by the regulation, secondary market investors like Freddie and Fannie do require it. If the existing determination is 7 years old or older you must obtain a new determination. If not older than 7 years, the Bank would have to ensure that the map has not been updated to rely on the previous determination. The bank could check it themselves and note the file or some LOL companies will issue a re-determination for a small fee.

Bottom line – without life of loan or a new determination, this is risky business. Life of loan generally costs $5 or less – one violation potentially costs you $2,577.

16. **A question has been raised as to when the effective date of a NFIP policy should be 30 day waiting period vs a shorter waiting period. A property that has a current mortgage on it had an effective flood policy. This policy ended up canceled due to non-payment (payment was received after the reinstatement date). The insurance agent has applied for a new flood insurance policy for the customer/property. The declaration page just received shows an effective date 30 days from date of application. Would the fact there is a mortgage on the property and that mortgage is the reason behind the need for flood insurance be an exception to the NFIP standard 30 day waiting period?**

    Answer: If you purchase flood insurance while making, increasing, extending, or renewing your mortgage loan.

    Unfortunately, when the customer creates a lapse, there will be a 30 day wait for the coverage to begin.

17. **The flood determination and the appraisal for a parcel we are supposed to close on tomorrow indicate that the property is in a "special flood hazard area" (Zone A) and I need your help determining if we are required to have flood insurance on the land. The loan is to be secured by vacant land – a camp site – in a rural county. Are we are required to have flood insurance on this property?**

    Answer: No, you are not. Flood insurance is required only when some eligible building on a property is in a flood zone. Since this property is vacant land (no buildings) flood insurance is not required for this loan (as long as no building is going to be built/placed on this property at this time).

18. **Typically, we would have the borrower provide us a copy of the flood application and proof of payment prior to the loan closing. I have always understood that we needed proof of the insurance prior to closing.**

    I'm being told by those that handle Secondary Market closings that it is allowable for the agent to provide a copy of the application for flood insurance & an invoice to pay at the closing.

    Answer: Among others, the FDIC exam manual says "obtain prior to closing." You need to ask your examiners whether they will permit this.

Section 3: Regulation B: Equal Credit Opportunity Act

1. **Can we deny someone a loan because they are a certain type of felon? If so, does it need to be written out what felons we would not accept? This specific loan is a commercial loan.**

   Answer: The fact that this is a commercial loan has no relevance here. All loan types are subject to regulation B.

   This wouldn't qualify as a fair lending issue because the denial is not based on a protected class. It is the Bank's prerogative - as long as it's well documented in their policies and procedures, and they are consistent.

   There could be a lot of variants with this one, so we caution the bank on the wording in their policy. It should be very specific regarding how the bank determines criminal history, the timeframe of the conviction, the type/level of conviction, etc. You may even want to discuss this with your legal counsel or exam team.

   Another viewpoint:

   My question is what is there is about the applicant other than having been convicted of a felony such that they want to deny them? Do they have the ability to repay the debt based on normal credit standards? If so, why deny the applicant because they have a felony? I recommend that they speak with the bank's legal counsel before denying the application.

   Another viewpoint:

   It could be that the bank does not want to lend to anyone with some kind of fraud or other dishonesty-type felony conviction, regardless of ability to repay. Especially in commercial lending, it's not just credit and capacity. Character counts, too.

2. **Appraisal Notices: What is your opinion about providing the Appraisal Delivery Waiver with the early loan disclosures? I provide a copy of the appraisal to the borrower via email once received. Thank you!**

   Answer: There is no specific prohibition, as long as the Appraisal is still delivered promptly upon completion, per 1002.14(a)(1).

   There is no specific prohibition when it comes to doing this. However, examiners may well take a dim view of doing this, as it indicates to the customer that they should sign the waiver. I am not sure I agree, but everyone needs to be careful, so they are not accused of encouraging people to waive their rights.

3. **I need information regarding the difference between a pre-approval and a pre-qualification for a residential real estate purchase. I understand that our bank currently only does pre-qualification letters because pre-approvals unlock additional disclosure requirements. I'd like to better understand the difference and requirements. Can you help me?**

   Answer: The clearest definition of a pre-approval program is in regulation C, and I quoted it below.

   Preapproval programs. A request for preapproval for a home purchase loan, other than a home purchase loan that will be an open-end line of credit, a reverse mortgage, or secured by a multifamily dwelling, 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:

   - Conditions that require the identification of a suitable property;
   - Conditions that require that no material change has occurred in the applicant's financial condition or creditworthiness prior to closing; and
   - Limited conditions that are not related to the financial condition or creditworthiness of the applicant that the financial institution ordinarily attaches to a traditional home mortgage application.

   Basically, the difference between pre approval and prequalification is that in a pre-approval, you do a full workup of everything but the property itself. In a pre-qualification, you only use the information provided by the customer, without trying to do anything in the way of verification.

   The problem that most banks run into is they call it a prequalification, but start verifying things, pulling credit reports etc. The more that you do, the closer you get to a pre-approval.

   If you do a pre-approval, there really are no disclosures to deal with. Many of the normal real estate disclosures require a full and complete application, which you will not have until there is a property identified. This holds true for the loan estimate as well. In a pre-approval, you do not have a property, the value of that property, or any other additional information, so there is no requirement to send a loan estimate.

   You may want to look at your current situation and perhaps reassess exactly how you want to do this going forward.

4. **We do not have credit reporting interfaced with our loan origination system. I have a loan officer asking if they have to retype all of the debts into the liability section of the consumer app when it is already on the credit report in the file. Any advisement would be appreciated.**

Answer: The Reg B Model Application does contain a “debts” section.

Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References)		Date Paid
1.	$	

There are no requirements to have the debts on the application; it would be a matter of the underwriting documentation the bank utilizes…but it should be consistent. For instance, the bank may utilize software in which the debts are identified, a DTI worksheet, or other underwriting/qualifying documents. The bank’s policy/procedures should dictate how/where the debts/assets are documented and the should be consistently followed.

Of course, if the loan is going to be sold, then the answer is probably yes, you do have to type them in.

5. **Management want to continue to use the URLA 6/09 Form 1003 for In House loans? I think it is a bad idea. Do you have thoughts on this?**

   Answer: Use of the new URLA is a secondary market requirement and would not be enforced for portfolio loans.

   However, we advise that you keep in mind that the loan would not be eligible for sale to Fannie or Freddie, or anyone else if anything should change.

   If the customer should change their mind and decide to apply for a secondary market loan, you would have to start over with the new application

   If you need GMI information, that would have to be a separate form.

6. **My understanding of when providing an appraisal to an applicant is that, if there is an application that has multiple first-lien dwellings, then the appraisal disclosure and appraisals would not need to be given to the customer. This is because Regulation B provides that this requirement applies to an “Application for credit that is to be secured by a first lien on a dwelling.” Am I correct on this issue?**

Answer: No, you are not. I find no exception from this requirement for transactions secured by more than one dwelling. As long as there is at least one dwelling with a first lien (mortgage or deed of trust), the requirement to provide a copy of any appraisal/valuation would apply.

7. **The bank has an application that was entered into the automated underwriting system and received an approve/eligible response. But later that same day during conversation with the applicant, the bank finds that the property is a lease hold and, thus, not eligible for the secondary market. The bank does not make such loans. So, is this a denial or an application for a product not offered? Not sure how to handle this one.**

   Answer: This a denial to extend credit due to the fact that the bank does not offer the type of credit or credit plan requested. That would be cited as the reason for the adverse action on the denial notice to the applicant.

8. **We have a joint application for a loan that we are denying. The reason we are denying is because the primary applicant was not up front with us about the purpose of the loan, and we found this out only when we asked for copies of the bills for debts the borrower was paying off and he was not able to provide any. The primary borrower can be denied for "collection action or judgment," but the co-applicant has excellent credit and income to support the loan.**

   Are we required to send the co-applicant a notice of adverse action or would it be acceptable to provide just the credit score disclosure since we did pull credit?

   Answer: The primary applicant should receive an adverse action notice with denial reason(s). Since you pulled credit reports, both applicants should be given the Fair Credit Reporting Act (FCRA) adverse action notice (e.g., use of information from a consumer reporting agency, along with its name, address, and telephone number, etc.). If credit scores were used, credit score disclosure disclosures should also be sent to both applicants.

9. **We have a loan applicant who qualifies for a requested loan but is involved in a romance scheme. They are wanting money for their "fiancée." Can the bank deny the loan and give the reason that the bank believes that the proceeds of the loan are being used for a fraudulent romance scheme?**

   Answer: There is nothing in consumer regulations that requires lenders to extend just any old credit. If they have reason to believe that there is some fraud involved, they are free to deny the application and may cite the reason as something like "suspect transaction involved" (or words to a similar effect). But the bank will want to be reasonably sure of this conclusion.

10. **One of my branch managers recently asked me if we're required to send out a notice of action when denying someone a deposit account. Can you send me some guidance on this?**

Answer: There is no Regulation B-like requirement for sending a notice of action taken with disclosure of the adverse action taken and the reason(s) for it. (There is also nothing to prohibit giving such a notice.)

However, like with credit applications, if banks take adverse action for a deposit account application based on a "consumer report" then the Fair Credit Reporting Act (FCRA) does require that notice be given to the applicant. This notice would include the information about the use of a credit reporting agency and its name, address, etc. that is normally included on the second part of our credit adverse action notices.

So, the answer is yes and no. Yes, an FCRA adverse action notice must be sent if third-party information is used at all in making the decision. But no, a Regulation B-like notice of action taken and reasons does not have to be given (but may be).

11. **Regulation B states that for unsecured credit, a creditor may not inquire about an applicant's marital status unless they reside in a community property state. However, most consumer loan applications have a section which asks for marital status with boxes for Married/Separated/Unmarried.**

    What is a bank to do with this data when an applicant fills in the appropriate box to their circumstance in an online application, or via mail when they are applying for unsecured credit?

    Answer: The bank should have procedures in place to address scenarios where applicants improperly provide marital status on applications they complete and submit to the bank.

    Regulation B has this provision because the first two "prohibited bases" in the original ECOA and Regulation B were sex and marital status – because of discrimination against women. This prohibition is in there because marital status is irrelevant for individual, unsecured credit. For any other type of credit, marital status might be relevant for some aspect of creditworthiness and/or access to collateral. The Official Staff Commentary states that it is permissible for the applicant to provide prohibited information, so long as the lender does not use it when prohibited. One way to make it clear in a case such as this is to notate that the information was "completed by applicant" (or similar).

12. **We would still record and report demographic information (race, ethnicity, and sex) for investment properties, right?**

    Answer: That depends. You would not collect "government monitoring information" (GMI) for Regulation B purposes since the property securing the loan will not be occupied by the applicant as their principal residence.

    However, if the bank is subject to the Home Mortgage Disclosure Act (HMDA), you would collect GMI if the purpose of the loan is "home purchase," "home improvement," or "refinancing."

13. **Can we limit mortgage lending to citizens and permanent residents? In one city,**

we're getting a lot of applications from people on 18 month or 3 year visas. They all work at the same place, which is a potential safety & soundness issue. They are all the same ethnic group. We already made a couple of loans before we realized the volume of applications that would be coming. Feel free to call me to discuss in more detail.

14. **Second question – same general topic: We are receiving a lot of applications for mortgage loans that are from nonpermanent residents in a certain community where we lend. I think we can offer loans limited to the length of an applicant's visa, as long as we're consistent. We have a lender who says that we should not be making these loans; we should only lend to permanent residents or we are at risk of discrimination. He thinks that offering a loan to a nonpermanent resident on different terms than the other loans we make would be a problem. But I think that we're focusing on ability to repay, not national origin or citizenship**

    Answer: Regulation B prohibits discrimination based on a wide variety of factors, including race and national origin. Nonetheless, Reg B does allow a creditor to consider such things as permanent residency versus being a temporary visitor; immigration status and information concerning the lender's ability to collect payments from the borrower. See Reg. B §202.6(b)(7). We recommend that you consult with your Banks legal counsel on the best way forward as this is something that the bank will have to decide. It would also be a good idea to update your policies and procedures and be consistent in all considerations.

    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.

15. **I'm currently looking at adverse action notices, and we have an adverse action that received a statement of denial due to collateral. However they added the credit score and the 4 reasons and 5th being number of inquiries. If this was not denied due to the credit report, do we have to have the credit score and the reasons added? This is a mortgage loan...... and same question for non real estate loans.**

    Answer: If credit had ABSOLUTELY nothing to do with the denial, then the score and reasons are not material. But sometimes it is difficult to make that determination, so be careful.

    There is the argument whether the credit information had at least some influence on the credit decision. If it did, then FCRA disclosures must be made. Would another applicant with a golden credit record have been granted the loan, despite the condition of the

collateral (for example)? Hard to argue that there was no impact on the credit decision. So, the general "rule" is if you pull it, disclose it. And there is no harm to the consumer in being given information about their credit standing.

16. **While performing our Marijuana Related Business (MRB) training, the question was posed if we could face a Regulation B issue by denying a loan application if the loan applicant was truly an MRB. Is this a possibility? Would we want to take the loan application and then send an adverse action notice denying the loan, or should we not take the application in the first place?**

    Answer: The best course would be to take an application from a prospective applicant. Then, if it is determined that the applicant truly is an MRB, and the bank has decided not to lend to MRBs (and documented this determination in its loan policy), the application may be denied on that basis.

17. **I have a few questions regarding Regulation B. Are commitment letters required on business-purpose loans (not secured by a dwelling)? Are loan officers required to ask marital status on business-purpose loans? Are they required to ask marital status for any loans? I see a lot of "the creditor may inquire of" in this regulation.**

    Answer: No, commitment letters are not required for business-purpose, or any, loan transactions. Regulation B allows oral, as well as written, notice of action taken for business-purpose applications (while requiring written notice for consumer-purpose transactions). That said, use of written notices – such as commitment letters (or denial notices, when the news is not positive) – is a best practice, clearly documenting when notice is given and what applicants are told.

    Marital status is a prohibited information request for any individual, unsecured credit, whether for business or consumer purposes. For any joint or secured credit, it is a permitted inquiry – because lenders may need this information in determining their rights to any collateral (but is still permitted on applications for joint unsecured credit). The only loans/applications for which requesting marital status is required are those "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."

18. **If our Commercial Loan Area has a potential customer that is inquiring about a loan and sending preliminary information, but does not complete a full application, does this still require an adverse action to be sent when there is no origination?**

    Answer: If the potential applicant is inquiring about a type of credit the bank does not offer, such as SBA lending when the bank does not participate with SBA, then no adverse action is taken under Regulation B, and no notice is required.

    However, if the potential applicant sent enough information for the lender to make a credit decision, then it is considered an application and some notice of adverse action is required

– a "full application" (or "completed application") is not needed to trigger this. What notice is required depends on the size of the business. Regulation B has relaxed notification requirements for business credit, but lenders are free to just give business applicants the same adverse action notices that are given to consumer applicants.

19. **If members of an LLC (husband and wife) sign individually on a loan (as co-borrowers), is evidence of their intent to apply jointly (e.g., signatures/initials on such a statement) required? I know that if they sign as guarantors, such joint intent evidence is not required.**

    Answer: Yes, just like if some owners/senior officers or their spouses in any other corporation signing as individuals would trigger the requirement.

20. **Our borrowers applied for secondary market financing. We know right away after pulling a credit report that it will not qualify to go that route. However, we can do it as a portfolio loan. Can we now initially disclose as a portfolio loan with a "variable condition commitment" that they did not qualify for the original request, and will qualify for a portfolio loan? Or, do we have to disclose as an FHLB loan, then turn around and disclose it as a portfolio loan?**

    Answer: Regulation B allows for pretty much whatever back-&-forth that goes on in the application process during the 30-day countdown between "completed application" and when notice of action must be given. So, you have some flexibility in how to handle this.

    If you are using their original application as an application for a mortgage loan – secondary market or portfolio, whichever they qualify for – then a notice of action taken is not required for the change from secondary to portfolio, as long as Regulation B's timing is met. Of course, the file should be documented (e.g., a memo) as to what happened. You could send them a notice of counteroffer, if you want, as a way to document the file – and proceed with the portfolio processing.

    If you require separate applications – a secondary market one that is denied, followed by a portfolio one that you proceed with – then you will have to have some written notice of action taken on the secondary one.

    As for TRID disclosures (the Loan Estimate, LE), if the decision to switch and any notice to the borrower occurs within the three business days after original application, only one LE need be provided (presumably for the portfolio loan). If the decision, etc. occurs after that third business day, an LE for the secondary option better have been provided within the required time. And, from your description it sounds like it will be followed by another LE for the portfolio loan within three business days after the switch/new application (with changed circumstances documentation, if a secondary loan LE has been provided before the switch in the switch scenario).

Section 4: Consumer Protection (Insurance).

1. **For indirect lending, if the bank itself does not solicit or sell insurance related to the transaction the Consumer Protection in Sales of Insurance disclosure is not required at the time of application. However, if the car dealership solicits or sells credit life or disability insurance through a third-party on the transaction, should the bank be looking for the application disclosure?**

   Answer: This depends on how the indirect lending relationship is structured. If the deal involves three-party paper – the dealer is the lender and then sells the loan to the bank – then, as long as the dealer is not selling or soliciting for the insurance at an office of the bank, this rule does not apply.

   If the deal is on two-party paper – the bank is the lender and the dealer is just its agent taking the application and closing the loan – then the rule does apply and the application ("credit") and sale ("insurance") disclosures must be given at their appropriate times.

Section 5: Regulation C: Home Mortgage Disclosure Act

1. **We had a customer that filled out for Ethnicity – Hispanic or Latino and then also checked Mexican. They did not know what to check for Race. Do we leave it blank, or do we check I do not wish to provide this information. If we check I do not wish to provide this information, then do we have to complete it by visual observation. I am struggling with this one. If you could help with some insight.**

   Answer: If it was left blank, or "I Do Not Wish to Provide," and if you saw them, use visual observation and/or surname to complete the section.

2. **We have a loan to purchase an adult foster care residential home that has five bedrooms (this is how the appraisal describes it). There are six residents who will live in the house with one common area. From what we understand, this is permanent housing for the residents.**

   For the HMDA field "Total Units," do we report that as five units or one? Also, do we report it as "Multifamily"?

   Answer: This property should be reported as one unit and not as a multifamily dwelling.

3. **We have a loan file where there are two separate applicants. The main borrower will live in the home as their primary residence, and it will be an investment property for the other borrower.**

   Should I fill out the HMDA screen as a primary home or an investment? We are using the investment borrower's score for qualifying purposes

   Answer: For purposes of § 1003.4(a)(6), an applicant or borrower can have only one principal residence at a time. Thus, a vacation or other second home would not be a principal residence.

   Paragraph 4(a)(6) 2. Principal residence. Section 1003.4(a)(6) requires a financial institution to identify whether the property to which the covered loan or application relates is or will be used as a residence that the applicant or borrower physically occupies and uses, or will occupy and use, as his or her principal residence. For purposes of § 1003.4(a)(6), an applicant or borrower can have only one principal residence at a time. Thus, a vacation or other second home would not be a principal residence. However, if an applicant or borrower buys or builds a new dwelling that will become the applicant's or borrower's principal residence within a year or upon the completion of construction, the new dwelling is considered the principal residence for purposes of applying this definition to a particular transaction.

   The regulation did not contemplate this scenario. We would be more tempted to call it

personal residence than investment property. But we could not point you to anything that would say that directly

4. **We have a HMDA loan where it's a Condo with 4 units, however, only 1 unit is securing the property. I am reviewing the LAR, and it states 4 unit. After reviewing regulation, It appears we should be reporting 1 unit. Can you confirm?**

   Answer: § 1003.4 Compilation of reportable data.

   (a) Data format and itemization.

   (31) The number of individual dwelling units related to the property securing the covered loan

   Commentary:

   3. Condominium and cooperative projects. For a covered loan secured by a condominium or cooperative property, the financial institution reports the total number of individual dwelling units securing the covered loan or proposed to secure the covered loan in the case of an application. For example:

   ii. Assume that a covered loan is secured by 30 individual dwelling units in a condominium property that contains 100 individual dwelling units and that the loan is not exempt from Regulation C under § 1003.3(c)(3). The financial institution reports 30 individual dwelling units.

5. **I am looking at a file where there are two living trusts on the Note, and each living trust is reported as an applicant for the GMI (NA for ethnicity, race, and sex). The property is a residential dwelling, and the individuals involved with the living trusts are living in the dwelling as a primary residence. The loan purpose is, "cash out of a free and clear property for liquidity purposes." The borrowers were considering buying an investment property but did not have any concrete plans, contract, or timeline to do so, so we reported this one as "Other."**

   The borrowers are listed on the note like this:

   - **Person A, Individually and as Trustee of the Person A Living Trust dated April 15, 2020**
   - **Person A, Individually and as Trustee of the Person B Living Trust dated April 15, 2020**
   - **Person B, Individually and as a Trustee of the Person B Living Trust dated April 15, 2020**
   - **Person B, Individually and as Trustee of the Person A Living Trust dated April 15, 2020**

   In these situations, our procedure is to report the Occupancy Type as Investment

Purpose, because "the trusts aren't living in the dwelling."

Should we be reporting this data field based on what the relationship is between the subject property and the humans, even though the humans aren't being reported on the LAR?

Answer: As I understand this, the trust owns the real estate. However, you indicate that they're signing the note individually as well. If they're signing individually, why are you not reporting them on the LAR? They're signers, and I assume the money to pay back this loan is coming from them individually.

The small entity compliance guide does not offer much. It states:

5.14 Occupancy type A Financial Institution reports the occupancy type for the Identified Property, using one of the following:

1. Principal residence. An applicant or borrower can have only one principal residence at a time. However, if an applicant or borrower buys or builds a new Dwelling that will become the applicant's or borrower's principal residence within a year or upon the completion of construction, the new Dwelling is considered the principal residence for this data point. Comment 4(a)(6)-2. For purchased Covered Loans, a Financial Institution may report the occupancy type as "principal residence" unless the loan documents or Application indicate that the property will not be occupied as a principal residence. Comment 4(a)(6)-5.

2. Second residence. A property is a second residence if the property is or will be occupied by the applicant or borrower for a portion of the year and is not the applicant's or borrower's principal residence. For example, if a person purchases a property, occupies the property for a portion of the year, and rents the property for the remainder of the year, the property is a second residence. Similarly, if a person occupies a property near his or her place of employment on weekdays, but the person returns to his or her principal residence on weekends, the property near the person's place of employment is a second residence. Comment 4(a)(6)-3.

3. Investment property. A property is an investment property if the applicant or borrower does not occupy the property. For example, if a person purchases a property, does not occupy the property, and generates income by renting the property, the property is an investment property. Similarly, if a person purchases a property, does not occupy the property, and does not generate income by renting the property, but intends to generate income by selling the property, the property is an investment property. Comment 4(a)(6)

4. If a corporation purchases a property that is a Dwelling and uses it for the long-term residence of its employees, the property is an investment property, even if the corporation considers the property as owned for business purposes rather than investment purposes, does not generate income by renting the property, and does not intend to generate income by selling the property. If the property is for transitory use by employees, the property would not be considered a Dwelling. Comment 4(a)(6)-4.

So, you need to think through who is actually signing the note and who's actually paying. If indeed the individuals are signing the note and paying the loan, then the trust is only really involved in the mortgage, not the note. If that is true, then I would classify it as principal residence. But as you can see from the text above, that is not always crystal clear. Since this is a Gray area, you may also want to talk to your regulator to see if they have a different point of view. Ultimately, their point of view will prevail, as there is nothing anywhere in the text that gives a definitive answer.

6. **We have always said that we do not have a preapproval or a prequalification program. HMDA has been reported as NA or borrower did not request preapproval to this question since before I joined the mortgage department. If a consumer wishes to see what they qualify for they have to apply. And a comprehensive review of creditworthiness is determined via application, full review of income, deposits, and credit history.**

   Many times they even have an address, which is one of six criteria to be considered an "application" under HMDA. So, we call that an application. We disclose all the proper up-front disclosures each time and report to HMDA that application. We give a letter of approval subject to clear title, appraisal, verification of missing pieces, and sometimes require PMI review.

   Now as I read the definition of a "preapproval program" in Regulation C, it appears that this is so close to what we call an application that it makes me wonder if we are still OK to say we do not have a preapproval program.

   Answer: From your description, it sounds like the bank does have a "preapproval program" under HMDA. But the regulation also requires that it be part of your loan policy. The basic purpose of that reporting field is to explain longer time frames for fair lending exams. The best course would be to incorporate the preapproval program in bank policy and begin reporting it correctly.

   Of course, when the applicants start out with a property when they approach the bank, it is an "application" rather than a request for preapproval, and all the application rules, including TRID, are required..

7. **We have a request from a self-employed applicant who provided their tax returns but does not have a home lined up yet (no address). Is this considered a "preapproval" request?**

   Answer: Maybe, depending on what your bank has in place. If you have a formal preapproval program that meets the criteria spelled out in the Official Staff Commentary on Regulation C, 12 CFR 1003.2(b), Comment 3. If your bank does not have a formal preapproval program in place, this is a request for a prequalification. Preapprovals are reportable under HMDA, while prequalifications are not.

8. **We are kicking around a mortgage that we've done. The property has an abandoned mobile home and small garage on the property. The bank did not take the mobile home as collateral, just the land. Our customer is going to**

remove the mobile home and tear down the small garage. His intent is to build on the property in the future. We first said not HMDA reportable but then started to doubt ourselves because the intent of our customer is to build in the future. In your opinion do you believe it's reportable?

Answer: If I am understanding you correctly, you have no dwelling on the property and the loan money will not be used to build a dwelling on the property. If this is the case, it is exempt from HMDA.

9. **I've got on my notes that due to cash out for commercial it's not HMDA. Is that correct?**

   Answer: Commercial loans are reportable for HMDA based on purpose – purchase of a dwelling or improvement of a dwelling. Cash out has little impact in determining whether HMDA applies..

10. **Is a loan with the purpose of refinancing a primary residence and purchasing farm equipment with the remaining funds considered reportable under HMDA? The regulation doesn't mention anything about farm equipment under its exception for agricultural purpose transactions.**

    Answer: Unfortunately, Regulation C and its Commentary are not very enlightening on what "agricultural purpose" entails. However, if we look at the Official Staff Commentary on Regulation Z for its exemption of agricultural purpose credit, we find that "agricultural purpose" is a very broad category. So, using this yardstick, if a loan is primarily for an agricultural purpose, it would be exempt from HMDA reporting (as well as Regulation Z disclosure and other requirements).

11. **I have been looking in the HMDA getting it right book but can't find anything. I was thinking from past HMDA experience that if you have a borrower or a coborrower that is a business/entity that income is always NA. Isn't that right?**

    Answer: You are correct. Income should be reported "NA" when the applicant or co-applicant is not a natural person.

    The below are scenarios where NA should be reported for income.

    - Covered loans or applications for which the credit decision did not consider, or would not have considered income, § 1003.4(a)(10)(iii); Comment 4(a)(10)(iii)-6;

    - Covered loans or applications when applicant or co-applicant is not a natural person, Comment 4(a)(10)(iii)-7;

    - Covered loan is secured by, or application is proposed to be secured by, a multifamily dwelling, Comment 4(a)(10)(iii)-8;

- Purchased covered loans for which the financial institution chooses not to report the income, Comment 4(a)(10)(iii)-9;
- Covered loan to, or an application from, the institution's employees to protect their privacy, even if the institution relied on their income in making the credit decision, Comment 4(a)(10)(iii)-3

12. **We have a current loan in which a husband and wife are purchasing their current home (buying home from the estate) but are not able to qualify for the loan without their son's income. We are counting son as a second co-borrower. My question stems from how this should look on the HMDA-LAR. Currently we are listing only mom and dad's HMDA information on the Loan/Application Register (LAR) but are listing the son's income on the LAR. Is this correct? It seems odd to me that we are not including the son's race, etc. information on the LAR but are using his income.**

    Answer: As odd as it may seem, that looks like how you should report it. Regulation C says to record/report the income on which you rely in making your credit decision, without any restrictions related to source, etc.

    And, for each of the applicant information categories (race/national origin, sex, age), the HMDA Reference Chart in the Getting It Right guide says, "If there is more than one co-applicant or co-borrower, provide the required information only for the first co-applicant or co-borrower listed on the collection form."

    So, if the parents are listed before the son, it would be their "monitoring information" that gets recorded/reported – and son's income, if that is what is relied on in making the credit decision.

13. **The bank owns an insurance company. Would an employee of the insurance company be considered an employee of the bank allowing for the income field to be "N/A"?**

    Answer: Only if the insurance company is the equivalent of a department of the bank. If it is set up as a separate company (that is owned by the bank or by the bank's holding company), then the actual income relied on may not be excluded.

Section 6: Regulation O: Loans to Insiders

1. **A director's commercial line of credit of more than $500,000 was due to mature on August 1. However, on July 28 the term was extended by two months.**

   Extending the term like this for a short period of time is a common practice within our commercial area. The extension was not approved by the board. Would this be considered a violation under Regulation O?

   Answer: Yes, very definitely. Regulation O requires preapproval by the board of directors for any extension of credit in an amount that, when aggregated with the amount of all other extensions of credit to that person and to all related interests of that person, exceeds the higher of $25,000 or five percent of the bank's unimpaired capital and unimpaired surplus (up to $500,000). So, in all cases, extensions over $500.000 must receive prior approval from a majority of the board.

2. **Are overdrafts of a related interest of a director of the bank covered under the Regulation O overdraft rules? For example, a director has identified that ABC Company is a related interest since the director is a partner in the company. For ABC Company we have received a debit item that would overdraw the account by more than $1,000.00. Should this item be returned?**

   Answer: No, this provision of Regulation O does not apply to overdrafts on accounts of related interests of insiders. Footnote 3 to the regulation states, "This prohibition also does not apply to the payment by a member bank of an overdraft of a related interest of an executive officer, director, or principal shareholder of the member bank or executive officer, director, or principal shareholder of its affiliates."

   So, Regulation O would not compel the bank to return the item. Beyond that, it is up to bank policy and procedures, or management discretion (in the absence of such policy and procedure).

3. **When calculating Regulation O loans to insiders, how do we treat related interests? We have a director who is a senior executive of an LLC and owns 10.6% of the LLC. I am pretty sure he sets the policies and practices there. He does not guarantee the loan. Do we count 10.6% of the LLC loan or 100% of the LLC loan in his total Regulation O loans?**

   Answer: You are correct. From your description, your director has "control" of the LLC since he "Has the power to exercise a controlling influence over the management or policies of the company or bank." Therefore, extensions of credit to that related interest feed into your computations of insider lending limits – and you count the entire loan amount (100%), no prorating based on any ownership percentage in that related interest. Percentage of ownership comes into play in one of the tests of "control," as well as in determining whether someone is a "principal shareholder." Otherwise, it is not an issue.

4. **We have an executive officer (EO) whose stepdaughter is applying for a car loan. The EO's wife will be co-signing for the car loan. Being that we are in Wisconsin, a community property state, does this loan need board approval?**

   Answer: Maybe not. If the loan proceeds are not transferred to the EO or used for their direct benefit, and the loan is to be repaid from the separate income of either the stepdaughter and/or the wife, then the loan is not considered an "extension of credit" to the EO. There is a Federal Reserve Staff Opinion on this type of issue (though it is dealing with a business of the spouse rather than their stepdaughter, but the logic and reasoning seems to apply to this scenario).

   In such a situation, prior approval by the board would not be necessary (under Regulation O) since this would not be an "extension of credit" to the EO. However, if there is some direct benefit, etc. for the EO and other criteria are met, then prior approval would be required.

5. **If a new member of the bank's board of directors has an existing deposit relationship and/or existing loans with the bank, is there anything that we need to be looking at? As they are not an executive officer, they would not be subject to the $100,000 limit on "other purpose" loans, correct?**

   Answer: Existing loans (that were not made in contemplation of the person becoming an "insider") need not conform to the requirements of Regulation O until such extensions of credit are renewed, revised, or extended, at which time the extensions of credit would be treated as a new extension of credit and therefore subject to all requirements of Regulation O. However, such transition loans must be counted toward the individual and aggregate lending limits of Regulation O as soon as the borrower becomes an insider.

   This same treatment would apply to extensions of credit to a director or principal shareholder that later becomes an executive officer. Such extensions of credit need not conform to the provisions of Regulation O that apply only to executive officers until such extensions of credit are renewed, revised, or extended. However, the amount of any such extensions of credit count toward the quantitative limits for loans to executive officers as soon as the director or principal shareholder becomes an executive officer.

   Keep in mind that many lines of credit by a bank to an insider must be approved by the bank's board of directors every 14 months. Each such approval constitutes a new "extension of credit." Accordingly, transition loans that are lines of credit generally must conform to the requirements of Regulation O within 14 months of the borrower becoming an insider – by the time of the next new "extension of credit."

   Also, keep in mind that any overdrafts involving this new director's deposit accounts must comply with Regulation O limitations from the time they become an insider.

6. **An "insider" pledges collateral for a loan but will not be a borrower/ signer on**

the loan. Is this an "extension of credit" to the insider under Regulation O? Our exam team was hesitant to provide a definitive answer.

Answer: The examiners may have been hesitant because the answer is, "It depends." If the insider is merely putting up some collateral and will receive no benefit from the loan, then it is not an "extension of credit." However, if the insider will benefit, then the "tangible economic benefit rule" in Regulation O comes into play and the loan is considered an "extension of credit," subject to all applicable Regulation O provisions (prior approval, non-preferential terms, lending limits, etc.).

7. **We have an executive officer who wants to refinance his personal residence (allowable under Regulation O) and two investment properties, each of which exceed the $100,000 limit ($150,000 and $131,250) which I believe applies to him. The loans will be sold, however, but we will retain servicing so his payments will be made to us and remitted to Freddie Mac and if there is a problem, the loan could come back on our books. It seems that these loan are then prohibited by Regulation O, but perhaps the fact that they will be sold changes that.**

   Answer: When the loans are sold, there would no longer be a problem – other than having made/extended a prohibited loan. But, they have to go through the bank's books to get there, and that is where the problem lies. You are correct that the portion of the loan attributable to the investment properties falls in Regulation O's "other purposes" bucket for executive officers – which is limited to a total of no more than $100,000 outstanding at any one time. And, the bank would not be able to buy back the loan once sold unless the "other purposes" balance (when aggregated with any other "other purposes" credit that might be outstanding at that time) is no more than $100,000.

   So, the bank really cannot make this loan, even though it is to be sold because the "other purposes" amount exceeds Regulation O's limit for such credit. It does not appear as though the bank will be able to accommodate its EO's credit needs regarding the investment properties. The EO should find an alternative lender for that credit, or come up with other collateral that could cover it (e.g., a segregated deposit account, securities, etc.).

Section 7: Servicemembers Civil Relief Act

1. **Rate reductions because of active-duty service (SCRA). This is a HELOC and we were wondering if the rate change is good for a year after active duty like it is for a standard mortgage loan.**

   Answer: Yes, the rate reduction applies to a HELOC as long as the loan is secured by a mortgage.

   50 U.S.C. § 3937

   (a) INTEREST RATE LIMITATION-

   (1) LIMITATION TO 6 PERCENT- An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent --

   (A) during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage;

2. **We have a former active-duty member who just got out of the service last week. The loan is to purchase a vehicle. Do we have to do the Military Lending rate or is this exempt?**

   We thought of asking for his Discharge Papers to show he is no longer in the service.

   Answer: If the "Military Lending rate" you refer to is the 6% limit set by the Servicemembers Civil Relief Act (SCRA), then it does not apply in this case because the SCRA applies to pre-service debt when a service member enters active duty.

   If you are referring to the Military APR (MAPR) limit of 36% set by the Military Lending Act (MLA), then it also does not apply in this case since the customer is no longer on active duty. However, under the MLA rule, you will still need to verify the customer's active duty status – which can be accomplished by inquiring of the Department of Defense (DoD) database or by getting a credit bureau report that includes a check of the DoD database.

1. **We are working on a 1st lien residential real estate loan where the property is in a condominium. Making a loan secured by a condo is rare for us. Current pricing will put this loan above the APOR limit making it a higher priced mortgage loan. Our bank does escrow as we chose to continue offering escrow (so the small bank exemption does not apply to us).**

   I've been reading the regulation, and it sounds like if we make the loan as a HPML that escrow of property taxes would be required. If the insurance is paid by the condo association, it appears there is an exclusion for escrowing insurance if there is a master policy.

   Please let me know if I'm reading this correctly and if there is anything else we need to do or don't have to do for a 1st lien HPML loan secured by a condo.

   Answer: If insurance is being paid through the association, there is a de facto escrow already in place with their monthly condo fee. Therefore, anything being paid through the association would not have to be escrowed. Sometimes insurance is a group policy, but taxes would always be individual, and you need to escrow for those.

2. **It is my understanding that a vehicle title registration fee, to add a lienholder, is a non-finance charge on a purchase transaction, but a finance charge on a non-purchase transaction. This is only if the fee cannot be disclosed in the Federal Truth in Lending Disclosure 'box'. Is this correct? Can you also provide the reference to where this is quoted in the regulation?**

   Answer: Well, we do not know for sure what the "vehicle title registration fee" covers, but can provide some guidance.

   - If the vehicle title registration fee is the same amount for a cash purchase of a vehicle as for a financed purchase (with its attendant lien placed on the title), then it is NOT a finance charge.

   - If the vehicle title registration fee is greater when a lien is involved, then the difference IS a finance charge (a security interest charge/lien filing fee).

   - As for whether is appears on the TIL disclosure, this depends on whether it is or is not a finance charge, as well as whether or not it is being financed as part of the loan.

   - If the fee, or some part of it, IS a finance charge, then it will appear on the TIL disclosures as a prepaid finance charge (because it is being paid before/at closing, etc.).

- If the fee is NOT a finance charge, but IS being financed in the loan proceeds, then it will appear in the itemization of amount financed as an amount paid to some third party (presumably "government agency" or similar).

This is discussed in Regulation Z, 1026.4.

3. **If I am reading 1026.15 correctly, rescission applies to all HELOCs. So even if I refi one HELOC with another and do not advance any new money/increase the line amount, rescission still applies, is that correct?**

Answer: Yes. The increase in the HELOC line is rescindable, so there can be no disbursement from the new line except for the payoff of the old HELOC and the costs of refinancing until the rescission period has elapsed.

Just a side note. There is no "no new money" exemption in 1026.15 as there is in 1026.23. Even if the LOC was not increased and it was refinanced the new transaction would have rescission.

1026.15(a) Consumer's right to rescind. (1)(i) Except as provided in paragraph (a)(1)(ii) of this section, in a credit plan in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind: each credit extension made under the plan; the plan when the plan is opened; a security interest when added or increased to secure an existing plan; and the increase when a credit limit on the plan is increased.

4. **The bank offers a credit card product, underwritten and decisioned by the bank. They provide the initial disclosure which is accurate. However, in conversation it was divulged that they may require "funds to be held" in certain situations.**

There are no written guidelines for when this would be implemented, how long the funds would be held or any disclosure to the customer of such hold.

In further discussion with bank management, the CEO stated this was quid pro quo and was an acceptable practice? The customer is informed "verbally" that the credit card will be approved only if a hold of X $ amount is held. Again, no security interest agreement or disclosure is provided to and executed by the customer, and there are no written guidelines or tracking for these approvals/holds. (The bank approved three such applications last week.)

Answer: Whether a security agreement is required (a matter of state law), Reg Z does require disclosure of any security interest being taken [12 CFR 1026.6(a)(4)]. Arguably, this is at least the equivalent of taking a security interest, so should be disclosed.

The only provision in Reg Z that I could find that is specific to secured credit cards is in 12 CFR 1026.53(b)(4) that gives the lender some flexibility in allocating any payment in excess of the minimum payment to the held balance.

Also, UDAAP can be an issue – even when the lender is strictly complying with the technical requirements of a particular rule. If regulators find that there is something harmful to the customer going on, they may be able to drop the UDAAP hammer.

On the other hand, secured credit cards are a long-time avenue for less qualified applicants to get a credit card – if done right and fairly.

5. **This question is in regard to credit report fees for reports that are pulled in connection with a preapproval to purchase a home. When the customer comes back to us after a home is identified, we will use the original credit report if it is within a 60 day window. But, if it is older, we pull a new credit report. Would we be out of compliance if we charge the borrower for both credit report fees at the time we close the loan? Please advise.**

Answer: Assuming that the reason for the credit report re-pull is a valid change of circumstance under §1026.19(e)(3)(iv), revised disclosure of the LE is permitted because a credit report is a third-party charge subject to a zero tolerance limit under §1026.19(e)(3)(i).

They should not be doing an LE until they have a completed application, which would include the identification of a property. The way the question reads, it leads me to believe that they're doing one way too early.

If they wait to do the LE after they get the six pieces of information, they will know exactly how many credit reports they will have to pull, and can get it right.

However, if they need to do it for some reason, here is the relevant regulatory text:

§1026.19(e)(3)(iv):

(iv) ***Revised estimates.*** For the purpose of determining good faith under paragraph (e)(3)(i) and (ii) of this section, a creditor may use a revised estimate of a charge instead of the estimate of the charge originally disclosed under paragraph (e)(1)(i) of this section if the revision is due to any of the following reasons:

(A) ***Changed circumstance affecting settlement charges.*** Changed circumstances cause the estimated charges to increase or, in the case of estimated charges identified in paragraph (e)(3)(ii) of this section, cause the aggregate amount of such charges to increase by more than 10 percent. For purposes of this paragraph, "changed circumstance" means:

(*1*) An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction;

(*2*) Information specific to the consumer or transaction that the creditor relied upon when providing the disclosures required under paragraph (e)(1)(i) of this section and that was inaccurate or changed after the disclosures were provided; or

(*3*) New information specific to the consumer or transaction that the creditor did not rely on when providing the original disclosures required under paragraph (e)(1)(i) of this section.

6. **We are going to offer a program where we will pay some of the closing costs for a customer. How do we show this on the Loan Estimate?**

   Answer: From the TRID FAQs:

   Is a creditor required to disclose a closing cost and a related lender on the Loan Estimate if the creditor will absorb the cost?

   Answer: No. The TRID Rule does not require disclosure of a closing cost and a related lender credit on the Loan Estimate if the creditor incurs a cost, but will not charge the consumer for that cost (i.e., the creditor will "absorb" the cost). In such cases, the absorption of the cost or charge would not "offset" an amount paid by the consumer. However, a creditor must disclose a closing cost and related lender credit on the Loan Estimate if the creditor is offsetting a cost charged to the consumer. Comment 37(g)(6)(ii)-2.

   To illustrate, assume a creditor will require an appraisal, credit report, flood determination, title search, and lender's title insurance policy in connection with a particular mortgage loan transaction. Further assume, that the creditor will incur attorney fees for loan documentation and recording fees in connection with the transaction. If, based on the best information reasonably available, the consumer will only pay an application fee of $500 and the creditor will absorb all other costs, the creditor is not required to disclose the appraisal fee, credit report fee, flood determination fee, title search fee, lender's title insurance policy premiums, attorney fees for loan documentation, and recording fees on the Loan Estimate. Conversely, if the creditor agrees to provide a lender credit sufficient to offset all of these charges, except the application fee, the creditor must disclose the charges in the Loan Costs table and Other Costs table, as applicable, and include a corresponding total amount in the Lender Credits disclosure on the Loan Estimate.

   Alternatively, the TRID Rule does not prohibit creditors from including amounts for costs that the creditor absorbs (i.e., does not charge the consumer) when the creditor is disclosing Lender Credits in the Total Closing Costs section of the Loan Estimate. Note, however, that the restrictions on decreasing lender credits, discussed in TRID Lender Credit Question 10, apply to any amounts the creditor includes in the Lender Credits disclosure on the Loan Estimate.

7. **We have a situation where we disclosed on our LE the appraisal fee of $510.00…AMC charged $670.00 to the customer, which was incorrect….we have the corrected appraisal invoice of $510.00 and AMC refunded the borrower the difference to their credit card….our closer did not catch this and the initial CD was disclosed with the appraisal fee of $670.00 and a cost to curie of $160.00….we are working on the final CD and closing docs and have the corrected invoice for the appraisal…can we issue the final CD with the $510.00 and no lender credit for the cost to cure? Or do we keep it at $670.00 and keep the lender credit for the cost to cure….thanks in advance for your time.**

Answer: Use the higher appraisal fee amount, and then include a credit from the appraiser so that CD comes out correctly financially. It also would indicate exactly what happened. There is no lender cost to cure,

8. **We have a closed-end home construction line of credit that needs to be extended due to contractor being fired. Additional time is needed to hire a new contractor and complete construction. The loan amount will not increase. May we prepare a simple loan extension, or must we start the loan over and redisclose?**

   Answer: Compliance is not the key determinant here. How you accomplish this is a matter of state contract law, and you need to consult with the bank's legal counsel on how to accomplish what you want to do.

   Then, compliance – particularly Regulation Z – comes into play. If you accomplish this without it being considered a "refinancing" under your state law [as discussed in 12 CFR 1026.20], then no new TIL/TRID disclosures are needed. However, if the route you decide to go does amount to a "refinancing," then all new TIL/TRID disclosures would be required.

9. **I have a question regarding our Closing Disclosure. If our Loan Estimate did not disclose the costs for title insurance and a realtor fee that was written in the purchase contract.. Can it be added to the Closing Disclosure? If so, under what section can I disclose this info on the CD?**

   Answer: Realtor Fees would go in the "Other" Section of the CD 38(g)(4) Other.

   Costs disclosed. The costs disclosed under § 1026.38(g)(4) include all real estate brokerage fees, homeowner's or condominium association charges paid at consummation, home warranties, inspection fees, and other fees that are part of the real estate closing but not required by the creditor or not disclosed elsewhere under § 1026.38.

   *****

   4. **Real estate commissions.** The amount of real estate commissions pursuant to § 1026.38(g)(4) must be the total amount paid to any real estate brokerage as a commission, regardless of the identity of the party holding any earnest money deposit. Additional charges made by real estate brokerages or agents to the seller or consumer are itemized separately as additional items for services rendered, with a description of the service and an identification of the person ultimately receiving the payment.

   Follow Up Question Thank you for the response. So, it is ok to add these items to the CD even though they were not disclosed on the Loan Estimate?

   Follow Up Answer: The realtor information is not subject to tolerance requirements, so there is no issue.

10. **Our flood vendor no longer separates out the life of loan portion of the fee. Should the entire fee now be considered a prepaid finance charge?**

Answer: Yes, though it will have a minimal (if any) impact on the annual percentage rate (APR) and finance charge disclosures (well within tolerances). The Official Staff Commentary on Regulation Z states, "If a creditor is uncertain about what portion of a fee to be paid at consummation or loan closing is related to the initial decision to grant credit, the entire fee may be treated as a finance charge."

11. **We need to correct the purpose of the loan disclosed on a Closing Disclosure (CD) from "refinance" to "home equity." Does this call for a corrected CD and a new waiting period?**

    I know Regulation Z provides that, if the product changes (which it did not in this case), a new CD and waiting period are required. But I did not know if this situation falls under that rule as well.

    Answer: Yes, a new CD is required. However, a new waiting period is not to correct this clerical error.

12. **We have a loan that had the right to rescind, the borrower signed the rescission notice that he wished to confirm the loan. However, the co-borrower said they both wished to cancel the loan. We have a copy of the borrower's signature wishing to confirm the loan but no copies with signatures that they both wish to cancel the loan. Is this an issue? Would it matter if the confirmation was signed after the cancellation?**

    Answer: First, the "confirmation" signature is not something required or even acknowledged by Regulation Z. (It is a common method lenders use to document that rescission has expired and the customer has not cancelled.)

    Everything is pretty much driven by timing. The rescission period begins when the last of three things (consummation, provision of the "material disclosures," and provision of the rescission notices) occurs and ends at midnight of the third business day following that last occurrence. (Usually, all three occur at the same time, at a loan closing, but they can occur at different times in some situations.)

    Then, there is the issue of how a consumer may exercise their right to rescind. That also is time sensitive. Their notice must be in writing and it must be placed in the mail or delivered (if other than by mail) to the lender by that midnight deadline. So, there could be a valid, effective notice of cancellation that is not received by the lender until after the midnight deadline because of mail handling/delivery time.

    And, yes, one consumer may cancel a transaction even if another (or others) do not wish to do so. This part is not swayed by majority rule. It is a way to allow each consumer involved to protect their home.

    Lastly, the timing of a confirmation does not overrule a valid cancellation. If the cancellation/rescission is timely (by the midnight deadline), a confirmation has no effect – it does not cancel out the loan cancellation.

13. We had a customer who rescinded his mortgage loan. Will the loan now be considered as withdrawn and no fees can be collected from him?

Answer: Re whether the loan will be considered "withdrawn" (presumably for HMDA reporting purposes) – No. An action code of "withdrawn" requires that the applicant expressly withdraw the application before the lender makes a credit decision. In the case of a rescinded loan, the lender has already approved and closed the loan. The Official Staff Commentary on Regulation C provides that the action taken for such a transaction should be recorded as "approved not accepted."

No, no fees may be charged to the customer for a loan they have rescinded. In fact, the lender must refund to the borrower all loan-related fees it has collected (even for third-party charges), as provided in the Official Staff Commentary on Regulation Z.

Remember also, the lender must promptly release its security interest – and it must absorb the costs of both the original filing and the release of that mortgage/deed of trust.

One thing to note – Regulation B requires the lender to provide the borrower with a copy of any appraisal related to a home loan. Regulation B also allows the lender to pass the cost of that appraisal on to the borrower and is silent on the issue of a rescinded loan. However, Regulation Z clearly states that the borrower cannot be required to pay any amount – which appears to override the Regulation B provision. So, be sure the borrower gets their copy of the appraisal (free to them).

14. I am working on a Loan Estimate (LE) for a purchase transaction that we have not received a purchase agreement for yet. The lender would like to include all of the seller fees on the LE, so that we would not have to redisclose the LE in the event that we get a purchase agreement that says the buyer must pay all seller fees. Is there any harm in doing this?

Answer: The intent of the LE is to inform applicants of costs they are likely to incur as part of their loans. If there is some likelihood that the buyer will agree to pay the seller's fees (such as if that is happening with some frequency in your market due to real estate market conditions), then it would probably be fine to include those normally seller's fees on the buyer's LE, showing to be paid by buyer/borrower.

If there is not a basis for believing it likely that the buyer will agree to pay the seller's fees, it may or may not be compliant to disclose those fees on the LE as to be paid by the buyer/borrower.

Regulation Z requires that these disclosures be made in "good faith." The lender may need to probe a bit further to try to determine who will be paying these fees. Overdisclosing merely to avoid having to produce a revised LE is probably not a reasonable basis for "good faith" disclosures.

15. Can we do a balloon loan for a loan secured by non-real estate investments? The applicants are purchasing real estate. Is there anything special we would need

to do? I know on real estate loans that we would need to know that they could pay the loan without the investments and that they have the funds to pay the balloon. I don't believe that it is the same for non-real estate loans.

Answer: Whether the bank can extend a balloon loan secured by non-real estate investments is a legal question. You will need to check with the bank's legal counsel on that one.

Even though this loan is to be used to purchase real estate, since it is not to be secured by a dwelling, the "ability to pay/qualified mortgage" (ATR/QM) rules in Regulation Z will not apply. If the loan is for a personal, family, or household (consumer) purpose, then "regular" Regulation Z disclosures ("Fed box") will be required. If it is not for a consumer purpose, then Regulation Z does not come into play.

16. **We sometimes make loans with private mortgage insurance (PMI). This should be reflected on the Loan Estimate (LE) and Closing Disclosure (CD), right?**

Answer: Yes. In the "Projected Payments" section the first page, there is a line item for "Mortgage Insurance." However, it will not be included with taxes and property insurance in the "Estimated Taxes, Insurance & Assessment" section on page one.

On the second page of both the LE and CD, PMI will appear section F, "Prepaids," in the "Mortgage Insurance Premium" space for any PMI to be paid before the first scheduled payment. Also on the second page, PMI will be shown in section G, "Initial Escrow Payment at Closing," in the "Mortgage Insurance" space for any PMI that the consumer will be expected to place into a reserve or escrow account at consummation to be applied to recurring periodic charges. (Be sure that these amounts do not double-count any PMI premiums.)

17. **We are beginning to use a vendor to electronically file our mortgages/deeds of trust. Are we correct that the fee for this service is not an APR fee, and that it goes in Section B on the LE and CD?**

Answer: You are half right. The vendor is a private company that provides the e-filing services, so their fee does not fit into the finance charge exclusion in Regulation Z for "security interest charges" (filing fees, in plain English) because it is not a fee "prescribed by law that actually are or will be paid to public officials" to file/perfect the security interest.

Therefore, their fee is an "APR fee," one that is a finance charge – and likely a prepaid finance charge since it is presumably paid at settlement.

You are correct on where the fee should go. It belongs in section B since the bank is requiring this particular provider be used.

If the fee was to the county directly, it would not be a FC.

18. Would a late fee on a loan be considered a prepaid finance charge?

Answer: No, a fee triggered by a late payment is not a prepaid finance charge for two reasons: (1) a late payment fee is not a finance charge and (2) such a fee is not collected before or at closing (which is needed to be "prepaid" for Regulation Z purposes).

19. We are updating the bank's historical table in the early plan disclosure for our variable-rate home equity line of credit (HELOC). The bank's HELOC product is set up as 10 years with interest-only payments, and the principal is due at maturity.

The historical table always had the first 10 years completed with index, interest rate (APR), and payment, and the last five year showing the index and rate only. However, this year's updated table shows only the most recent 10 years completed with the monthly payment.

I didn't see anything where the rule on this disclosure has changed. Shouldn't the historical table have the first 10 years completed with the index, rate, and monthly payment, and the last five with the index and rate only?

Answer: Yes, the historical table must show a full 15-year history of both the index values (for a particular date each year) and annual percentage rates (APR) to show potential borrowers what would have happened in the past (as an indicator of what might happen in the future). In addition, the table should show any payments (based on an initial $10,000 advance) for whatever time period payments are to be made under the particular program – for the 10 years in this case, the first 10 years of the 15-year index/rate history.

20. We have a situation with a mortgage loan where the Loan Estimate (LE) was properly completed with the UST1 index but the final Closing Disclosure (CD) was completed with an incorrect SOFR index. The note and mortgage both correctly indicate the UST1 index. The SOFR index tracks lower than UST1 so the disclosed finance charge and annual percentage rate (APR) are higher than disclosed on the CD. We are not sure how to get this corrected since the loan has already been closed and booked.

Answer: The TILA provides a "cure" provision, if done timely. The bank would recalculate/verify the APR and FC it disclosed, but using the correct values for amount financed and payment schedule(s) (if those in the CD were not correct/in line with the note). If the APR verification program shows a violation, you should compute what (if any) restitution is due. If no monthly payment has yet come due, you should enter "1" in the space for number of payments made. Then, see what the program tells you is due. You will also need to issue a corrected CD since this is part of proper correction under the TRID rules.

In addition, you should work with the bank's legal counsel from the beginning on making this cure.

21. **Our bank's practice has been to have our lenders either obtain the signatures of persons entitled to rescind a particular loan on the rescission notice for non-cancellation or calling/e-mailing the individuals, then documenting the non-cancellation section themselves after the rescission period has expired and before disbursement.**

    We have talked to other banks who say they are not doing this, that their practice is if they have not been contacted by "the date" that the transaction is being cancelled then they disburse funds.

    What is the right way to handle this? We are leaning towards not gathering these signatures or doing the follow-up that we are currently doing but would like some guidance.

    Answer: Regulation Z and the TILA do not require a signature or follow-up, just being "reasonably satisfied" that the consumer(s) has not cancelled. Since almost no one cancels, most lenders just go with that "the date" business. However, I cannot fault the bank for what it has been doing – making sure the consumer(s) has not cancelled before disbursing – which is the route some lender choose to follow.

    Of course, you need to make sure that your lenders/closers do not do what sometimes happens – getting borrowers (and non-borrowers who are entitled to rescind) to sign the confirmations at closing (with the correct date on it). This is hard to catch, as a reviewer, unless you happen to have a loan in your sample that has closed but not reached disbursement date (rare) – or have this happen at your own closing for a rescindable loan (as happened once when my wife and I were refinancing our home). Such a "confirmation" is, as they say, not worth the paper it's printed on.

22. **We have a loan to a husband and wife, secured by their home. The wife is the only one on the deed and mortgage. However, our lending team gave both husband and wife rescission notices. But I thought it should be given only to one who is on the deed. Is this correct?**

    Answer: Yes, that is the general understanding (though you might want to consult with the bank's legal counsel to understand what is considered an ownership interest in your state). "Ownership interest" does not include inchoate rights such as dower (or curtesy, the male/husband's equivalent of dower) according to the Official Staff Commentary on Regulation Z.

23. **We would like to begin offering a reduced interest rate on consumer loans for automatic transfers for loan payments. This will not be a requirement for getting a loan, but will be offered as an option for reducing the customer's interest rate. We plan to discuss it with applicants and it will be disclosed in the note/disclosure. Are there any other regulations or disclosures we need to consider or provide?**

    Answer: Two different federal regulations come into play here. One is Regulation Z. If the reduced interest rate will increase to its undiscounted level should the auto-payment

cease (due to consumer choice, insufficient funds, or some other reason), then this is considered a variable-rate loan and appropriate TIL variable-rate/ARM disclosures must be given, even if the underlying interest rate is otherwise fixed.

The other rule that could apply is Regulation E. If the automatic payment is to come from another financial institution, then the bank will need to obtain written permission from the consumer before beginning these auto-payments. While Regulation E exempts intra-institutional transfers from this requirement (they are not considered "electronic fund transfers" under the regulation), many institutions go ahead and get written authorizations in this case, too. That way, lending personnel consider it just a routine part of the process regardless of payment source.

24. **We are closing a rescindable loan on 12/21/XX, so rescission will end at midnight on Saturday 12/24/XX. However, with the weekend and holiday the customer will not actually have their funds until Tuesday 12/27/XX (with the holiday observance on Monday).**

    I just wanted to make sure that since rescission uses the precise definition of a "business day" it does not matter that our office will be closed on the 24th, and that we can still count that as one of the three business days of the rescission period?

    Answer: For this loan, the bank is permitted to disburse after midnight 12/24/XX – as long as it is reasonably certain that no person entitled to rescind has cancelled. In practical terms, the bank likely will not disburse until Tuesday 12/27/XX if the bank will be closed Saturday and Monday 12/26 /XX for the observed Christmas Day.

    For rescission "business day" purposes, Monday 12/26/XX would still count as a "business day" (if there is a rescission period that extends over that day) since Christmas is one of the federal holidays that is defined by its specific date – 12/25 – not by when the Federal Reserve and government observe Christmas.

25. **The percentage of downpayment applies only to "credit sale transactions" – one in which the creditor is the seller – correct? For example, that would include loans the bank extends to finance the sale of repossessed property (home, car, etc.)? If the bank is not advertising financing this type of transaction but a simple transaction for the purchase of a home from some third party, we are permitted to say 80% LTV or 20% downpayment in our advertising with no additional triggered terms, correct?**

    Answer: Correct. In Regulation Z, "downpayment" is defined so that it applies only to "credit sale transactions." Therefore, mention – explicitly or implicitly – of a downpayment is not a "triggering term" for general loan advertising, only for advertisements of loans related to credit sale transactions.

26. **Can banks terminate open-end credit lines for inactivity? Are the rules different for home equity lines of credit (HELOC)? If such lines may be terminated for inactivity, are we required to include this information at time of loan origination**

and would we need to send an adverse action notification at the time of termination/closure?

Answer: Whether most types of open-end lines (other than HELOCs) may be closed for inactivity is not addressed by the federal consumer protection laws and regulations, so legal counsel should be consulted for any state law limitations.

While not required, it would be prudent to inform customers that account inactivity could lead to closure of their lines of credit. If such an account is closed, an adverse action notice is required if the termination does not affect all or substantially all of a class of the lender's accounts.

HELOCs may be closed only in certain specific circumstances listed in the Truth in Lending Act and Regulation Z since the late 1980s. Account inactivity is not one of these listed circumstances.

27. **During normal monthly reviews of loan documentation, it was discovered that the stated index rate on one HELOC was incorrect. The language in the bank's Credit Agreement and Disclosure (the "Note") reads "Today the Index is ____% per annum, and therefore the initial Periodic Rate and the corresponding Annual Percentage Rate on your Credit Line are as stated below: …".**

    For the loan in question, the index was understated by 0.25%. However, the borrower received the stated APR initially. The rate and APR have since increased by 0.25%. This issue appears to have been caused by the bank's unstated policy of honoring the interest rate in effect as of the date of application. This policy was applied to provide a benefit to the borrower in an increasing rate environment. Upon sampling HELOCs made within the past year, six additional Notes contained an incorrect index value, and hence an incorrect APR and periodic rate. This issue may also impact the floor and ceiling rates stated on Notes.

    Answer: If they received the rate that was discussed, and it was equal to or below the current rates, you might take the position that the customer was not harmed. And I would agree, BUT the issue appears to be a note related issue rather than disclosure.

    As far as what to do, here are some thoughts:

    - Unwritten rules are dangerous. You might want to think about that.
    - What happened in the processing system that allowed this to happen?
    - See what the amount of interest was that they paid during that initial month. If they did not have a balance, then there probably is no issue.
    - If they did have a balance, you need to determine what you might have to do, as it seems as if you essentially quoted an initial rate of 0% on the note, and you might

have to make an adjustment. The adjustment would be a return of the first month's interest amount. This might be a smaller price to pay than if the examiners or the consumer's attorney gets hold of this. It could create trouble should you have to foreclose.

- It is a legal matter as to whether or not the initial month's interest payment money must be returned – and the floor and ceiling rates as well.

28. From a Y&A Consultant: I'm doing a lending compliance review for a client and, when I requested a sample of HELOCs from the time period covered, they sent me five "personal lines of credit" (since they had not extended any HELOCs during that time). These loans are set up on regular closed-end notes with TIL "Fed box" disclosures. When I started questioning these, it turned out that two are business-purpose, so they're out. But that left three.

The compliance officer needed to dig further on the other three. This morning I got her response:

After looking at the entire files and talking with the Lender, unfortunately, the intent was for them to be revolving lines of credit. I am now working with our software vendor to get the appropriate templates built in the system to allow for this type of loan and proper disclosures.

So, it looks like I have three loans (with no TRID disclosures, even though dwelling-secured and on closed end notes) that were creatively set up like commercial "lines of credit" rather than using their existing HELOC product. I will be writing them up for no TRID disclosures, but I'm pretty sure Regulation Z also had language prohibiting lenders from setting credit up as closed-end just to evade HELOC restrictions.

From another consultant – this is the regulatory text:

> **(d) Evasion; open-end credit.** In connection with credit secured by a consumer's principal dwelling that does not meet the definition of open-end credit in § 1026.2(a)(20), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of this section.

Based on that section, I do not think there is an issue with evasion. They are using a closed end note to "disguise" an open end note – the exact opposite.

29. I have a question regarding our Closing Disclosure. If our Loan Estimate did not disclose the costs for title insurance and a realtor fee that was written in the purchase contract.. Can it be added to the Closing Disclosure? If so, under what section can I disclose this info on the CD?

Answer: Realtor Fees would go in the "Other" Section of the CD 38(g)(4) Other. From the Small Entity Compliance Guide:

Costs disclosed. The costs disclosed under § 1026.38(g)(4) include all real estate brokerage fees, homeowner's or condominium association charges paid at consummation, home warranties, inspection fees, and other fees that are part of the real estate closing but not required by the creditor or not disclosed elsewhere under § 1026.38.

4. **Real estate commissions.** The amount of real estate commissions pursuant to § 1026.38(g)(4) must be the total amount paid to any real estate brokerage as a commission, regardless of the identity of the party holding any earnest money deposit. Additional charges made by real estate brokerages or agents to the seller or consumer are itemized separately as additional items for services rendered, with a description of the service and an identification of the person ultimately receiving the payment

Title Insurance fee placement would depend on what was provided on the SSPL and what the consumer selected.

A better move might have been to issue a new LE when you read the purchase agreement. Waiting until the CD to bring these up will raise the amount they have to bring to closing.

Also, if they are paying for lender's title, and that was not disclosed on an LE, you might have to pay a tolerance.

30. **If an Appraisal Review Fee (completed by an inhouse employee) is a finance charge? I read that fees for confirming the accuracy of an appraisal might be excluded.**

Answer: 4(c)(7) Real-Estate Related Fees 1. Real estate or residential mortgage transaction charges. The list of charges in §1026.4(c)(7) applies both to residential mortgage transactions (which may include, for example, the purchase of a mobile home) and to other transactions secured by real estate. The fees are excluded from the finance charge even if the services for which the fees are imposed are performed by the creditor's employees rather than by a third party. In addition, the cost of verifying or confirming information connected to the item is also excluded. For example, credit-report fees cover not only the cost of the report but also the cost of verifying information in the report. In all cases, charges excluded under §1026.4(c)(7) must be bona fide and reasonable.

It needs to be done prior to closing, however.

31. **To avoid the 7-day review period for the CD, and only wait 3 days, do all applicants have to acknowledge receipt of the CD? Does it matter if it is a rescindable transaction?**

Answer: See Regulation Z, section 1026.17(d) (d) Multiple creditors; multiple consumers. If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor must comply with the requirements that this part imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation. If the transaction is rescindable under §1026.23, however, the disclosures shall

be made to each consumer who has the right to rescind.

Official Interpretation

17(d) Multiple Creditors; Multiple Consumers

1. Multiple creditors. If a credit transaction involves more than one creditor:

i. The creditors must choose which of them will make the disclosures.

ii. A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.

iii. All disclosures for the transaction must be given, even if the disclosing creditor would not otherwise have been obligated to make a particular disclosure. For example, if one of the creditors is the seller, the total sale price disclosure under §1026.18(j) must be made, even though the disclosing creditor is not the seller.

2. Multiple consumers. When two consumers are joint obligors with primary liability on an obligation, the disclosures may be given to either one of them. If one consumer is merely a surety or guarantor, the disclosures must be given to the principal debtor. In rescindable transactions, however, separate disclosures must be given to each consumer who has the right to rescind under § 1026.23, although the disclosures required under § 1026.19(b) need only be provided to the consumer who expresses an interest in a variable-rate loan program. When two consumers are joint obligors with primary liability on an obligation, the early disclosures required by § 1026.19(a), (e), or (g), as applicable, may be provided to any one of them. In rescindable transactions, the disclosures required by § 1026.19(f) must be given separately to each consumer who has the right to rescind under § 1026.23. In transactions that are not rescindable, the disclosures required by § 1026.19(f) may be provided to any consumer with primary liability on the obligation. See §§ 1026.2(a)(11), 1026.17(b), 1026.19(a), 1026.19(f), and 1026.23(b).

32. I am just checking, the fee expiration date that is normally only on the first LE the customer gets, if we change the fees do we put it back on again?

Answer: Once the consumer indicates an intent to proceed within the time specified by the creditor, the date and time at which estimated closing costs expire are left blank on any subsequent revised disclosures. The creditor may extend the period of availability to expire beyond the time disclosed. If the consumer indicates an intent to proceed within that longer time period, the date and time at which estimated closing costs expire are **left blank on subsequent revised disclosures.**

See also Regulation Z section 1026.37(a)(13)-4

4. *Revised disclosures*. Once the consumer indicates an intent to proceed within the time specified by the creditor under § 1026.37(a)(13)(ii), the date and time at which estimated closing costs expire are left blank on any subsequent revised disclosures. The creditor may

extend the period of availability to expire beyond the time disclosed under § 1026.37(a)(13)(ii). If the consumer indicates an intent to proceed within that longer time period, the date and time at which estimated closing costs expire are left blank on subsequent revised disclosures, if any. See comment 19(e)(3)(iv)-5.

So, if the customer already gave an intent to proceed, the closing costs expiration date is left blank. I assume that the fees are changing due to a valid changed circumstance.

33. Would I expect to see gift funds or gifts of equity on the LE. We are putting them in our software but they are not showing on the LE. Is it required?

Answer: On the LE, gift funds will appear in the "Adjustments and other credits" line in the "Calculating Cash to Close" section.

Page 52 of the Guide to the completion of the LE and CD.

Adjustments and Other Credits Adjustments and Other Credits is the sum of adjustments requiring additional funds from the consumer, calculated as a positive amount, and other credits for certain items expected to be paid at closing by persons other than the loan originator, creditor, consumer, or seller, calculated as negative amounts. The calculation includes:

The total of all items in the Loan Costs and Other Costs tables that are expected to be paid at closing by persons other than the loan originator, creditor, consumer, or seller. A creditor is not required to include such amounts if they are expected to be paid in advance of closing. Examples of items that are paid by persons other than the loan originator, creditor, consumer, or seller include:

Gifts from family members expected to be paid at closing. Gifts expected to be paid in advance of closing are not included.

Credits from a developer or home builder to be applied to items in the Loan Costs and Other Costs tables. (Comment 37(h)(1)(vii)-1 and -2)

Also see, Regulation Z, Section 1026.17(h)(1)(vii)

34. In the middle of an audit and getting hit with tolerance violation on recording fees. We have traditionally not included an estimate of the cost of filing a deed on our LE. I am getting hit with the violation mainly due to the deed filing costs. Should we be including that?

Answer: Yes, you should be including the fee to file the deed, ***if*** the borrower will be responsible for paying for it. If the seller is paying the deed filing fee, then it is not required to be on the LE.

35. I have a customer who inherited a property that has a mortgage on it. They are

now getting a loan to pay off the existing loan. This is not a refinance for HMDA because the loan is not to the same person. Is it considered a refinance for TRID on the LE? I can't remember if that rule is different.

Answer: 1026.20(a) states: (a) *Refinancings.* A refinancing occurs when an existing obligation that was subject to this subpart is satisfied and replaced by a new obligation **undertaken by the same consumer**. A refinancing is a new transaction requiring new disclosures to the consumer. The new finance charge shall include any unearned portion of the old finance charge that is not credited to the existing obligation.

So no refinance for TRID.

36. **Hello, We are working on a RE refinance loan transaction for a current customer. The payoff of the current loan was not disclosed on the initial Loan Estimate. Therefore, the Estimated Cash to Close was disclosed with customer receiving approx. $40,000 more than what they will actually be receiving. The current loan payoff is disclosed on the Closing Disclosure. Should a revised LE have been issued once it became known this was not disclosed? Are there any additional compliance considerations that we should be aware of?**

    Answer: Once the CD was issued they cannot issue a revised LE. However, one of the questions was *should* a revised LE have been issued. A revised LE would technically not be required; however, from a customer service standpoint, I would have issued one to accurately reflect the estimated proceeds to the borrower.

37. **We have loan application for which the applicant's father is gifting $30,000 in equity to the son at closing. Son is purchasing Dad's house so Dad is also the seller. The purchase contract states that Dad is gifting the son $30,000 in equity and we had Dad complete a gift letter. Should the $30,000 be listed under "Seller Credit" or "Gift Funds" on page three of the Closing Disclosure (Summaries of Transaction)?**

    Answer: It seems most appropriate to list this as a "seller credit," though Regulation Z and its Commentary do not directly deal with this issue. Dad is both seller and family member. If the gift was a sum of money, then "gift from family member" would seem appropriate. But, since this is effectively a reduction of the sales price, "seller credit" seems the correct approach.

38. **We closed a purchase loan in which the real estate broker charged our borrower a $129 transaction fee. We did not know this at the time of the Loan Estimate (LE) and so this fee was not disclosed to the borrower on the LE. Based on my reading of the TRID rule, because this fee is located in section H on the Closing Disclosure (CD), this is a fee that can change without regards to any tolerance concerns. Is this correct?**

    Answer: Yes, as long as the bank did not require the third-party service the fee covers.

39. To obtain income tax transcripts, the IRS is charging a $2.00 fee (per transcript) to the bank. This is a cost that we will pass on to the consumer. Is this an "APR" fee?

Answer: If the bank requires the tax return transcripts in connection with loan applications, then the IRS fee seems to fit the definition of "finance charge" in Regulation Z – and does not seem to fit any of the exceptions/exclusions from the finance charge. So, it seems it is an "APR" fee, though is small enough in amount as to be insignificant in relation to something of the size of a mortgage loan.

40. Could we modify a current 15/1 ARM to a fixed rate loan? They are looking to modify the note to the current rate for the rest of the 30-year term. If possible, what disclosure requirements exist?

Answer: Whether the bank can make such a change, and how to accomplish the modification, are questions you need to put to the bank's legal counsel as these issues are governed by state law. Another question for your attorney is whether this transaction would be considered under state law to satisfy/extinguish the original obligation and replace it with a new one – which is considered a "refinancing" under Regulation Z.

If the transaction is a "refinancing" and a consumer loan (for personal, family, or household purposes), then full Regulation Z disclosures are required – Loan Estimate and Closing Disclosure. If there is any new money involved (it does not sound like it), then the right of rescission will also apply.

Another issue to be sure you address is the flood insurance regulation. Even a simple modification of an existing loan triggers the flood insurance rules – if the loan is increased, renewed, or extended. If the modification entails no increase in the loan amount, extension of the loan maturity, or renewal of the loan (this latter issue would be defined by state law), then the flood insurance rule – hazard determination and customer notice – would not apply.

41. We are doing a mortgage to pay off a land contract. We treat these as refinancings, but we have a lender who prefers not to use a title company and the bank orders the deed and we do a seller-side-only Closing Disclosure (CD). My question is relating to the issue date. The borrowers' CD will show 12-21-XX for issue with closing date of 12-24-XX with disbursement of 12-31-XX (we are closed this Saturday and not counting due to that fact). As to the sellers, should the dates match to the CD for our borrower? They will not come in till the 31st to get their monies.

Answer: The "Date Issued" on each of these documents must reflect when the applicable disclosure is "delivered" to the applicable consumer/party – e.g., if both are put in the mail the same day, these dates will match; if they are hand delivered on different dates, the two documents will each reflect when each was hand delivered (even if after "closing," in the case of the seller).

42. If I am reading Regulation Z correctly, rescission applies to all home equity lines of credit (HELOC). So, even if we refinance one HELOC with another HELOC and do not advance any new money or increase the line amount, rescission still applies. Is that correct?

Answer: Yes, for a bank as lender, the only exemption from rescission for a HELOC is if the transaction is a "residential mortgage transaction" (used to purchase the dwelling). Other exemptions from the closed-end side of Regulation Z do not exist for open-end credit, including the closed-end exemption for a refinancing by the same lender (with no new funds advanced).

43. Question regarding balloon payments and extensions.

Our promissory note will state in the payment section, XX number of regular payments to start on a certain day with the final payment due XXX day. For example-35 regular payments of $XXX each and one irregular last payment at $XXXXX. 1st payment due is 9-28-2020 and all subsequent payments due on the same day each month after that. Borrower's final payment will be on 8-28-XX and will be all principal and all accrued interest not yet paid. The bank has typically required a customer to make a regular payment due on the due date (8-28-23 in the example) before extending the loan.

Could there be any issues by requiring a customer to make a regular payment before extending the loan instead of having them make the final payment of principal and interest? Is it at the bank's discretion to require a payment before extending for another balloon term?

Answer: The bank must follow the Note for how payments are to be made. We do not think that requiring a payment not in the note is a good idea, but your attorney can advise on how the note reads, as this is a contract issue.

44. We are a QM "small creditor" that does some 1/1 and 5/1 ARM's that we keep in our portfolio.

Can you confirm what time frame should be considered in the determination of the "highest rate in the first 5 years"?

If our ARM changes the rate on the 60th month from the closing date, thereby effecting the 61st payment - is that the highest rate in the first 5 years?

We have been including the rate change that occurs on month 60, but our Wolters Kluwer Compliance One Mortgage software in its calculation does not.

What is the correct time frame to determine the highest rate in the first 5 years?

Answer: The commentary states:

** Date of the recast.** The term “recast” means, for an adjustable-rate mortgage, the expiration of the period during which payments based on the introductory fixed rate are permitted; for an interest-only loan, the expiration of the period during which the interest-only payments are permitted; and, for a negative amortization loan, the expiration of the period during which negatively amortizing payments are permitted. For adjustable-rate mortgages, interest-only loans, and negative amortization loans, the date on which the recast is considered to occur is the due date of the last monthly payment based on the introductory fixed rate, the interest-only payment, or the negatively amortizing payment, respectively. To illustrate: A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a fixed interest rate and permits interest-only payments for the first five years of the loan (60 months). The loan is recast on the due date of the 60th monthly payment. Thus, the term of the loan remaining as of the date the loan is recast is 25 years (300 months).

So, it appears that your software is correct.

45. We have a situation in which we are set to issue a CD to a borrower today in order to close on Friday. They have been unsuccessful in actually getting us anything other than a quote for insurance (not escrowing). If we send out a CD based on the quote and later that figure changes, will we be okay to bring an accurate CD to closing or will this event push back the closing itself?

Answer: Only three changes would require a new review period (delay in closing):

- APR increase by more than 1/8% for regular loans; ¼% for irregular loans May also dome up if APR decreases beyond these limits, but that is unclear

- If a prepayment is added after the first CD is issued

- The loan product changes; i.e., fixed to variable rate, secondary market to in house

As long as the timing and acknowledgement of the initial CD are within the appropriate timeframe, and the changes fall within the “changed circumstance” description (which this will), they do not have to have a new waiting period. Just a new CD at closing once you have the amount.

46. For a TRID loan we are not sure if a Lease Agreement containing an Option to Purchase is a purchase or refinance under the purpose hierarchy of TRID.

Answer: This will be dependent upon State Law because some State laws will give ownership interest in a property if the consumer made payments during the lease term. If there no is ownership interest, then this would be a purchase with TRID. If there is an ownership interest, it would be a purchase with TRID and rescission.

47. I have a lender here who is wanting to do a mobile home only loan without taking the land as collateral. In this instance, the loan will be higher priced. Do the escrow rules for higher priced mortgages apply to this type of loan? This

property is not in a flood zone.

Answer: The regulation just says principal dwelling, with no mention of "dirt." So, you would escrow for the mobile home tax and insurance..

You also need to consider the potential for difficulties in repossessing the mobile home. You should know the risk involved in having your collateral sitting on someone else's land. But that is a discussion to have with your attorney.

48. **When a customer that is John & Jane Doe Revocable Trust owns 150 acres free and clear, but are using proceeds from a loan secured by that property to construct a condo, this would be considered a consumer/TRID purpose, correct?**

    Answer: Sounds like another consumer-purpose loan, and when real estate (dirt) is part of the collateral, TRID is triggered. I suspect the issues is the trust (a non-natural person) involved. But, the CFPB explicitly dealt with that some years ago in the Official Staff Commentary on Regulation Z, Comment 2(a)(11)-3, to the definition of "consumer," by saying, "Credit extended to trusts established for tax or estate planning purposes or to land trusts…. is considered to be extended to a natural person for purposes of the definition of consumer."

49. **We have a loan request for a customer that will be located on 79 acres, but they are building a house. This house will obviously be consumer purpose, but will have a shop that will store farm equipment. The lender from the commercial side of the fence is hoping to do this loan instead of sending it to consumer. Is that permissible?**

    Answer: For Regulation Z purposes, it does not matter which functional area of the bank extends the loan. If the loan is primarily for consumer (personal, family, or household) purposes, appropriate disclosures must be given. In this case, that would mean TRID disclosures – Loan Estimate(s) and Closing Disclosure(s). You say that the purpose of the loan is to build a new house for the borrower, along with a shop/building for storing farm equipment, it sounds like it is probably a consumer-purpose loan.

    The bank can use any reasonable method for determining what the primary purpose is – e.g., what amount of the loan is to build the house vs. to build the shop/storage building. If the amount for the farm storage shop/building is greater than for the house, then an argument could be made that the loan is primarily for agricultural purposes and, thus, exempt from Regulation Z. But, if it is the other way, TRID rules.

    Whichever way the decision goes, be sure that the file is well documented on what is determined and how the bank made its determination.

Section 9: Regulation P: Privacy of Consumer Financial Information

1. **We recently made several minor changes to our Privacy Notice, but one more significant change under the section "Reasons we can share your personal information." In that section, we changed from stating that "we do NOT share information with our affiliates for their everyday business purposes" to "Yes we do share." The bank owns 50% of a title agency that we share information with.**

   My question is, do we need to mail the revised privacy notice out to our customers or could we include a statement message letting our customers know where to locate the most recent privacy notice on our website.

   Answer: Your question hits on an intersection of two regulations – Regulation V (Fair Credit Reporting) and Regulation P (Privacy). Regulation V lays out the requirements for sharing consumer information among affiliated entities, while Regulation P does the same for sharing consumer information with non-affiliated entities. They are joined to an extent because Regulation V (and the FCRA itself) allow its opt-out notice to be "coordinated and consolidated" with another similar notice – such as the Regulation P privacy notice. Regulation P explicitly provides for including the Regulation V/FCRA notice as an integral part of its model privacy notice.

   With that said, Regulation V requires that a bank give a consumer appropriate notice – either in writing or, if the consumer has agreed, electronically – before sharing the consumer's information with an affiliate so that the affiliate may market to the consumer, and give the consumer a reasonable opportunity to opt out of this sharing before the sharing occurs.

   All of this argues against merely using something like a statement message. There would not be room for the required language – and there is nothing in the rules that explicitly allows merely providing a web address (where the full notice may be accessed) as a substitute for the required notice. The best route would be to send revised privacy notices to affected consumers and provide them with the required opportunity to opt out of the sharing before the sharing with any affiliate commences.

2. **Follow-up: If there is no option to opt out, could we just post the revised privacy notice on our website?**

   Answer Follow Up: No, the rules require providing it in a manner that ensures that the consumer/customer actually receives it. Generally, it is not considered reasonable to presume that all customers regularly access the bank's website.

3. **Q: I have a beginner's question I think you may be able to help me with.**

   In an effort to make sure all information available on our website is current and accurate, I found our Privacy Notice. For all intents and purposes, it seems

compliant with Regulation P and our privacy policy, and it is based on the model form provided in the regulation.

We noticed that the revision date at the top, December 2010, is more than a decade old and could cause a customer to question if the notice is actually current/reliable. I think that is a fair sentiment, however the notice is current despite its age. Would removing the revision date from the notice trigger a new one to be mailed? I do not think that would constitute a privacy policy change to require a new mailing, nor do I think the revision date is required on the notice from my reading of Regulation P.

In practice I do think it is a good idea to keep track of the revisions, but not necessarily on the document in this particular situation. Am I correct in my understanding?

Answer: I can understand that concern, but there is no requirement that the notice be updated on any particular frequency. It is updated when the bank's privacy policy/practices change, whenever that is. So, having the same notice for many years is not a problem under Regulation P.

As far as having the revision date on the notice, I will point you to the General Instructions in the Appendix to Reg P. While the body of the regulation is silent about a revision date, the General Instructions in the Appendix do require it.

4. **We received a letter from the Attorney General office of Illinois (we are based in Ohio, but do national lending). They want information about an identity theft case involving a loan application; we discovered the fraud and declined the loan before funding. Do privacy regulations allow us to give out information to a state AG?**

Answer: There is an exception in Regulation P that allows sharing consumer/customer information in a situation like this. The "Other exceptions" section of Regulation P [§1016.15(a)(7)] the regulation's requirements to give notice and opt-out, etc. "do not apply when you disclose nonpublic personal information….To comply with Federal, state, or local laws, rules and other applicable legal requirements" or "To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by Federal, state, or local authorities."

Since it is out of state, you might want to double check with your attorney.

Section 10: Regulation BB
Community Reinvestment Act

CRA/Interstate Branching

1. **We have one branch in a neighboring state and the loan to deposit ratio for that branch is 33% at the end of 2022. The Section 109 Host State Loan to Deposit Ratio for that state as of June 30, 2021 is 69%. We are supposed to be lending there at a level that is at least one half of the Host State Loan to Deposit Ratio for that state.**

   Since we failed this first Section 109 test we have to show the bank is reasonably trying to help meet the credit needs of the communities served by our interstate branches.

   First off is this that big of deal?

   Second, should the bank be doing additional advertising, outreach etc. to try and generate more loans?

   Answer: Yes, it is a big deal. The regulators could require the bank to close the interstate branch if both tests are failed: LTD ratio is below the threshold (which you say it is) and the branch is not adequately meeting local credit needs. Determining and documenting the latter is what you need to concentrate on. The FDIC's examination manual has a section on these requirements (as do the examination manuals from the other regulators).

Section 11: Fair Credit Reporting Act

1. **I am currently performing an FCRA Audit, and our Commercial Department states we have verbiage on our personal financial statement (PFS) form about pulling credit. However, I notice that some of the PFS's we acquire from other banks do not have this verbiage. I am trying to find guidance on whether we indeed need that for consumer loans made in the Commercial area. On the Retail side, we have the borrower sign the Borrower's Authorization form for us to pull credit. Is the permission required?**

   Answer: No, not for consumer (personal, household, or family) purpose loans. The FCRA does not require that a signature be obtained by the financial institution before obtaining the credit report. A lender may obtain a credit report when it intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer.

   However, the "permissible purpose" to pull a credit report in relation to a loan is only for consumer purpose credit. For business or agricultural purpose credit, the lender would indeed have to obtain permission from individuals involved in the transaction before pulling their credit reports.

2. **We have a customer who is trying to refinance a loan she has with our bank. She first asked our bank to do the refi so we pulled her credit report. Now she is shopping and asked us to share the credit report we pulled with another lender. I don't know if we want to do that but I need to know if that is even allowable under the regulation.**

   Answer: The FCRA permits the bank to share the report with the applicant, but not with the other lender. If the bank shares the information with another person, it becomes a credit reporting agency. And it likely does not want to be considered a consumer reporting agency because there are a lot of additional requirements and obligations it would have to meet. Most banks believe it is best to stay a user and a provider of information to the consumer reporting agencies.

3. **I have a husband and wife loan borrower who have filed multiple e-Oscar disputes (18 in the last 3 months) on a loan that they had with our bank and have since paid off. They are disputing payment history which has all been verified and confirmed that the bank reported all information correctly.**

   In reading 1022.43 regarding frivolous disputes, I believe this definitely qualifies as frivolous. 1022.43(f)(3) states a notice can be mailed to them. My question is, what are the requirements for this notice? What do I need to include in this letter to comply? Are there any examples of a form letter I can use?

Answer: If the bank feels that the dispute is frivolous, then they should follow section 1022.43(f).

(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.

PMI

1. **When can PMI insurance be cancelled? On a purchase transaction the LTV was based on the sales price because it was lower than the appraised value.**

   Answer: [From the FDIC Exam Manual]

   The Act requires a servicer to automatically terminate PMI for residential mortgage transactions on the date that:

   - •the principal balance of the mortgage is first scheduled to reach 78 percent of the original value of the secured property (based solely on the initial amortization schedule in the case of a fixed rate loan or on the amortization schedule then in effect in the case of an adjustable-rate loan, irrespective of the outstanding balance), if the borrower is current;
   - Or
   - if the borrower is not current on that date, on the first day of the first month following the date that the borrower becomes current (12 USC §4902(b)).

   (16) TERMINATION DATE.—The term "termination date" means—

   (A) with respect to a fixed rate mortgage, the date on which the principal balance of the mortgage, based solely on the initial amortization schedule for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 78 percent of the original value of the property securing the loan; and

   (B) with respect to an adjustable-rate mortgage, the date on which the principal balance of the mortgage, based solely on amortization schedules for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 78 percent of the original value of the property securing the loan.

2. **At any time during the loan can you drop the PMI due to the LTV with the appraised value being under the 80% when the sales price should be what was used?**

   Answer: The initial disclosure needs to show the date the loan balance is first scheduled to reach 80% so the borrower can choose to request cancellation. . Termination must occur no later than when the LTV is first scheduled to reach 78% of the original value based solely on the amortization schedule.

3. **On purchase transactions, can you have the house reappraised and use that value to cancel the insurance?**

Answer: Yes –but if the bank reappraises the home, the cost of the appraisal must be covered by the bank.

4. **Can I request cancellation of my PMI when my principal balance is 80 percent of the home's original value?**

Answer: Yes. You have the right to ask your servicer to cancel PMI on the date the principal balance of your mortgage is scheduled to fall to 80 percent of the original value of your home. The first date you can make the request should appear on your PMI disclosure form, which you received along with your mortgage. If you can't find the disclosure form, contact your servicer.

You can ask to cancel PMI ahead of the scheduled date, if you have made additional payments that reduce the principal balance of your mortgage to 80 percent of the original value of your home.

For this purpose, "original value" generally means either the contract sales price or the appraised value of your home at the time you purchased it, whichever is lower. But, if you have refinanced, the "original value" is the appraised value at the time you refinanced.

Your servicer is legally required to grant your request to cancel your PMI as long as you meet the criteria below:

- You make your request in writing
- You have a good payment history and are current on your payments
- You can certify that there are no junior liens (such as a second mortgage) on your home

You can provide evidence (for example, an appraisal) that the value of your property hasn't declined below the original value of the home—if it has, you may not be able to cancel PMI on schedule

5. **<u>When can I remove private mortgage insurance (PMI) from my loan? | Consumer Financial Protection Bureau (consumerfinance.gov)</u>**

Answer: You could refinance the house and use the appraised value to recalculate the LTV.

Other worthwhile documents:

CFPB Bulletin 2015-03 - PMI 08.2015.pdf

2012-10 CFPB Homeowners Protection Act PMI Cancellation Exam Procedures.pdf

One thing to keep in mind is that the PMI statute sets maximum times that lenders may keep PMI in place. If the lender chooses to cancel it SOONER than those outer limits, the statute would allow it to do so.

6. **I am finding mixed messages as to whether the private mortgage insurance (PMI) disclosures are required for loans on investment rental properties. I have been going back and forth on this issue. Which is it?**

   Answer: The Homeowners Protection Act (HPA) – there is no implementing regulation – covers only consumer-purpose loans (those for personal, family, or household purposes), so it does not apply to loans involving non-owner-occupied investment properties.

   A covered "residential mortgage transaction" is a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against a single-family dwelling that is the principal residence of the mortgagor to finance the acquisition, initial construction, or refinancing of that dwelling.

7. **Our mortgage area is considering adding this paying for private mortgage insurance (PMI) upfront as an option for our borrowers. I am not familiar with this subject and want to make sure we are following the proper procedures. When a borrower pays for PMI upfront in a single payment, do they still need to receive annual notices or notice when the termination of the MI is met? Does the PMI company still issue a refund if the loan is paid off early or when LTV is less than 80 percent?**

   Answer: All the PMI notice requirements still apply. In addition, by law, the PMI company cannot keep unearned premiums so they would have to refund if the customer paid off early, just like with monthly-payment PMI.

Deposit Errors

Section 1: Regulation DD: Truth in Savings

1. **I'm creating a new checking account and was trying to figure out if it should go in a business product or a personal product and wanted to get some guidance.**

   This product will be for folks who have a business line of credit or an AG line of credit and will have a checking account linked to it. So obviously a business line of credit will be a business account and we'd like to make it a business checking.

   But I do have some farm customers who just use their personal name and Social Security number and wanted to think through any issues related to having a personal name and Social Security number on a business product.

   Answer: Whether something is personal, or business is determined by how it will be used, not necessarily who the signers are. In a perfect world, if you had a business product, you would have an obvious business signatory on the account. But that is not a requirement. What is required is for you to look at the purpose of the account. If this account is being tied to a business line of credit, we believe that would be a business account.

2. **We are changing our deposit products. When we send out our migration letters, does it need to say anything specific. The old account got free checks, but the new account will not get free checks. Do we need to state that somewhere? This information is not on the TIS that will be provided.**

   Answer: There is no requirement under Regulation DD that you must disclose checkbook fees. Accordingly, when you adjust those fees, there is no requirement (under Reg DD) for you to notify your customers. From the regulation:

   4(b)(4) Fees.

   1. **Covered fees.** The following are types of fees that must be disclosed:

      i. Maintenance fees, such as monthly service fees.

      ii. Fees to open or to close an account.

      iii. Fees related to deposits or withdrawals, such as fees for use of the institution's ATMs.

      iv. Fees for special services, such as stop-payment fees, fees for balance inquiries or verification of deposits, fees associated with checks returned unpaid, and fees for regularly sending to consumers checks that otherwise would be held by the institution.

2. Other fees. Institutions need not disclose fees such as the following:

i. Fees for services offered to account and non-account holders alike, such as travelers checks and wire transfers (even if different amounts are charged to account and noncount holders).

ii. Incidental fees, such as fees associated with state escheat laws, garnishment or attorney's fees, and fees for photocopying.

Another Consultant Opinion

From the technical Regulation DD perspective, I agree that disclosure is not required so a change in the fee (from zero to something, in this case) is not required. But from a UDAAP perspective, it would probably be better to disclose it rather than just spring it on affected customers when they get hit with this new fee they have never had to pay before.

3. **We have recently made a change that our online banking logins will expire after 18 months if a customer has not logged in. This may trigger them to begin being assessed paper statement fees (if they sign up for e-statements, there is no cost) as the paper statement fee is determined by an online account being established and maintained. The $3.00 paper statement fee is listed as one of our fees on our fee chart, however customers don't know that they have to log in every 18 months to keep their online account from expiring and therefore start incurring the paper statement fee. I feel that this should be disclosed in some way but I'm not sure how best to do it. We can push a message to all online account holders. Would that be acceptable?**

   Answer: Yes, the bank should have been disclosing this all along on its TISA account disclosures for account affected because Regulation DD requires the financial institution to disclose both the amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed.

   Failing to log in at least every 18 months, in this case, is the condition under which the fee may be imposed. So, the conservative approach would be to send a corrective disclosure to your existing customers disclosing both the fee and the condition (logging on, etc.). Also, you need to make sure the TISA account disclosures for affected accounts include this information for future customers.

4. **We are going to migrate customers from their current account to our new accounts. In the change letter, do we need to state all the negatives such as maintenance fees increasing, a new paper statement fee, no free checks, and no free cashier's checks? We will be sending the TISA account disclosure with the letter.**

   Answer: The bank cannot simply rely on customers reading the account disclosures. Regulation DD provides that if a financial institution provides notice through revised

account disclosures, the changed term must be highlighted in some manner. For example, financial institutions may note that a particular fee has been changed (also specifying the new amount) or use an accompanying letter that refers to the changed term. So, your cover letter will need to point customers to the changes that increase their costs (or reduce their earnings – interest rates).

5. **We currently offer only fixed-rate certificates of deposit (CD). We still issue certificates for these. Management wants to offer a promotional 30-month variable-rate CD with a special introductory rate not tied to any index, and these promotional CDs would automatically renew at maturity into our regular fixed-rate 30-month CDs.**

   Can we switch customers from a variable-rate product to a fixed-rate product without having to send new disclosures at maturity (or before maturity?). This promotional CD is for new money only and will be the only variable-rate CD we offer.

   Answer: Regulation DD does not explicitly require disclosure of the fact that a renewal CD will be fixed, rather than variable rate, but it may be a good idea to disclose that to avoid later customer and regulator concerns.

   Since this CD has a term over one year, the bank must send a full account disclosure for the renewal CD with the prematurity notice it must send before maturity. This account disclosure will inform the customer that the interest rate for the renewal CD is fixed (and not variable).

6. **We are researching increasing our international wire transfer fee. We are having a debate whether this would require 30-day prior notice to customers. The reason for the debate is that the fee is disclosed in our Terms & Conditions disclosure currently. My position is that it would not be required because it is not a fee that is connected to an account, but a service we provide even if the person doesn't have an account. Can you provide some clarification for us? Do we need to give a prior notice to the customer?**

   Answer: You are correct. If the fee is not charged "in connection with" the account or with making/receiving electronic fund transfers, then Regulation E and Regulation DD do not require that it be disclosed.

   While neither rule prohibits the bank from disclosing these non-account-related fees (allowing banks and thrifts to have consolidated fee schedules that they give with their regulatory disclosures), the mere inclusion of such fees in consolidated fee schedules does not make future increases subject to the rules' advance notice requirements.

7. **I am reviewing a checking account advertisement which states "NO Monthly Service Charge." The account being advertised requires that monthly statements are sent by e-mail and charges a $3.00 monthly service charge if they are not. I reviewed Regulation DD and it states that a monthly service charge is a fee that must be listed, and the bank lists the fee on the TISA disclosure. My**

question is whether the advertising claim of "no monthly service charge" is "misleading" under Regulation DD standards?

Answer: Yes, this probably should be considered it misleading as written because Regulation DD states that "An advertisement shall not….[r]efer to or describe an account as 'free' or 'no cost' (or contain a similar term) if any maintenance or activity fee may be imposed on the account." "No monthly service charge" seems to be a "similar term" to "free" or "no cost."

Now, if the advertisement clearly stated, "NO Monthly Service Charge with E-Statements," that would be a different story. The limiting factor would be clearly stated, making the advertisement compliant (and no longer misleading).

8. **I'm comparing the fees disclosed on a Truth in Savings account disclosure to a monthly statement for the same deposit product. The account disclosure describes the fee as "A dormant account fee of $2.00 per month will be charged after 3 years of inactivity." The description on the statement is "Service Charge." Doesn't the disclosed name of the fee have to be the same of similar enough for the consumer to determine what the fee is for?**

   Answer: Yes, you are correct. The Official Staff Commentary on Regulation DD requires that financial institutions must use consistent terminology to describe terms or features required to be disclosed. The example given in the Commentary is if an institution describes a monthly fee (regardless of account activity) as a "monthly service fee" in account-opening disclosures, the periodic statement and any change-in-term notices must use the same terminology so that consumers can readily identify the fee.

9. **Our bank would like to offer a limited time certificate of deposit special. When it comes to advertising on the bank's website would it be acceptable to include the "triggered terms" in a link or do they need to be on the same screen with the annual percentage yield (APY)? For example, the "triggered terms" could be accessible by clicking on a link labelled "Disclosure."**

   Answer: Linking to the additional required terms is allowed, but the link must take the consumer directly to the additional information (not some chain of multiple links to get there). Also, just labelling the link as "Disclosures" might not be clear enough to at least some average consumers. It might be better to have something like, "For additional information, click here" – with the link embedded in the last word.

10. **Regulation DD requires all TIS disclosures be provided in writing and in a manner consumer can keep (1030.3(a)). Wouldn't these statements be accurate for subsequent requests for TIS documentation but not for initial disclosures? Should the following statements found in this section be removed or modified to clarify that these statements apply only to subsequent and not initial disclosure/new account disclosures?**

Our bank may send the disclosures in paper form or, if the consumer agrees, may provide the disclosure electronically, such as to an email address that the consumer provides for that purpose, or on our bank's Web site, without regard to the consumer consent or other provisions of the E-Sign Act.

Our bank is not required to provide nor the consumer to agree to receive disclosures provided by 1030.4(a)(2) in electronic form.

Answer: The regulation states: in § 1030.4 Account Disclosures"

General. A depository institution shall provide account disclosures to a consumer before an account is opened or a service is provided, whichever is earlier. An institution is deemed to have provided a service when a fee required to be disclosed is assessed. Except as provided in paragraph (a)(1)(ii) of this section, if the consumer is not present at the institution when the account is opened or the service is provided and has not already received the disclosures, the institution shall mail or deliver the disclosures no later than 10 business days after the account is opened or the service is provided, whichever is earlier.

> 4. Use of electronic means. If a consumer who is not present at the institution makes a request for account disclosures, including a request made by telephone, email, or via the institution's Web site, the institution may send the disclosures in paper form or, if the consumer agrees, may provide the disclosures electronically, such as to an email address that the consumer provides for that purpose, or on the institution's Web site, without regard to the consumer consent or other provisions of the E-Sign Act. The regulation does not require an institution to provide, nor a consumer to agree to receive, the disclosures required by § 1030.4(a)(2) in electronic form.

11. **We are looking at offering a reward checking account to customers. What are some of the compliance requirements that we need to follow?**

Answer: Compliance issues for rewards checking center around disclosures and advertising, and involve TISA and UDAAP requirements/concerns.

The rewards typically amount to a "bonus" under Regulation DD (TISA), things valued over $10 given for opening, maintaining, etc. a deposit account. The term does not include interest, other consideration worth $10 or less given during a year, the waiver or reduction of a fee, or the absorption of expenses" [12 CFR 1030.2(f)].

A bonus must be disclosed on the "account disclosure" (given at account opening), as well as details about when the bonus is paid, etc. In addition, mention of a bonus in any advertising for the account is a "triggering term," requiring disclosure of the APY (and all the terms that mention of the APY triggers).

Beyond the technical issues of terms to be disclosed and advertised, you need to make sure that the account disclosures accurately reflect the terms of the account and that any advertising is not misleading or inaccurate. This latter point ties into the general UDAAP issue, particularly the "deceptive" part of UDAAP. The primary concern in this area is that

any advertising, promotion, etc. (whether through media, website, personal interactions, etc.) fairly represent the account and do not mislead customers to take on something that is not appropriate for them.

12. **When calculating an annual percentage yield (APY) for a savings account, does the formula include the frequency of how often the interest is paid? For example, in a one year's time, interest compounded daily and paid monthly to the account will earn much more than compounded daily and paid annually.**

    Answer: The APY formula does not calculate the interest paid on an account – that is an independent computation performed by the financial institution with whatever tools it uses. The APY formula takes the interest amount and other figures the bank inputs and computes the annual percentage yield – an annualized measure of the return paid on a deposit account. The interest amount the bank computes should, of course, take into account all relevant factors – interest rate, compounding frequency, etc. So more frequent compounding will increase the APY.

13. **May the bank have a link in an online advertisement with "triggering terms" to the required additional TISA disclosures. For instance, the bank has an online ad saying "Earn up to 3.00% APY each statement cycle during the first 12 months of opening your account when you meet our minimum cycle requirements. Click HERE to learn more." The "HERE" link directs them to the required information. Is this compliant?**

    Answer: Yes, that would be permitted as long as the "HERE" link takes the viewer directly to the required additional information. This is spelled out in the Official Staff Commentary on Regulation DD at Comment 9 to 12 CFR 1030.8(a).

Section 2: Regulation CC: Expediated Funds Availability Act

1. **While reviewing some Regulation CC holds, I noticed a 7-day hold is being placed on deposits made at ATM that are owned by us. I see in the regulation it states Deposits, cash or check at an ATM that the bank does not own must be made available by the 5th business day 229.12(f). Then deposits of cash or check made at ATMs owned by the bank must be made available in accordance with a schedule specified in the Regulation and that is disclosed to the customer.**

   Review of the initial Regulation CC disclosure provided at account opening we have the regulatory suggested language for Deposits at Nonproprietary ATMs, but no language that deposits made at Bank owned ATMs will be held longer.

   It would seem deposits made at our owned ATM based on the item being deposit we would follow the Regulation CC holds schedule.

   ***Proprietary ATM* means an ATM that is—**

   (1) Owned or operated by, or operated exclusively for, the depositary bank;

   (2) Located on the premises (including the outside wall) of the depositary bank; or

   (3) Located within 50 feet of the premises of the depositary bank, and not identified as being owned or operated by another entity.

   If more than one bank meets the owned or operated criterion of paragraph (aa)(1) of this section, the ATM is considered proprietary to the bank that operates it.

   If all of your ATMs are proprietary (see definition above), then you have a problem. You have to treat deposits made at these ATMs as made in person. Of course, if there is a suspicious item, you can use normal holds and send the proper notices.

   Some of our ATMs meet the definition below (1, 2 & 3) while other ATMs meet the definition #1—owned & operated by us.

   Then you need to explain to them how to distinguish between proprietary and non proprietary ATM's. I'm not sure how you're exactly pull that off, frankly. Assuming you empty the ATM every day, I would suggest you treat them all as proprietary.

2. **We're closing up our compliance audit about a hold that was placed for a brand new account with government bonds. It was the amount was about $800 and our**

teller did place a hold on the funds just because of new accounts. We're going back and forth to see if we were able to do that and if this may not or may not be a finding,

Answer: New Accounts (§ 229.13(a))

An account is considered a "new" account, under section 229.13(a), for the first thirty calendar days it is open, beginning on the date the account is established. An account is not considered "new" if "each customer on the account has had, within thirty calendar days before the account is established, another account at the... bank for at least thirty calendar days." The new-account exception does not cover all deposits made to the account. New accounts are exempted from the availability schedules for depos[1]its of local and nonlocal checks, but next-day availability is required for deposits of cash and for electronic payments. Also, the first $5,000 of a day's aggregate deposits of government checks (including federal, state, and local governments), cashier's, certified, teller's, depository, or traveler's checks must be given next-day availability. The amount in excess of $5,000 must be made available no later than the ninth business day following the day of deposit.

If these "government bonds" meet the definition of "government checks" (not clear from the description) and are deposited in person into an account of the named payee, then next-day availability is the longest hold that can be placed on them.

3. **Can we place a hold on a check that has been returned NSF so that we can run it through a second time for processing?**

Answer: In this case, the facts upon which to impose an exception hold become available after the date of deposit (such as would be the case in a notice of return), the bank can place the hold and send the notice no later than the next business day after the facts came to light. From the Commentary:

Official Interpretation

F. 229.13(e) Reasonable Cause To Doubt Collectibility

1. In the case of certain check deposits, if the bank has reasonable cause to believe the check is uncollectible, it may extend the time funds must be made available for withdrawal. This exception applies to local and nonlocal checks, as well as to checks that would otherwise be made available on the next (or second) business day after the day of deposit under §229.10(c). When a bank places or extends a hold under this exception, it need not make the first $100 of a deposit available for withdrawal on the next business day, as otherwise would be required by §229.10(c)(1)(vii). If the reasonable cause exception is invoked, the bank must include in the notice to its customer, required by §229.13(g), the reason that the bank believes that the check is uncollectible.

2. The following are several examples of circumstances under which the reasonable cause exception may be invoked:

a. If a bank received a notice from the paying bank that a check was not paid and is being returned to the depositary bank, the depositary bank could place a hold on the check or extend a hold previously placed on that check, and notify the customer that the bank had received notice that the check is being returned. The exception could be invoked even if the notice were incomplete, if the bank had reasonable cause to believe that the notice applied to that particular check.

4. **Can a hold be placed on a Cashier's Check that is payable to a non-customer and signed by our customer, and deposited in our customer's account, which does not have enough money in the account to cover the check?**

Answer: Yes. Next-day availability for cashier's checks is required only when the cashier's check is deposited into an account of a payee named on the check, not into the account of a transferee/endorsee. The Official Staff Commentary on Regulation CC specifically provides that one statutory condition for next-day availability for these checks is "that the check must be 'endorsed only by the person to whom it was issued.'"

So, a cashier's check deposited into someone other than a payee's account may be treated as just any other local check, including having holds placed on the availability of its funds.

5. **A customer brings in two checks to deposit into their account – one for $5,000 and one for $8,000. If we want to invoke a "large deposit" exception hold, does it apply only to the $8,000 check, or to the aggregated checks deposited in the same day?**

Answer: The latter, the "large deposit" exception is applied to the aggregate of all checks deposited into a transaction account during a banking day.

6. **We have an existing customer who is depositing a large check into their account and we would like to place a five-day hold on the check due to the fact that the customer does not have the funds on deposit. I was under the impression that we are required to make $5,525 available to them the next business day per Regulation CC. Is this incorrect? Can we hold the entire amount for five business days?**

Answer: There are a couple ways to handle this one. First, if the customer deposits the check into their savings account, that is not subject to Regulation CC so you would be able to impose pretty much any reasonable hold on the deposit.

If deposited into a transaction account (DDA, NOW, etc.), then Regulation CC does come into play.

- Of course, a case-by-case hold is always available to hold the amount over $225 for up to two business days. But, that is limited relief.

- If an exception hold (other than large deposit) can be applied (reasonable cause to doubt collectibility, etc.), then the entire deposit may be held until the seventh

business day after the banking day of deposit.

- If no other exception hold will apply but the large deposit exception, then $225 still must be made available by the first business day after the banking day of deposit, the next $5,300 must be made available by the second business day after the banking day of deposit, and any remaining funds may be held until the seventh business day after the banking day of deposit.

Section 3: Regulation E Electronic Fund Transfers

1. **We have a customer who is disputing multiple in-app purchases for the same app. She is disputing only some of the purchases for this app but not all. Because of the way the dates of the purchases fell, we had to open multiple cases in our dispute system to get them all covered.**

   Google has since replied with compelling evidence for two of the six disputes filed. We are still waiting for communication regarding the other transactions. Since they are all the same transactions for the same app and account, is the evidence we have so far received from Google enough to revoke all of our provisional credits?

   Answer: No, it would probably be best to keep the other provisional credits in place until final word is received from Google for each transaction. It may seem reasonable to extend the result for the first two disputed transactions to the remaining four, but it certainly is possible that one or more of those transactions could prove to be fraudulent or otherwise unauthorized.

2. **Is there any extension of time we can add to completing a dispute for POS transactions when we are still in arbitration with a merchant? For example, We have a 90 day resolution period - if we have not yet received settlement from merchant, can we extend the FINAL investigation period - or are we required to send FINAL letter and FINAL provisional credit by the end of this 90 day period regardless of position with merchant?**

   Answer: Unfortunately, if you have not completed your investigation by the time the Reg E timeframe has expired, you will have to finalize the provisional credit. You cannot reverse the provisional credit if you obtain information that the customer's claim is invalid, or the merchant does not respond once the credit is final. You may present the evidence to the customer and ask their permission to debit the account in this situation, but you cannot revoke the credit without their consent. This regulation is very pro-consumer.

   11(c)(3) Extension of Time Periods- Comment for 1005.11 Procedures for Resolving Errors | Consumer Financial Protection Bureau (consumerfinance.gov)

   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. From the regulation:

   (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

3. **I cannot locate in regulation whether annual training is required of frontline staff on Overdraft protection programs and alternatives. We have it in our policy that we will, but I am wondering if regulation requires it or if we just decided internally we would do so.**

   Answer: The bank should provide training to appropriate staff on any overdraft protection programs the bank offers, so that they are able to explain the programs' features, costs, and terms, and to explain other available overdraft products offered by the bank. That is one of the "best practices" listed in the Joint Guidance on Overdraft Protection Programs issued by the OCC, Fed, FDIC and NCUA in February 2005 (70 FR 9127) and reinforced by the FDIC in its FIL 81-2010 in November 2010. So, we believe that annual training on this sensitive topic is required.

4. **If we have debit card transactions outside of the U.S. blocked, would that have to be disclosed to the account/card holder?**

   Answer: Regulation E requires the bank to disclose any limitations on the frequency and dollar amount of transfers. Blocking transactions not originated in the U.S. would impact the frequency of transfers, at least for some customers. So, this should be stated in the initial EFT disclosure. If this limitation has not been disclosed to current/existing customers, the bank should inform them in writing, which can be a message on or an insert sent with a monthly statement.

5. **Do banks need to have an overdraft privilege/service policy vs. having procedures? If so, could you direct me to the regulation or commentary requiring it? I am trying to sort out some details of our overdraft privilege policy and am struggling to find much information.**

   Answer: Actually, a bank may have both policy and procedure. Policy sets the high-level goals of what the bank wants to achieve (in a case such as this, comply with regulatory requirements, etc.). Procedure sets out what the bank will do to accomplish those goals, with some appropriate level of detail. Policy can be seen as the "what we want to accomplish" and procedure as the "how we will accomplish it."

   Overdraft "privilege" regulatory requirements are found in both Regulation E (for the opt-in requirement before charging fees) and Regulation DD (advertising, etc.). Besides those regulations and their commentaries, you can get information from the banking supervisors' exam procedures, particularly (for this subject) the Electronic Fund Transfer Act section and the Truth in Savings section.

Having an appropriate (for your bank) level of policy and procedure helps ensure that staff are aware of what is expected of them, how they should accomplish what is expected, as well as helping ensure consistent treatment of and service to bank customers. You end up with happy staff because they know what is expected of them and how to accomplish it, and happy customers because they are receiving a superior level of service consistently.

6. **If a customer calls the bank and says his son stole his debit card and used it, do we still need to file Visa chargebacks per Regulation E for this customer or does this customer need to get law enforcement involved?**

   Answer: This customer's call is a notification of unauthorized use and must be handled and investigated by the bank just like any other such notice would be. The bank may not require the customer to file a police report, etc. before beginning its investigation. The investigation may be easy since the customer is providing much of the information needed. Whether to involve law enforcement is up to the bank, probably in consultation with your customer.

7. **For EFT error resolutions, how many days after a customer notifies us of an error do we have to give provisional credit? Is that business days or actual days?**

   Answer: For an electronic fund transfer (EFT) "error," provisional credit must be given if the bank will need more than 10 business days to investigate and resolve an alleged error. This gives the bank up to 45 calendar days to finish its investigation for many errors. The 10 business day time period is doubled if the "error" involves a new account (within 30 days after opening) and the 45 calendar day limit is doubled if the "error" involves a point-of-sale debit card transaction (because, no doubt, of the extra time needed when communicating with merchants and processors).

   To take advantage of the 45 (or 90) calendar day extended time limit, the bank must provisionally credit the customer's account with the amount of the alleged "error" by the 10th business day (or 20th business day for a new account).

8. **We have an existing deposit customer who has had an account with us for over a year. Now, the customer is requesting to have overdraft protection added to their account. if the customer comes in and signs a form to have the overdraft protection added to their account, do we also need to give them a new Regulation E disclosure?**

   Answer: A full Reg E initial disclosure is not required unless there have been any changes that have not already been disclosed to the customer. However, the bank does need to comply with the opt-in requirements in the regulation: provide a separate written notice that describes the bank's overdraft service, give the customer a reasonable time or opportunity to opt-in to the overdraft service for ATM and one-time debit card transactions, obtain the customer's affirmative consent (opt-in) to the bank's payment of ATM and one-time debit card transactions, and provide the customer with written confirmation of their opt-in (including a statement of their right to revoke that consent).

9. **The person that usually works our disputes is not here any longer, would you**

refresh my memory on the following?

Our customer ordered tires online and authorized payment through Square, but then never received any tires and the phone number to the guy selling the tires is no longer valid. Is the bank at loss when our customer authorized this?

Answer: It may depend on whether the customer used a debit card or a credit card. If a debit card, the bank is off the hook – no investigation under Regulation E or customer reimbursement. The EFTA and Regulation E do not have a provision about the customer not getting what they ordered/bought, etc.

On the other hand, if it involves a credit card, TILA and Regulation Z do have such a provision and the bank will have to investigate and may have to absorb at least some of the loss.

10. **When crediting back an amount from an ACH dispute, we call the customer. If no contact is made, should a letter be sent?**

    Answer: An attempted phone call does not seem to "provide notice" to the customer. Yes, the bank is permitted to notify the customer either in writing or orally (other than if it finds no error), but the key is to notify them – not just try to notify them. Written notices (with copies to file) are generally a better way to document that a required notice was given.

11. **Does Regulation E require an error resolution log to be kept for tracking the dates, amounts/liability, etc.? I am not finding where it says that in the regulation, but management thinks it is a regulatory requirement. I was thinking it's more of an internal procedure/policy.**

    Answer: Keeping a log or spreadsheet is not specifically required by the regulation. However, Regulation E does require financial institutions to maintain some record of their compliance with its provisions. In addition, when auditors or examiners review an institution's Regulation E compliance, they usually ask for the log or other record of the Regulation E error resolution process. A log – whether maintain as a written hard copy or an electronic spreadsheet provides a handy method for maintaining this compliance record – allowing the bank to both track the status of individual error resolutions and to document its overall compliance with the applicable rules.

12. **Q: A customer called yesterday about some charges that came out of his account from December 24, 2018 through August 23, 2019. The customer did not notice those transactions were coming out of his account monthly for that period of time.**

    He finally noticed them recently and called the car insurance company that was receiving the funds and they told him they could not find anything under his name. We did some research and found a debit card number associated with the account was marked stolen and closed, but the customer never stated at the time any charges that were not his.

The customer gave the debit card number to the insurance company and found out the money was being used to pay a guy's insurance in Florida. They told him they could not do anything about it and that he would have to call the bank and have us refund his money back.

Due to the time frame, if we cannot get money back when disputed, would the bank be out this amount? It is over $4,000.00

Answer: This customer is long past his time period to assert an EFT "error" or "unauthorized transaction." You are not required by Regulation E to refund any money at this time.

To preserve their rights and limit their losses, customers must notify the bank of an unauthorized EFT within 60 days after the date the first periodic statement reflecting that unauthorized EFT was sent to them ("sent" or "provided" can mean made available for pick-up, for those customer who do not want statements mailed to them). In such a case, the customer's liability is limited to those unauthorized transfers that occur after the 60-day period until notice is given to the bank. If an access device is involved, there may be other liability for transfers within the 60-day period, as discussed next.

If the alleged error involves a lost or stolen access device (such as a debit card), then there is a stepped liability structure – if the customer notifies the bank of the loss/theft within two business days after the customer discovers that the device (card) is lost/stolen, their loss is limited to no more than $50; if they fail to notify the bank within two business days after learning of the loss/theft, then their liability is limited to the lesser of $500 or the sum of $50 (or the actual amount of losses within the first two business days) plus the amount of unauthorized EFTs that occur after the first two business days up to the day they notify the bank.

13. **If a customer opts into ATM/one-time debit card transactions, we have to deliver a notice or letter to the consumer acknowledging that the consumer has elected to opt into this service. If a customer later chooses to opt out, are we required to also send a letter or notice at that time acknowledging that they have opted out?**

    Also, if a customer elects to opt out or is removed from the whole overdraft program, are we required to send a letter acknowledging this? This occasionally happens when we remove someone from the program if they have filed bankruptcy (this is stated in our disclosure as a reason they would not be eligible to be in the program), or occasionally a customer requests to be removed. We have always provided notice to the customer in these situations where they are removed from the overdraft program. I am being questioned by an officer of the bank regarding if this notice of removal is required even if the customer requests removal.

    Answer: No, there is no requirement in Regulation E for any notice related to a customer opting out of ATM/one-time debit card coverage under an overdraft program. The bank may disclose, in the confirmation notice sent when someone opts in, the customer's right

to revoke their consent (but is not required to do so).

However, it is possible that your state law may have some requirement for notice regarding the end of any banking service, whether initiated by the bank or by the customer. You will need to check with the bank's legal counsel about whether there is any state requirement for such good customer service.

Section 4: Regulation D: Reserve Requirements for Depository Institutions

1. **Is a for-profit LLC permitted to hold a negotiable order of withdrawal (NOW) account or money market deposit account (MMDA)?**

   Answer: No and yes. No, an LLC is a corporation, so a for-profit LLC is prohibited from holding a NOW account. However, there is no similar prohibition against a corporation holding an MMDA (or other savings deposit).

   This treatment based in what seems like distant history, from back in the days of interest rate limits on savings deposits and a prohibition against paying interest on demand deposits. The NOW account was initially an experiment that was ultimately extended nationwide, but was limited to individuals, governmental units, non-profits, and a few other entities. For-profit corporations were prohibited from holding these savings accounts (depositories have to reserve the right to require advance notice of withdrawals) with unlimited transaction capabilities.

   The Dodd-Frank Act (2010) rescinded the statutory prohibition against paying interest on demand deposit accounts (DDA) but left the NOW account provision in Regulation D untouched. Therefore, any entity may hold an interest-bearing DDA, while NOW account ownership remains limited.

   MMDAs are a savings deposit that initially had transaction limitations, so a NOW-like restriction on ownership was never imposed on MMDAs. For-profit businesses are free to hold MMDAs, as well as other savings deposits.

2. **Does a business customer that is a DBA with an Employer Identification Number (EIN) still qualify for a NOW account? Normally, DBAs are registered under the owner's Social Security Number (SSN).**

   Answer: Whether an SSN or EIN is used for the account is not the governing issue. The key is whether the DBA is a sole proprietorship or not. If it is, it qualifies for a NOW. If it is a partnership or a corporation (Inc., LLC), it does not qualify for a NOW (but does for an interest-bearing DDA, as does anyone).

3. **If we have a personal or family trust, we have allowed them to open personal accounts versus business. Should we still allow them to remain in a personal account if the trust gets an EIN? If it is a trust that is formed to operate a business, then we put them in business accounts.**

   Answer: I am not aware of any stipulation that would warrant the bank changing their practice NOR to change the account type from personal to business because of obtaining an EIN. I have observed this exact practice in many institutions without criticism; although, some FIs will always put trusts in a business account. Remember that a business account cannot be a NOW account.

General Questions

Section 1: Record Retention

1. **We keep a paper copy of a loan for five years in a physical file. We are also scanning those copies into our core system. As long as we have a copy somewhere that we can access at any time, are we okay to just scan them and not keep a hard paper copy? We can always print the scanned document in the future, if need be.**

   Answer: To satisfy the record retention requirements of the various federal consumer rules, scanned/e-copies are just fine.

   However, I cannot speak to any rules or expectations that may impact legal documents (e.g., notes, mortgages, account agreements, etc.). For those, you will need to consult with the bank's legal counsel. The federal E-Sign Act may have overridden all that kind of thing, but that is a legal issue and I must defer to your attorney.

2. **We are purchasing a small number of residential loans from another financial institution. We have confirmed that the selling bank will be sending out a Notice of Servicing Transfer Letter. Do we have to send out our own Notice of Servicing Transfer Letter as well?**

   In addition, are there any other required notices that have to be sent to the borrowers – for example, our privacy notice, first payment coupons, etc.?

   Answer: Either separate mortgage servicing transfers notices, or one combined notice, may be sent – as long as the proper notice is given in the proper time, as required by Regulation X (RESPA). If the seller is not including your bank's notice information in its notice, then your bank will have to send its own buyer's notice.

   There is also a mortgage transfer notice required by Regulation Z since the bank is acquiring the loan itself, as well as the servicing of those loans.

   The bank's privacy notice should also be sent since this is the beginning of these borrowers' customer relationship with a new-to-them bank. Other notices or documents might be required by your state's laws, but you need to check

Section 2: Credit Practices Rule

1. **Q: Regulation AA was rescinded some time ago, but is a Notice to Cosigner still required when we are doing a loan that has a cosigner?**

   Answer: Since repeal of FRB Regulation AA (and similar rules by the Office of Thrift Supervision and National Credit Union Administration) there has not been an explicit requirement for banks, thrifts, and credit unions to give cosigners the Notice to Cosigner. Lenders under the enforcement authority of the Federal Trade Commission are subject to the FTC's Credit Practices Rule which requires such a notice (among other provisions).

   However, at the time the Federal Reserve Board (and other agencies) proposed the repeal of its Regulation AA, the agencies issued Interagency Guidance Regarding Unfair or Deceptive Practices (8/22/2014). In this document is a footnote (#11) that states:

   "The Agencies note that the FTC's Credit Practices Rule requires—and the former credit practices rules applicable to banks, savings associations, and Federal credit unions required—creditors to provide a 'Notice to Cosigner' explaining the cosigner's obligations and his or her liability if the borrower fails to pay. The Agencies believe that creditors have properly disclosed a cosigner's liability if, prior to obligation, they continue to provide a 'Notice to Cosigner.'"

   So, providing the Notice to Cosigner continues to be the best way to document that the bank has properly disclosed the liability that a cosigner is taking on when signing on to someone else's loan.

Marketing

Section 1: Marketing

1. **We plan to offer a CD special that was only advertised in one market but to honor the rate in all of our markets. Unsurprisingly, our CFO is pushing back on that a little. I can envision a couple of scenarios I was hoping you could comment on. First is we advertise the special only in the one market but have it listed on our rate sheet and offer it to anyone who comes in to open a CD at any branch. The second is to advertise in one market but only give it to anyone in other markets who has seen/heard about it and specifically asks for it. The third would be to only offer it at the branch located in the target market. I'm assuming that this is mainly a UDAAP issue and that there isn't another reg involved that I'm not thinking of. What are your thoughts here?**

   Answer: The wider the availability, the better from the fair banking perspective. The first scenario with the advertising in one market, but inclusion on rate sheets and free availability in other markets is best from the CRA and fair banking standpoint. The second scenario where it is advertised in one market, but still available to anyone who becomes aware of the special and asks for it, should still be OK.

   However, the most restrictive option – advertised and available only in one market – is the most likely to raise regulatory eyebrows, especially if there are significant demographic differences between the markets. For example, if the target market is predominantly white and middle income or higher, but other markets have significant Native American/American Indian or other minority populations, there likely would be additional regulatory scrutiny and perhaps criticisms.

   And frankly, if the deal is good enough, there is nothing stopping the customer from going to the branch or branches that are offering that product, and obtaining it there. Of course, the deal would have to be exceptional to for them to make the effort, but I'm not sure how you stop them from doing it. And if you tell them no, they cannot have the product, because they do not live in the correct area, that creates another whole set of issues. So why, as practical matter, would do you want to do this? It easily could result in alienating some of your really good customers.

2. **Do you know if there's guidance on whether Regulation Z's advertising requirements regarding triggering terms apply to communication via text messages? We have a system in which consumers can ask questions (including questions about APR for loans, etc) via text message, and bankers or lenders will respond via text. Would these text exchanges fall under Regulation Z's advertising requirements? Should the lenders include the disclosures required for triggering terms in their responses?**

   Answer: If the texts are the modern equivalent of a phone call inquiring about rates, etc., then there would be no advertising issues. They would have to respond in the text exactly as they would respond on the telephone. But if they use texts to advertise products for the bank, then Regulation Z advertising rules would apply. This is a very slippery slope.