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Title 12
Banks and Banking

Parts 900 to 1025

Revised as of January 1, 2016

Containing a codification of documents
of general applicability and future effect

As of January 1, 2016

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Table of Contents

	Page
Explanation	v
Title 12:	
Chapter IX—Federal Housing Finance Board	3
Chapter X—Bureau of Consumer Financial Protection	29
Finding Aids:	
Table of CFR Titles and Chapters	631
Alphabetical List of Agencies Appearing in the CFR	651
List of CFR Sections Affected	661

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Title 17 through Title 27.....as of April 1
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OLIVER A. POTTS,
Director,
Office of the Federal Register.
January 1, 2016.

THIS TITLE

Title 12—BANKS AND BANKING is composed of eight volumes. The parts in these volumes are arranged in the following order: Parts 1–199, 200–219, 220–229, 230–299, 300–499, 500–599, part 600–899, and 900–end. The first volume containing parts 1–199 is comprised of chapter I—Comptroller of the Currency, Department of the Treasury. The second, third and fourth volumes containing parts 200–299 are comprised of chapter II—Federal Reserve System. The fifth volume containing parts 300–499 is comprised of chapter III—Federal Deposit Insurance Corporation and chapter IV—Export-Import Bank of the United States. The sixth volume containing parts 500–599 is comprised of chapter V—Office of Thrift Supervision, Department of the Treasury. The seventh volume containing parts 600–899 is comprised of chapter VI—Farm Credit Administration, chapter VII—National Credit Union Administration, chapter VIII—Federal Financing Bank. The eighth volume containing part 900–end is comprised of chapter IX—Federal Housing Finance Board, chapter XI—Federal Financial Institutions Examination Council, chapter XIV—Farm Credit System Insurance Corporation, chapter XV—Department of the Treasury, chapter XVII—Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development and chapter XVIII—Community Development Financial Institutions Fund, Department of the Treasury. The contents of these volumes represent all of the current regulations codified under this title of the CFR as of January 1, 2016.

For this volume, Ann Worley was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Stephen J. Frattini.

Title 12—Banks and Banking

(This book contains part 900 to 1025)

Part

CHAPTER IX—Federal Housing Finance Board 900

CHAPTER X— Bureau of Consumer Financial Protection 1001

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

SUBCHAPTER A—GENERAL DEFINITIONS

Part		*Page*
900	General definitions applying to all Finance Board regulations	5

SUBCHAPTER B—FEDERAL HOUSING FINANCE BOARD ORGANIZATION AND OPERATIONS

906	Operations	8

SUBCHAPTERS C–D [RESERVED]

SUBCHAPTER E—FEDERAL HOME LOAN BANK RISK MANAGEMENT AND CAPITAL STANDARDS

930	Definitions applying to risk management and capital regulations	9
932	Federal Home Loan Bank capital requirements	10

SUBCHAPTER F [RESERVED]

SUBCHAPTER G—FEDERAL HOME LOAN BANK ASSETS AND OFF-BALANCE SHEET ITEMS

955	Acquired member assets	24

SUBCHAPTERS H–M [RESERVED]

956–999	[Reserved]

SUBCHAPTER A—GENERAL DEFINITIONS

PART 900—GENERAL DEFINITIONS APPLYING TO ALL FINANCE BOARD REGULATIONS

Sec.

900.1 Basic terms relating to the Finance Board, the Bank System and related entities.
900.2 Terms relating to Bank operations, mission and supervision.
900.3 Terms relating to other entities and concepts used throughout 12 CFR chapter IX.

AUTHORITY: 12 U.S.C. 1422b(a).

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

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

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

Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

Bank, written in title case, means a Federal Home Loan Bank established under section 12 of the Act (12 U.S.C. 1432).

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

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

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

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

Finance Board means the Federal Housing Finance Board established by section 2A of the Act (12 U.S.C. 1422a).

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

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

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

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

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

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

[67 FR 12842, Mar. 20, 2002, as amended at 68 FR 38169, June 27, 2003]

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

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

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

Advance means a loan from a Bank that is:

(1) Provided pursuant to a written agreement;

(2) Supported by a note or other written evidence of the borrower's obligation; and

(3) Fully secured by collateral in accordance with the Act and part 950 of this chapter.

Affordable Housing Program or AHP means the Affordable Housing Program, the CICA program that each Bank is required to establish pursuant

to section 10(j) of the Act (12 U.S.C. 1430(j)) and part 951 of this chapter.

Capital plan means the capital structure plan required for each Bank by section 6(b) of the Act, as amended (12 U.S.C. 1426(b)), and part 933 of this chapter, as approved by the Finance Board, unless the context of the regulation refers to the capital plan prior to its approval by the Finance Board.

CIP means the Community Investment Program, an advance program under CICA required to be offered pursuant to section 10(i) of the Act (12 U.S.C. 1430(i)).

Community Investment Cash Advance or *CICA* means any advance made through a program offered by a Bank under section 10 of the Act (12 U.S.C. 1430) and parts 951 and 952 of this chapter to provide funding for targeted community lending and affordable housing, including advances made under a Bank's Rural Development Funding (RDF) program, offered under section 10(j)(10) of the Act (12 U.S.C. 1430(j)(10)); a Bank's Urban Development Funding (UDF) program, offered under section 10(j)(10) of the Act (12 U.S.C. 1430(j)(10)); a Bank's Affordable Housing Program (AHP), offered under section 10(j) of the Act (12 U.S.C. 1430(j)); a Bank's Community Investment Program (CIP), offered under section 10(i) of the Act (12 U.S.C. 1430(i)); or any other program offered by a Bank that meets the requirements of part 952 of this chapter.

Community lending means providing financing for economic development projects for targeted beneficiaries, and, for community financial institutions (as defined in § 925.1 of this chapter), purchasing or funding small business loans, small farm loans or small agribusiness loans (as defined in § 950.1 of this chapter).

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

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

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

Financial Management Policy or *FMP* means the Financial Management Policy For The Federal Home Loan Bank System approved by the Finance Board pursuant to Finance Board Resolution No. 96–45 (July 3, 1996), as amended by Finance Board Resolution No. 96–90 (Dec. 6, 1996), Finance Board Resolution No. 97–05 (Jan. 14, 1997), and Finance Board Resolution No. 97–86 (Dec. 17, 1997).

[67 FR 12842, Mar. 20, 2002, as amended at 71 FR 35499, June 21, 2006; 71 FR 78050, Dec. 28, 2006]

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

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

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

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

Fannie Mae means the Federal National Mortgage Association established under authority of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716, *et seq.*).

FDIC means the Federal Deposit Insurance Corporation.

FRB means the Board of Governors of the Federal Reserve System.

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

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

Ginnie Mae means the Government National Mortgage Association established under authority of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716, *et seq.*).

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

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

NCUA means the National Credit Union Administration.

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

OCC means the Office of the Comptroller of the Currency.

OTS means the Office of Thrift Supervision.

SBIC means a small business investment company formed pursuant to section 301 of the Small Business Investment Act (15 U.S.C. 681).

SEC means the United States Securities and Exchange Commission.

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

1934 Act means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

[67 FR 12842, Mar. 20, 2002, as amended at 69 FR 38811, June 29, 2004]

SUBCHAPTER B—FEDERAL HOUSING FINANCE BOARD ORGANIZATION AND OPERATIONS

PART 906—OPERATIONS

Subpart A [Reserved]

Subpart B—Monthly Interest Rate Survey (MIRS)

Sec.
906.5 Monthly interest rate survey.

Subpart C [Reserved]

AUTHORITY: 12 U.S.C. 4516.

SOURCE: 70 FR 9509, Feb. 28, 2005, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Monthly Interest Rate Survey (MIRS)

§ 906.5 Monthly interest rate survey.

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

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

(b) *Adjustable-rate mortgage index*. The weighted data, tabulated and published pursuant to paragraph (a) of this section, is used to compile the Finance Board's adjustable-rate mortgage index, entitled the ''National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders.'' This index is the successor to the index maintained by the former Federal Home Loan Bank Board and is used for determining the movement of the interest rate on renegotiable-rate mortgages and on some other adjustable-rate mortgages.

Subpart C [Reserved]

SUBCHAPTERS C–D [RESERVED]
SUBCHAPTER E—FEDERAL HOME LOAN BANK RISK MANAGEMENT AND CAPITAL STANDARDS

PART 930—DEFINITIONS APPLYING TO RISK MANAGEMENT AND CAPITAL REGULATIONS

AUTHORITY: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1436(a), 1440, 1443, and 1446.

§ 930.1 Definitions.

As used in this subchapter:

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

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

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

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

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

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

(1) Marketable assets with a maturity of one year or less;

(2) Self-liquidating assets with a maturity of seven days or less;

(3) Assets that are generally accepted as collateral in the repurchase agreement market; and

(4) Irrevocable lines of credit from financial institutions rated not lower than the second highest credit rating category by an NRSRO.

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

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

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

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

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

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

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

Investment grade means:

(1) A credit quality rating in one of the four highest credit rating categories by an NRSRO and not below

the fourth highest rating category by any NRSRO; or

(2) If there is no credit quality rating by an NRSRO, a determination by a Bank that the issuer, asset or instrument is the credit equivalent of investment grade using credit rating standards available from an NRSRO or other similar standards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[66 FR 8310, Jan. 30, 2001, as amended at 66 FR 54107, Oct. 26, 2001; 66 FR 66728, Dec. 27, 2001; 67 FR 12849, Mar. 20, 2002; 71 FR 78051, Dec. 28, 2006]

PART 932—FEDERAL HOME LOAN BANK CAPITAL REQUIREMENTS

Sec.

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

counterparty or affiliated counterparties.

AUTHORITY: 12 U.S.C. 1426, 1440, 1443, 1446, 4513, 4526.

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

§ 932.1 Risk management.

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

§ 932.2 Total capital requirement.

Each Bank shall maintain at all times:

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

(b) A leverage ratio of total capital to total assets of at least 5.0 percent of the Bank's total assets. For purposes of determining the leverage ratio, total capital shall be computed by multiplying the Bank's permanent capital by 1.5 and adding to this product all other components of total capital.

[76 FR 11674, Mar. 3, 2011]

§ 932.3 Risk-based capital requirement.

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

[76 FR 11674, Mar. 3, 2011]

§ 932.4 Credit risk capital requirement.

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

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

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

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

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

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

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

(ii) The potential future credit exposure for the derivative contract calculated in accordance with paragraph (g) or (h) of this section, as applicable,

multiplied by the credit risk percentage requirement assigned to that derivative contract pursuant to paragraph (e)(2) of this section, where the actual remaining maturity of the derivative contract is used to apply Table 1.1 or Table 1.3 of this part.

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

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

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

TABLE 1.1—REQUIREMENT FOR ADVANCES

Type of advances	Percentage applicable to advances
Advances with:	
Remaining maturity <= 4 years	0.07
Remaining maturity >4 years to 7 years	0.20
Remaining maturity >7 years to 10 years	0.30
Remaining maturity >10 years	0.35

TABLE 1.2—REQUIREMENT FOR RATED RESIDENTIAL MORTGAGE ASSETS

Type of residential mortgage asset	Percentage applicable to residential mortgage assets
Highest Investment Grade	0.37
Second Highest Investment Grade	0.60
Third Highest Investment Grade	0.86
Fourth Highest Investment Grade	1.20
If Downgraded to Below Investment Grade After Acquisition By Bank:	
Highest Below Investment Grade	2.40
Second Highest Below Investment Grade	4.80
All Other Below Investment Grade	34.00
Subordinated Classes of Mortgage Assets:	
Highest Investment Grade	0.37
Second Highest Investment Grade	0.60
Third Highest Investment Grade	1.60
Fourth Highest Investment Grade	4.45
If Downgraded to Below Investment Grade After Acquisition By Bank:	
Highest Below Investment Grade	13.00
Second Highest Below Investment Grade	34.00
All Other Below Investment Grade	100.00

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

[Based on remaining maturity]

	Applicable percentage				
	≤1 year	>1 yr to 3 yrs	>3 yrs to 7yrs	>7 yrs to 10 yrs	>10 yrs
U.S. Government Securities	0.00	0.00	0.00	0.00	0.00
Highest Investment Grade	0.15	0.40	0.90	1.40	2.20
Second Highest Investment Grade	0.20	0.45	1.00	1.45	2.30
Third Highest Investment Grade	0.70	1.10	1.60	2.05	2.95
Fourth Highest Investment Grade	2.50	3.70	4.45	5.50	7.05
If Downgraded Below Investment Grade After Acquisition by Bank:					
Highest Below Investment Grade	10.00	13.00	13.00	13.00	13.00
Second Highest Below Investment Grade	26.00	34.00	34.00	34.00	34.00

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

[Based on remaining maturity]

	Applicable percentage				
	≤1 year	>1 yr to 3 yrs	>3 yrs to 7yrs	>7 yrs to 10 yrs	>10 yrs
All Other	100.00	100.00	100.00	100.00	100.00

TABLE 1.4—REQUIREMENT FOR UNRATED ASSETS

Type of unrated asset	Applicable percentage
Cash	0.00
Premises, Plant, and Equipment	8.00
Investments Under § 940.3(e) & (f)	8.00

(ii) When determining the applicable credit risk percentage requirement from Tables 1.2 or 1.3 of this part, each Bank shall apply the following criteria:

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

(B) When using Table 1.3 of this part, for an asset, off-balance sheet item, or derivative contract that is not rated directly by an NRSRO, but for which an NRSRO rating has been assigned to any corresponding obligor counterparty, third party guarantor, or collateral backing the asset, item, or derivative, the credit rating that shall apply to the asset, item, or derivative, or portion of the asset, item, or derivative so guaranteed or collateralized, shall be the credit rating corresponding to such obligor counterparty, third party guarantor, or underlying collateral, as determined in accordance with paragraph (e)(2)(iii) of this section. If there are multiple obligor counterparties, third party guarantors, or collateral instruments backing an asset, item, or derivative not rated directly by an NRSRO, or any specific portion thereof, then the credit rating that shall apply to that asset, item, or derivative or specific portion thereof, shall be the highest credit rating among such obligor counterparties, third party guarantors, or collateral instruments, as determined in accordance with paragraph (e)(2)(iii) of this section. Assets, items or derivatives shall be deemed to be backed by collateral for purposes of this paragraph if the collateral is:

(*1*) Actually held by the Bank or an independent, third-party custodian, or, if permitted under the Bank's collateral agreement with such party, by the Bank's member or an affiliate of that member where the term ''affiliate'' has the same meaning as in § 950.1 of this chapter;

(*2*) Legally available to absorb losses;

(*3*) Of a readily determinable value at which it can be liquidated by the Bank;

(*4*) Held in accordance with the provisions of the Bank's member products policy established pursuant to § 917.4 of this chapter; and

(*5*) Subject to an appropriate discount to protect against price decline during the holding period, as well as the costs likely to be incurred in the liquidation of the collateral.

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

(*1*) The highest short-term credit rating shall be equivalent to the third highest long-term rating;

(*2*) The second highest short-term rating shall be equivalent to the fourth highest long-term rating;

(*3*) The third highest short-term rating shall be equivalent to the fourth highest long-term rating; and

(*4*) If the short-term rating is downgraded to below investment grade after acquisition by the Bank, the short-term rating shall be equivalent to the second highest below investment grade long-term rating.

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

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

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

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

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

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

TABLE 2—CREDIT CONVERSION FACTORS FOR OFF-BALANCE SHEET ITEMS

Instrument	Credit conversion factor (In percent)
Asset sales with recourse where the credit risk remains with the Bank	100
Commitments to make advances subject to certain drawdown.	
Commitments to acquire loans subject to certain drawdown.	
Standby letters of credit	50
Other commitments with original maturity of over one year.	
Other commitments with original maturity of one year or less	20

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

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

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

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

(2) *Potential future credit exposure.* (i) The potential future credit exposure

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

TABLE 3—CREDIT CONVERSION FACTORS FOR POTENTIAL FUTURE CREDIT EXPOSURE DERIVATIVE CONTRACTS

[In percent]

Residual maturity	Interest rate	Foreign exchange and gold	Equity	Precious metals except gold	Other commodities
One year or less	0	1	6	7	10
Over 1 year to five years	.5	5	8	7	12
Over five years	1.5	7.5	10	8	15

(ii) In applying the credit conversion factors in Table 3 of this part the following modifications shall be made:

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

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

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

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

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

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

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

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

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

$$A_{net} = 0.4 \times A_{gross} + (0.6 \times NGR \times A_{gross}),$$

where:

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

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

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

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

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

(i) The netting contract is in writing;

(ii) The netting contract is not subject to a walkaway clause;

(iii) The netting contract provides that the Bank would have a single legal claim or obligation either to receive or to pay only the net amount of the sum of the positive and negative mark-to-market values on the individual derivative contracts covered by the netting contract in the event that a counterparty, or a counterparty to whom the netting contract has been assigned, fails to perform due to default, insolvency, bankruptcy, or other similar circumstance;

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

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

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

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

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

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

(i) *Credit risk capital charge for assets hedged with credit derivatives*—(1) *Credit derivatives with a remaining maturity of one year or more.* The credit risk capital charge for an asset that is hedged with a credit derivative that has a remaining maturity of one year or more may be reduced only in accordance with paragraph (i)(3) or (i)(4) of this section and only if the credit derivative provides substantial protection against credit losses.

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

(3) *Capital charge reduced to zero.* The credit risk capital charge for an asset shall be zero if a credit derivative is used to hedge the credit risk on that asset in accordance with paragraph (i)(1) or (i)(2) of this section, provided that:

(i) The remaining maturity for the credit derivative used for the hedge is identical to or exceeds the remaining

maturity for the hedged asset, and either:

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

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

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

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

(i) The remaining maturity for the credit derivative is less than the remaining maturity for the hedged asset and either:

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

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

(ii) The credit risk capital charge for the unhedged portion of the asset equals:

(A) The credit risk capital charge for the hedged asset, calculated as the book value of the hedged asset multiplied by the hedged asset's credit risk percentage requirement assigned pursuant to paragraph (e)(2) of this section where the appropriate credit rating is that for the hedged asset and the appropriate maturity is the remaining maturity of the hedged asset; minus

(B) The credit risk capital charge for the hedged asset, calculated as the book value of the hedged asset multiplied by the hedged asset's credit risk percentage requirement assigned pursuant to paragraph (e)(2) of this section where the appropriate credit rating is that for the hedged asset but the appropriate maturity is deemed to be the remaining maturity of the credit derivative; and

(iii) The credit risk capital charge for the hedged portion of the asset is equal to the credit risk capital charge for the credit derivative, calculated in accordance with paragraph (d) of this section.

(j) *Zero Credit risk capital charge for certain derivative contracts.* The credit risk capital charge for the following derivative contracts shall be zero:

(1) A foreign exchange rate contract with an original maturity of 14 calendar days or less (gold contracts do not qualify for this exception); and

(2) A derivative contract that is traded on an organized exchange requiring the daily payment of any variations in the market value of the contract.

(k) *Date of calculations.* Unless otherwise directed by the Finance Board, each Bank shall perform all calculations required by this section using the assets, off-balance sheet items, and derivative contracts held by the Bank, and, if applicable, the values or credit ratings of such assets, items, or derivatives as of the close of business of the last business day of the month for which the credit risk capital charge is being calculated.

[66 FR 8310, Jan. 30, 2001, as amended at 66 FR 54108, Oct. 26, 2001]

§ 932.5 Market risk capital requirement.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The Bank's internal market risk model shall incorporate scenarios that reflect changes in interest rates, interest rate volatility, and shape of the yield curve, and changes in market prices, equivalent to those that have been observed over 120-business day periods of market stress. For interest rates, the relevant historical observations should be drawn from the period that starts at the end of the previous month and goes back to the beginning of 1978;

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

(A) Satisfactory to the Finance Board;

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

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

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

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

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

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

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

(A) Satisfactory to the Finance Board;

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

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

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

(c) *Independent validation of Bank internal market risk model or internal cash flow model.* (1) Each Bank shall conduct an independent validation of its internal market risk model or internal cash flow model within the Bank that is carried out by personnel not reporting to the business line responsible for conducting business transactions for the Bank. Alternatively, the Bank may obtain independent validation by an outside party qualified to make such determinations. Validations shall be done on an annual basis, or more frequently as required by the Finance Board.

(2) The results of such independent validations shall be reviewed by the Bank's board of directors and provided promptly to the Finance Board.

(d) *Finance Board approval of Bank internal market risk model or internal cash flow model.* Each Bank shall obtain Finance Board approval of an internal market risk model or an internal cash flow model, including subsequent material adjustments to the model made by the Bank, prior to the use of any model. Each Bank shall make such adjustments to its model as may be directed by the Finance Board.

(e) *Date of calculations.* Unless otherwise directed by the Finance Board, each Bank shall perform any calculations or estimates required under this section using the assets and liabilities, off-balance sheet items, and derivative contracts held by the Bank, and if applicable, the values of any such holdings, as of the close of business of the last business day of the month for which the market risk capital requirement is being calculated.

§ 932.6 Operations risk capital requirement.

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

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

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

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

§ 932.7 Reporting requirements.

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

§ 932.8 Minimum liquidity requirements.

In addition to meeting the deposit liquidity requirements contained in § 965.3 of this chapter, each Bank shall hold contingency liquidity in an amount sufficient to enable the Bank to meet its liquidity needs, which

shall, at a minimum, cover five business days of inability to access the consolidated obligation debt markets. An asset that has been pledged under a repurchase agreement cannot be used to satisfy minimum liquidity requirements.

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

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

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

(i) The Bank's total capital; or

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

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

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

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

TABLE 4—MAXIMUM LIMITS ON UNSECURED EXTENSIONS OF CREDIT TO A SINGLE COUNTERPARTY BY COUNTERPARTY LONG-TERM CREDIT RATING CATEGORY

Long-term credit rating of counterparty category	Maximum capital exposure limit (in percent)
Highest Investment Grade	15
Second Highest Investment Grade	14
Third Highest Investment Grade	9

TABLE 4—MAXIMUM LIMITS ON UNSECURED EXTENSIONS OF CREDIT TO A SINGLE COUNTERPARTY BY COUNTERPARTY LONG-TERM CREDIT RATING CATEGORY—Continued

Long-term credit rating of counterparty category	Maximum capital exposure limit (in percent)
Fourth Highest Investment Grade	3
Below Investment Grade or Other	1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The Bank's total capital; or

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

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

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

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

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

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

(i) The Bank's total capital; or

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

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

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

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

(i) For on-balance sheet transactions, an amount equal to the sum of the book value of the item plus net payments due the Bank;

(ii) For off-balance sheet transactions, an amount equal to the credit

equivalent amount of such item, calculated in accordance with § 932.4(f) of this part; and

(iii) For derivative transactions, an amount equal to the sum of the current and potential future credit exposures for the derivative contract, where those values are calculated in accordance with §§ 932.4(g) or 932.4(h) of this part, as applicable, less the amount of any collateral that is held in accordance with the requirements of § 932.4(e)(2)(ii)(B) of this part against the credit exposure from the derivative contract.

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

(i) Any amount owed the Bank against which the Bank holds collateral in accordance with § 932.4(e)(2)(ii)(B) of this part; or

(ii) Any amount which the Finance Board has determined on a case-by-case basis shall not be considered an unsecured extension of credit.

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

[66728, Dec. 27, 2002]

SUBCHAPTER F [RESERVED]

SUBCHAPTER G—FEDERAL HOME LOAN BANK ASSETS AND OFF-BALANCE SHEET ITEMS

PART 955—ACQUIRED MEMBER ASSETS

Sec.

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

AUTHORITY: 12 U.S.C. 1422a(a)(3), 1422b(a), 1430, 1430b, 1431.

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

§ 955.1 Definitions.

As used in this part:

Affiliate means any business entity that controls, is controlled by, or is under common control with, a member.

Expected losses means the base loss scenario in the methodology of an NRSRO applicable to that type of AMA asset.

Residential real property has the meaning set forth in § 950.1 of this chapter.

[67 FR 12852, Mar. 20, 2002]

§ 955.2 Authorization to hold acquired member assets.

Subject to the requirements of part 980 of this chapter, each Bank may hold assets acquired from or through Bank System members or housing associates by means of either a purchase or a funding transaction (AMA), subject to each of the following requirements:

(a) *Loan type requirement.* The assets are either:

(1) Whole loans that are eligible to secure advances under §§ 950.7(a)(1)(i), (a)(2)(ii), (a)(4), or (b)(1) of this chapter, excluding:

(i) Single-family mortgages where the loan amount exceeds the limits established pursuant to 12 U.S.C. 1717(b)(2); and

(ii) Loans made to an entity, or secured by property, not located in a state;

(2) Whole loans secured by manufactured housing, regardless of whether such housing qualifies as residential real property; or

(3) State and local housing finance agency bonds;

(b) *Member or housing associate nexus requirement.* The assets are:

(1) Either:

(i) Originated or issued by, through, or on behalf of a Bank System member or housing associate, or an affiliate thereof; or

(ii) Held for a valid business purpose by a Bank System member or housing associate, or an affiliate thereof, prior to acquisition by a Bank; and

(2) Acquired either:

(i) From a member or housing associate of the acquiring Bank;

(ii) From a member or housing associate of another Bank, pursuant to an arrangement with that Bank, which, in the case of state and local finance agency bonds only, may be reached in accordance with the following process:

(A) The housing finance agency shall first offer the Bank in whose district the agency is located (local Bank) a right of first refusal to purchase, or negotiate the terms of, its proposed bond offering;

(B) If the local Bank indicates, within a three day period, that it will negotiate in good faith to purchase the bonds, the agency may not offer to sell or negotiate the terms of a purchase with another Bank; and

(C) If the local Bank declines the offer, or has failed to respond within the three day period, the acquiring Bank will be considered to have an arrangement with the local Bank for purposes of this section and may offer to buy or negotiate the terms of a bond sale with the agency;

(iii) From another Bank; and

(c) *Credit risk-sharing requirement.* The transactions through which the Bank acquires the assets either:

(1) Meet the credit risk-sharing requirements of § 955.3 of this part; or

(2) Were authorized by the Finance Board under section II.B.12 of the FMP and are within any total dollar cap established by the Finance Board at the time of such authorization.

§ 955.3 Required credit risk-sharing structure.

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

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

(1) A portion of the credit enhancement may be provided by:

(i) Contracting with an insurance affiliate of that member or housing associate to provide an enhancement or undertaking against losses to the Bank, but only where such insurance is positioned in the credit enhancement structure so as to cover only losses remaining after the member or housing associate has borne losses as required under paragraph (b)(2) of this section;

(ii) Purchasing loan-level insurance, which may include United States government insurance or guarantee, but only where:

(A) The member or housing associate is legally obligated at all times to maintain such insurance with an insurer rated not lower than the second highest credit rating category; and

(B) Such insurance is positioned in the credit enhancement structure so as to cover only losses remaining after the member or housing associate has borne losses as required under paragraph (b)(2) of this section;

(iii) Purchasing pool-level insurance, but only where such insurance:

(A) Insures that portion of the required credit enhancement attributable to the geographic concentration and size of the pool; and

(B) Is positioned last in the credit enhancement structure so as to cover only those losses remaining after all other elements of the credit enhancement structure have been exhausted; or

(iv) Contracting with another member or housing associate in the Bank's district or in another Bank's district, pursuant to an arrangement with that Bank, to provide an enhancement or undertaking against losses to the Bank in return for some compensation;

(2) The member or housing associate that is providing the credit enhancement required under paragraph (b)(1) of this section shall in all cases bear the direct economic consequences of actual credit losses on the asset or pool of assets:

(i) From the first dollar of loss up to the amount of expected losses; or

(ii) Immediately following expected losses, but in an amount equal to or exceeding the amount of expected losses;

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

(4) The Bank shall obtain written verification from an NRSRO that concludes to the satisfaction of the Finance Board, based on the underlying economic terms of the credit enhancement structure as represented by the

Bank for each AMA product, that either:

(i) The level of credit enhancement provided by the member or housing associate is generally sufficient to enhance the asset or pool of assets to a credit quality that is equivalent to that of an instrument having the fourth highest credit rating from an NRSRO, or such higher rating as the Bank may require; or

(ii) The methodology used by the Bank for estimating the level of credit enhancement provided by the member or housing associate is in accordance with the practices established by the NRSRO.

(c) *Timing of NRSRO opinions.* For AMA programs already in operation at the time of the effective date of this rule, a Bank shall have 90 days from the effective date of this rule to obtain the NRSRO verifications required under paragraphs (a) and (b)(4) of this section.

[65 FR 43981, July 17, 2000, as amended at 67 FR 12852, Mar. 20, 2002]

§ 955.4 Reporting requirement for acquired member assets.

Each Bank shall report information related to AMA in accordance with the instructions provided in the Data Reporting Manual issued by the Finance Board, as amended from time to time.

[71 FR 35500, June 21, 2006]

§ 955.5 Administrative and investment transactions between Banks.

(a) *Delegation of administrative duties.* A Bank may delegate the administration of an AMA program to another Bank whose administrative office has been examined and approved by the Finance Board to process AMA transactions. The existence of such a delegation, or the possibility that such a delegation may be made, must be disclosed to any potential participating member or housing associate as part of any AMA-related agreements are signed with that member or housing associate.

(b) *Terminability of Agreements.* Any agreement made between two or more Banks in connection with any AMA program shall be made terminable by either party after a reasonable notice period.

(c) *Delegation of Pricing Authority.* A Bank that has delegated its AMA pricing function to another Bank shall retain a right to refuse to acquire AMA at prices it does not consider appropriate.

§ 955.6 Risk-based capital requirement for acquired member assets.

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

TABLE 1

Putative rating of single-family mortgage assets	Percentage applicable to on-balance sheet equivalent value of AMA
Third Highest Investment Grade	0.90
Fourth Highest Investment Grade	1.50
If Downgraded to Below Investment Grade After Acquisition By Bank:	
Highest Below Investment Grade	2.25
Second Highest Below Investment Grade	2.60
All Other Below Investment Grade	100.00

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

there is evidence that a decline in the credit quality of that pool may have occurred.

SUBCHAPTERS H–M [RESERVED]

PARTS 956–999 [RESERVED]

CHAPTER X—BUREAU OF CONSUMER FINANCIAL PROTECTION

Part		*Page*
1000	[Reserved]	
1001	Financial products or services	31
1002	Equal Credit Opportunity Act (Regulation B)	31
1003	Home mortgage disclosure (Regulation C)	89
1004	Alternative mortgage transaction parity (Regulation D)	163
1005	Electronic fund transfers (Regulation E)	167
1006	Fair Debt Collection Practices Act (Regulation F)	282
1007	S.A.F.E. Mortgage Licensing Act—Federal registration of residential mortgage loan originators (Regulation G)	285
1008	S.A.F.E. Mortgage Licensing Act—State compliance and bureau registration system (Regulation H)	293
1009	Disclosure requirements for depository institutions lacking Federal deposit insurance (Regulation I)	307
1010	Land registration (Regulation J)	309
1011	Purchasers' revocation rights, sales practices and standards (Regulation K)	367
1012	Special rules of practice (Regulation L)	371
1013	Consumer leasing (Regulation M)	375
1014	Mortgage acts and practices—Advertising (Regulation N)	401
1015	Mortgage assistance relief services (Regulation O)	404
1016	Privacy of consumer financial information (Regulation P)	410
1022	Fair credit reporting (Regulation V)	445
1024	Real Estate Settlement Procedures Act (Regulation X)	537
1025	[Reserved]	

PART 1000 [RESERVED]

PART 1001—FINANCIAL PRODUCTS OR SERVICES

Sec.
1001.1 Authority and purpose.
1001.2 Definitions.

AUTHORITY: 12 U.S.C. 5481(15)(A)(xi); and 12 U.S.C. 5512(b)(1).

SOURCE: 80 FR 37526, June 30, 2015, unless otherwise noted.

§ 1001.1 Authority and purpose.

Under 12 U.S.C. 5481(15)(A)(xi), the Bureau is authorized to define certain financial products or services for purposes of title X of the Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010) (Title X) in addition to those defined in 12 U.S.C. 5481(15)(A)(i)–(x). The purpose of this part is to implement that authority.

§ 1001.2 Definitions.

Except as otherwise provided in Title X, in addition to the definitions set forth in 12 U.S.C. 5481(15)(A)(i)–(x), the term ''financial product or service'' means, for purposes of Title X:

(a) Extending or brokering leases of an automobile, as automobile is defined by 12 CFR 1090.108(a), where the lease:

(1) Qualifies as a full-payout lease and a net lease, as provided by 12 CFR 23.3(a), and has an initial term of not less than 90 days, as provided by 12 CFR 23.11; and

(2) Is not a financial product or service under 12 U.S.C. 5481(15)(A)(ii).

(b) [Reserved]

PART 1002—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

Sec.
1002.1 Authority, scope and purpose.
1002.2 Definitions.
1002.3 Limited exceptions for certain classes of transactions.
1002.4 General rules.
1002.5 Rules concerning requests for information.
1002.6 Rules concerning evaluation of applications.
1002.7 Rules concerning extensions of credit.
1002.8 Special purpose credit programs.
1002.9 Notifications.
1002.10 Furnishing of credit information.
1002.11 Relation to state law.
1002.12 Record retention.
1002.13 Information for monitoring purposes.
1002.14 Rules on providing appraisal reports.
1002.15 Incentives for self-testing and self-correction.
1002.16 Enforcement, penalties and liabilities.
APPENDIX A TO PART 1002—FEDERAL AGENCIES TO BE LISTED IN ADVERSE ACTION NOTICES
APPENDIX B TO PART 1002—MODEL APPLICATION FORMS
APPENDIX C TO PART 1002—SAMPLE NOTIFICATION FORMS
APPENDIX D TO PART 1002—ISSUANCE OF OFFICIAL INTERPRETATIONS
SUPPLEMENT I TO PART 1002—OFFICIAL INTERPRETATIONS

AUTHORITY: 12 U.S.C. 5512, 5581; 15 U.S.C. 1691b.

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

§ 1002.1 Authority, scope and purpose.

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

(b) *Purpose.* The purpose of this part is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The

regulation prohibits creditor practices that discriminate on the basis of any of these factors. The regulation also requires creditors to notify applicants of action taken on their applications; to report credit history in the names of both spouses on an account; to retain records of credit applications; to collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans; and to provide applicants with copies of appraisal reports used in connection with credit transactions.

§ 1002.2 Definitions.

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

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

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

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

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

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

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

(2) The term does not include:

(i) A change in the terms of an account expressly agreed to by an applicant;

(ii) Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account;

(iii) A refusal or failure to authorize an account transaction at point of sale or loan, except when the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts, or when the refusal is a denial of an application for an increase in the amount of credit available under the account;

(iv) A refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) A refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

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

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

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

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

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

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

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

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

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

(l) *Creditor* means a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit. The term creditor includes a creditor's assignee, transferee, or subrogee who so participates. For purposes of §§1002.4(a) and (b), the term creditor also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made. A person is not a creditor regarding any violation of the Act or this part committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before becoming involved in the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

(m) *Credit transaction* means every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit (including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures).

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

(o) *Elderly* means age 62 or older.

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

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

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

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

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

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

(q) *Extend credit* and *extension of credit* mean the granting of credit in any form (including, but not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open-end credit plan; the refinancing or other renewal of

credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity).

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

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

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

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

(v) *Negative factor or value*, in relation to the age of elderly applicants, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants or is less favorable than the factor, value, or weight assigned to the class of applicants that are not classified as elderly and are most favored by a creditor on the basis of age.

(w) *Open-end credit* means credit extended under a plan in which a creditor may permit an applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device.

(x) *Person* means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(y) *Pertinent element of creditworthiness*, in relation to a judgmental system of evaluating applicants, means any information about applicants that a creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness.

(z) *Prohibited basis* means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted by the Bureau.

(aa) *State* means any state, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 1002.3 Limited exceptions for certain classes of transactions.

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

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

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

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

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

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

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

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

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

(iv) Section 1002.7(b) relating to designation of name to the extent necessary to comply with rules regarding an account in which a broker or dealer has an interest, or rules regarding the aggregation of accounts of spouses to

determine controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) Section 1002.9 relating to notifications;

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

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

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

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

§1002.4 General rules.

(a) *Discrimination.* A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

(b) *Discouragement.* A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

(c) *Written applications.* A creditor shall take written applications for the dwelling-related types of credit covered by §1002.13(a).

(d) *Form of disclosures*—(1) *General rule.* A creditor that provides in writing any disclosures or information required by this part must provide the disclosures in a clear and conspicuous manner and, except for the disclosures required by §§1002.5 and 1002.13, in a form the applicant may retain.

(2) *Disclosures in electronic form.* The disclosures required by this part that are required to be given in writing may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). Where the disclosures under §§1002.5(b)(1), 1002.5(b)(2), 1002.5(d)(1), 1002.5(d)(2), 1002.13, and 1002.14(a)(2) accompany an application accessed by the applicant in electronic form, these disclosures may be provided to the applicant in electronic form on or with the application form, without regard to the consumer consent or other provisions of the E-Sign Act.

(e) *Foreign-language disclosures.* Disclosures may be made in languages other than English, provided they are available in English upon request.

[76 FR 79445, Dec. 21, 2011, as amended at 78 FR 7248, Jan. 31, 2013]

§1002.5 Rules concerning requests for information.

(a) *General rules*—(1) *Requests for information.* Except as provided in paragraphs (b) through (d) of this section, a

creditor may request any information in connection with a credit transaction. This paragraph does not limit or abrogate any Federal or state law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information.

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

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

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

(1) *Self-test.* A creditor may inquire about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction for the purpose of conducting a self-test that meets the requirements of §1002.15. A creditor that makes such an inquiry shall disclose orally or in writing, at the time the information is requested, that:

(i) The applicant will not be required to provide the information;

(ii) The creditor is requesting the information to monitor its compliance with the Federal Equal Credit Opportunity Act;

(iii) Federal law prohibits the creditor from discriminating on the basis of this information, or on the basis of an applicant's decision not to furnish the information; and

(iv) If applicable, certain information will be collected based on visual observation or surname if not provided by the applicant or other person.

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

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

(2) *Permissible inquiries.* A creditor may request any information concerning an applicant's spouse (or former spouse under paragraph (c)(2)(v) of this section) that may be requested about the applicant if:

(i) The spouse will be permitted to use the account;

(ii) The spouse will be contractually liable on the account;

(iii) The applicant is relying on the spouse's income as a basis for repayment of the credit requested;

(iv) The applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested; or

(v) The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

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

(d) *Other limitations on information requests*—(1) *Marital status.* If an applicant applies for individual unsecured credit, a creditor shall not inquire about the applicant's marital status unless the applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested. If an application is for other

than individual unsecured credit, a creditor may inquire about the applicant's marital status, but shall use only the terms *married*, *unmarried*, and *separated*. A creditor may explain that the category unmarried includes single, divorced, and widowed persons.

(2) *Disclosure about income from alimony, child support, or separate maintenance.* A creditor shall not inquire whether income stated in an application is derived from alimony, child support, or separate maintenance payments unless the creditor discloses to the applicant that such income need not be revealed if the applicant does not want the creditor to consider it in determining the applicant's creditworthiness.

(3) *Childbearing, childrearing.* A creditor shall not inquire about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. A creditor may inquire about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

(e) *Permanent residency and immigration status.* A creditor may inquire about the permanent residency and immigration status of an applicant or any other person in connection with a credit transaction.

§ 1002.6 Rules concerning evaluation of applications.

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

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

(2) *Age, receipt of public assistance.* (i) Except as permitted in this paragraph, a creditor shall not take into account an applicant's age (provided that the applicant has the capacity to enter into a binding contract) or whether an applicant's income derives from any public assistance program.

(ii) In an empirically derived, demonstrably and statistically sound, credit scoring system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

(iii) In a judgmental system of evaluating creditworthiness, a creditor may consider an applicant's age or whether an applicant's income derives from any public assistance program only for the purpose of determining a pertinent element of creditworthiness.

(iv) In any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is used to favor the elderly applicant in extending credit.

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

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

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

the extent that they are likely to be consistently made.

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

(i) The credit history, when available, of accounts designated as accounts that the applicant and the applicant's spouse are permitted to use or for which both are contractually liable;

(ii) On the applicant's request, any information the applicant may present that tends to indicate the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

(iii) On the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

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

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

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

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

§ 1002.7 Rules concerning extensions of credit.

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

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

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

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

(ii) Change the terms of the account; or

(iii) Terminate the account.

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

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

(2) *Unsecured credit.* If an applicant requests unsecured credit and relies in part upon property that the applicant

owns jointly with another person to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the other person only on the instrument(s) necessary, or reasonably believed by the creditor to be necessary, under the law of the state in which the property is located, to enable the creditor to reach the property being relied upon in the event of the death or default of the applicant.

(3) *Unsecured credit—community property states.* If a married applicant requests unsecured credit and resides in a community property state, or if the applicant is relying on property located in such a state, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the community property available to satisfy the debt in the event of default if:

(i) Applicable state law denies the applicant power to manage or control sufficient community property to qualify for the credit requested under the creditor's standards of creditworthiness; and

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

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

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

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

(e) *Insurance.* A creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, disability, or other credit-related insurance is not available on the basis of the applicant's age.

§ 1002.8 Special purpose credit programs.

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

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

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

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

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

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

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

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

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

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

§ 1002.9 Notifications.

(a) *Notification of action taken, ECOA notice, and statement of specific reasons*—(1) *When notification is required.* A creditor shall notify an applicant of action taken within:

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

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

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

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

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

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

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

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

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

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

(B) Disclosure of an applicant's right to a statement of reasons may be given at the time of application, instead of when adverse action is taken, provided the disclosure contains the information required by paragraph (a)(2)(ii) of this

section and the ECOA notice specified in paragraph (b)(1) of this section;

(C) For an application made entirely by telephone, a creditor satisfies the requirements of paragraph (a)(3)(i) of this section by an oral statement of the action taken and of the applicant's right to a statement of reasons for adverse action.

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

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

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

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

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

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

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

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

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

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

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

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

(f) *Multiple applicants.* When an application involves more than one applicant, notification need only be given to one of them but must be given to the primary applicant where one is readily apparent.

(g) *Applications submitted through a third party.* When an application is made on behalf of an applicant to more than one creditor and the applicant expressly accepts or uses credit offered by one of the creditors, notification of action taken by any of the other creditors is not required. If no credit is offered or if the applicant does not expressly accept or use the credit offered, each creditor taking adverse action must comply with this section, directly or through a third party. A notice given by a third party shall disclose the identity of each creditor on whose behalf the notice is given.

§ 1002.10 Furnishing of credit information.

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

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

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

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

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

§ 1002.11 Relation to state law.

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

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

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

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

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

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

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

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

(c) *Laws on finance charges, loan ceilings.* If married applicants voluntarily apply for and obtain individual accounts with the same creditor, the accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or loan ceilings under any Federal or state law. Permissible loan ceiling laws

shall be construed to permit each spouse to become individually liable up to the amount of the loan ceilings, less the amount for which the applicant is jointly liable.

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

(e) *Exemption for state-regulated transactions*—(1) *Applications.* A state may apply to the Bureau for an exemption from the requirements of the Act and this part for any class of credit transactions within the state. The Bureau will grant such an exemption if the Bureau determines that:

(i) The class of credit transactions is subject to state law requirements substantially similar to those of the Act and this part or that applicants are afforded greater protection under state law; and

(ii) There is adequate provision for state enforcement.

(2) *Liability and enforcement.* (i) No exemption will extend to the civil liability provisions of section 706 of the Act or the administrative enforcement provisions of section 704 of the Act.

(ii) After an exemption has been granted, the requirements of the applicable state law (except for additional requirements not imposed by Federal law) will constitute the requirements of the Act and this part.

§ 1002.12 Record retention.

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

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

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

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

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

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

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

(A) The notification of action taken; and

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

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

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

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

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

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

(4) *Enforcement proceedings and investigations.* A creditor shall retain the information beyond 25 months (12 months for business credit, except as

provided in paragraph (b)(5) of this section) if the creditor has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the Act or this part, by the Attorney General of the United States or by an enforcement agency charged with monitoring that creditor's compliance with the Act and this part, or if it has been served with notice of an action filed pursuant to section 706 of the Act and §1002.16 of this part. The creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

(5) *Special rule for certain business credit applications.* With regard to a business that had gross revenues in excess of $1 million in its preceding fiscal year, or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, the creditor shall retain records for at least 60 days after notifying the applicant of the action taken. If within that time period the applicant requests in writing the reasons for adverse action or that records be retained, the creditor shall retain records for 12 months.

(6) *Self-tests.* For 25 months after a self-test (as defined in §1002.15) has been completed, the creditor shall retain all written or recorded information about the self-test. A creditor shall retain information beyond 25 months if it has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation, or if it has been served with notice of a civil action. In such cases, the creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by the appropriate agency or court order.

(7) *Prescreened solicitations.* For 25 months after the date on which an offer of credit is made to potential customers (12 months for business credit, except as provided in paragraph (b)(5) of this section), the creditor shall retain in original form or a copy thereof:

(i) The text of any prescreened solicitation;

(ii) The list of criteria the creditor used to select potential recipients of the solicitation; and

(iii) Any correspondence related to complaints (formal or informal) about the solicitation.

§1002.13 Information for monitoring purposes.

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

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

(ii) Sex;

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

(iv) Age.

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

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

(c) *Disclosure to applicant(s).* The creditor shall inform the applicant(s) that the information regarding ethnicity, race, sex, marital status, and age is being requested by the Federal Government for the purpose of monitoring compliance with Federal statutes that prohibit creditors from discriminating

against applicants on those bases. The creditor shall also inform the applicant(s) that if the applicant(s) chooses not to provide the information, the creditor is required to note the ethnicity, race and sex on the basis of visual observation or surname.

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

§ 1002.14 Rules on providing appraisals and other valuations.

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

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

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

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

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

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

(1) *Consummation.* The term ''consummation'' means the time that a consumer becomes contractually obligated on a closed-end credit transaction.

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

(3) *Valuation.* The term ''valuation'' means any estimate of the value of a

dwelling developed in connection with an application for credit.

[78 FR 7248, Jan. 31, 2013]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 1002.16 Enforcement, penalties and liabilities.

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

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

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

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

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

701(a) of the Act, the agency may refer a matter to the Attorney General.

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

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

(i) Notify the Secretary of Housing and Urban Development; and

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

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

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

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

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

2. To the extent not included in item 1 above:

a. *National banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks:* Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, TX 77010–9050

b. *State member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act:* Federal Reserve Consumer Help Center, P.O. Box 1200, Minneapolis, MN 55480.

c. *Nonmember Insured Banks, Insured State Branches of Foreign Banks, and Insured State Savings Associations:* FDIC Consumer Response Center, 1100 Walnut Street, Box #11, Kansas City, MO 64106.

d. *Federal Credit Unions:* National Credit Union Administration, Office of Consumer Protection, 1775 Duke Street, Alexandria, VA 22314.

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

4. *Creditors Subject to Surface Transportation Board:* Office of Proceedings, Surface Transportation Board, Department of Transportation, 1925 K Street NW., Washington, DC 20423.

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

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

7. *Brokers and Dealers:* Securities and Exchange Commission, Washington, DC 20549.

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

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

Equal Credit Opportunity, Washington, DC 20580.

APPENDIX B TO PART 1002—MODEL APPLICATION FORMS

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

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

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

[Open-end, unsecured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for an individual account in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D.

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

We intend to apply for joint credit. _____ Applicant _____ Co-Applicant

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

SECTION A—INFORMATION REGARDING APPLICANT

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

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

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

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

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

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

Relationship: _____ Address: _____

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

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

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

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

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

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Joint Applicant, User, or Other Party: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION C—MARITAL STATUS
(Do not complete if this is an application for an individual account.)

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

[Open-end, unsecured credit]

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
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.						
4.						
5.						
6.						
Total Debts			$	$	$	

(Credit References) Date Paid

1. $

2.

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

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

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

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

Applicant's Signature Date Other Signature (Where Applicable) Date

[Closed-end, secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete Sections A, C, D, and E, omitting B and the second part of C.

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

We intend to apply for joint credit. _____ (Applicant) _____ (Co-Applicant)

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

Amount Requested $ _____ Payment Date Desired _____ Proceeds of Credit To be Used For _____

SECTION A—INFORMATION REGARDING APPLICANT

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

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

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

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

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

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

Relationship: _____ Address: _____

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

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

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

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

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

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Joint Applicant or Other Party: _____

Relationship: _____ Address: _____

SECTION C—MARITAL STATUS
(Do not complete if this is an application for an individual account.)

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

[Closed-end, secured credit]

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
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. $

2.

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

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

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

SECTION E—SECURED CREDIT (Briefly describe the property to be given as security.)

and list names and addresses of all co-owners of the property:

Name Address

If the security is real estate, give the full name of your spouse (if any):

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

Applicant's Signature Date Other Signature (Where Applicable) Date

[Closed-end, unsecured/secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete the first part of Section C and Section E.

☐ If you are applying for joint credit with another person, complete all Sections except E, providing information in B about the joint applicant. If the requested credit is to be secured, then complete Section E.

We intend to apply for joint credit. _____ (Applicant) _____ (Co-Applicant)

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

Amount Requested $ _____ Payment Date Desired _____ Proceeds of Credit To be Used For _____

SECTION A—INFORMATION REGARDING APPLICANT

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

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

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

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

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

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

Relationship: _____ Address: _____

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

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

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

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

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

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Joint Applicant or Other Party: _____ Telephone: _____

Relationship: _____ Address: _____

[Closed-end, unsecured/secured credit]

SECTION C—MARITAL STATUS
(Do not complete if this is an application for individual unsecured credit.)

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

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
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. $

2.

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

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

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

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security.

and list names and addresses of all co-owners of the property:

Name Address

If the security is real estate, give the full name of your spouse (if any):

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

Applicant's Signature Date Other Signature (Where Applicable) Date

[Community property]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name, are not married, and are not relying on alimony, child support, or separate maintenance payments or on the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete Section E.

☐ In all other situations, complete all Sections except E, providing information in B about your spouse, a joint applicant or user, or the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, also complete Section E.

If you intend to apply for joint credit, please initial here. _____ _____
Applicant Co-Applicant

Amount Requested $ _____ Payment Date Desired _____ Proceeds of Credit To be Used For _____

SECTION A—INFORMATION REGARDING APPLICANT

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

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

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

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

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

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

Relationship: _____ Address: _____

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

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

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

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

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

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Spouse, Joint Applicant, User, or Other Party: _____ Telephone: _____

Relationship: _____ Address: _____

[Community property]

SECTION C—MARITAL STATUS

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

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Spouse, Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
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.	$	
2.		

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

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

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

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security.

and list names and addresses of all co-owners of the property:

Name Address

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

Applicant's Signature Date Other Signature (Where Applicable) Date

Uniform Residential Loan Application

This application is designed to be completed by the applicant(s) with the Lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower," as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when ❑ the income or assets of a person other than the "Borrower" (including the Borrower's spouse) will be used as a basis for loan qualification or ❑ the income or assets of the Borrower's spouse will not be used as a basis for loan qualification, but his or her liabilities must be considered because the Borrower resides in a community property state, the security property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

I. TYPE OF MORTGAGE AND TERMS OF LOAN

Mortgage Applied for: ❑ VA ❑ FHA ❑ Conventional ❑ USDA/Rural Housing Service ❑ Other (explain): | Agency Case Number | Lender Case Number

Amount $ | Interest Rate % | No. of Months | **Amortization Type:** ❑ Fixed Rate ❑ GPM ❑ Other (explain): ❑ ARM (type):

II. PROPERTY INFORMATION AND PURPOSE OF LOAN

Subject Property Address (street, city, state, & ZIP) | No. of Units

Legal Description of Subject Property (attach description if necessary) | Year Built

Purpose of Loan ❑ Purchase ❑ Construction ❑ Other (explain): ❑ Refinance ❑ Construction-Permanent | Property will be: ❑ Primary Residence ❑ Secondary Residence ❑ Investment

Complete this line if construction or construction-permanent loan.

Year Lot Acquired	Original Cost	Amount Existing Liens	(a) Present Value of Lot	(b) Cost of Improvements	Total (a + b)
	$	$	$	$	$

Complete this line if this is a refinance loan.

Year Acquired	Original Cost	Amount Existing Liens	Purpose of Refinance	Describe Improvements ❑ made ❑ to be made
	$	$		Cost: $

Title will be held in what Name(s) | Manner in which Title will be held | Estate will be held in: ❑ Fee Simple ❑ Leasehold (show expiration date)

Source of Down Payment, Settlement Charges and/or Subordinate Financing (explain)

III. BORROWER INFORMATION

Borrower	Co-Borrower
Borrower's Name (include Jr. or Sr. if applicable)	Co-Borrower's Name (include Jr. or Sr. if applicable)
Social Security Number | Home Phone (incl. area code) | DOB (MM/DD/YYYY) | Yrs. School	Social Security Number | Home Phone (incl. area code) | DOB (MM/DD/YYYY) | Yrs. School
❑ Married ❑ Separated ❑ Unmarried (include single, divorced, widowed) | Dependents (not listed by Co-Borrower) no. ages	❑ Married ❑ Separated ❑ Unmarried (include single, divorced, widowed) | Dependents (not listed by Borrower) no. ages
Present Address (street, city, state, ZIP) ❑ Own ❑ Rent _____No. Yrs.	Present Address (street, city, state, ZIP) ❑ Own ❑ Rent _____No. Yrs.
Mailing Address, if different from Present Address	Mailing Address, if different from Present Address
If residing at present address for less than two years, complete the following:	
Former Address (street, city, state, ZIP) ❑ Own ❑ Rent _____No. Yrs.	Former Address (street, city, state, ZIP) ❑ Own ❑ Rent _____No. Yrs.

IV. EMPLOYMENT INFORMATION

Borrower	Co-Borrower
Name & Address of Employer ❑ Self Employed | Yrs. on this job | Yrs. employed in this line of work/profession	Name & Address of Employer ❑ Self Employed | Yrs. on this job | Yrs. employed in this line of work/profession
Position/Title/Type of Business | Business Phone (incl. area code)	Position/Title/Type of Business | Business Phone (incl. area code)
If employed in current position for less than two years or if currently employed in more than one position, complete the following:	
Name & Address of Employer ❑ Self Employed | Dates (from – to) | Monthly Income $	Name & Address of Employer ❑ Self Employed | Dates (from – to) | Monthly Income $
Position/Title/Type of Business | Business Phone (incl. area code)	Position/Title/Type of Business | Business Phone (incl. area code)
Name & Address of Employer ❑ Self Employed | Dates (from – to) | Monthly Income $	Name & Address of Employer ❑ Self Employed | Dates (from – to) | Monthly Income $
Position/Title/Type of Business | Business Phone (incl. area code)	Position/Title/Type of Business | Business Phone (incl. area code)

Freddie Mac Form 65 01/04 Page 1 of 4 Fannie Mae Form 1003 01/04

V. MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION

Gross Monthly Income	Borrower	Co-Borrower	Total	Combined Monthly Housing Expense	Present	Proposed
Base Empl. Income*	$	$	$	Rent	$	
Overtime				First Mortgage (P&I)		$
Bonuses				Other Financing (P&I)		
Commissions				Hazard Insurance		
Dividends/Interest				Real Estate Taxes		
Net Rental Income				Mortgage Insurance		
Other (before completing, see the notice in "describe other income," below)				Homeowner Assn. Dues		
				Other:		
Total	$	$	$	Total	$	$

* Self Employed Borrower(s) may be required to provide additional documentation such as tax returns and financial statements.

Describe Other Income ***Notice:*** **Alimony, child support, or separate maintenance income need not be revealed if the Borrower (B) or Co-Borrower (C) does not choose to have it considered for repaying this loan.**

B/C	Monthly Amount
	$

VI. ASSETS AND LIABILITIES

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried Co-Borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise, separate Statements and Schedules are required. If the Co-Borrower section was completed about a spouse, this Statement and supporting schedules must be completed about that spouse also.

Completed ❑ Jointly ❑ Not Jointly

ASSETS Description	Cash or Market Value	Liabilities and Pledged Assets. List the creditor's name, address and account number for all outstanding debts, including automobile loans, revolving charge accounts, real estate loans, alimony, child support, stock pledges, etc. Use continuation sheet, if necessary. Indicate by (*) those liabilities which will be satisfied upon sale of real estate owned or upon refinancing of the subject property. LIABILITIES	Monthly Payment & Months Left to Pay	Unpaid Balance
Cash deposit toward purchase held by:	$			
List checking and savings accounts below		Name and address of Company	$ Payment/Months	$
Name and address of Bank, S&L, or Credit Union				
		Acct. no.		
Acct. no.	$	Name and address of Company	$ Payment/Months	$
Name and address of Bank, S&L, or Credit Union				
		Acct. no.		
Acct. no.	$	Name and address of Company	$ Payment/Months	$
Name and address of Bank, S&L, or Credit Union				
		Acct. no.		
Acct. no.	$	Name and address of Company	$ Payment/Months	$
Name and address of Bank, S&L, or Credit Union				
		Acct. no.		
Acct. no.	$	Name and address of Company	$ Payment/Months	$
Stocks & Bonds (Company name/number & description)	$			
		Acct. no.		
Life insurance net cash value	$	Name and address of Company	$ Payment/Months	$
Face amount: $				
Subtotal Liquid Assets	$	Acct. no.		
Real estate owned (enter market value from schedule of real estate owned)	$	Name and address of Company	$ Payment/Months	$
Vested interest in retirement fund	$			
Net worth of business(es) owned (attach financial statement)	$			
Automobiles owned (make and year)	$	Acct. no.		
		Alimony/Child Support/Separate Maintenance Payments Owed to:	$	
Other Assets (itemize)	$			
		Job-Related Expense (child care, union dues, etc.)	$	
		Total Monthly Payments	$	
Total Assets a.	$	**Net Worth (a minus b)**	$	**Total Liabilities b.** $

VI. ASSETS AND LIABILITIES (cont.)

Schedule of Real Estate Owned (If additional properties are owned, use continuation sheet.)

Property Address (enter S if sold, PS if pending sale or R if rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Insurance, Maintenance, Taxes & Misc.	Net Rental Income
		$	$	$	$	$	$
	Totals	$	$	$	$	$	$

List any additional names under which credit has previously been received and indicate appropriate creditor name(s) and account number(s):

Alternate Name	Creditor Name	Account Number

VII. DETAILS OF TRANSACTION

a. Purchase price	$
b. Alterations, improvements, repairs	
c. Land (if acquired separately)	
d. Refinance (incl. debts to be paid off)	
e. Estimated prepaid items	
f. Estimated closing costs	
g. PMI, MIP, Funding Fee	
h. Discount (if Borrower will pay)	
i. **Total costs (add items a through h)**	
j. Subordinate financing	
k. Borrower's closing costs paid by Seller	
l. Other Credits (explain)	
m. Loan amount (exclude PMI, MIP, Funding Fee financed)	
n. PMI, MIP, Funding Fee financed	
o. Loan amount (add m & n)	
p. Cash from/to Borrower (subtract j, k, l & o from i)	

VIII. DECLARATIONS

If you answer "Yes" to any questions a through i, please use continuation sheet for explanation.

	Borrower Yes	Borrower No	Co-Borrower Yes	Co-Borrower No
a. Are there any outstanding judgments against you?	❑	❑	❑	❑
b. Have you been declared bankrupt within the past 7 years?	❑	❑	❑	❑
c. Have you had property foreclosed upon or given title or deed in lieu thereof in the last 7 years?	❑	❑	❑	❑
d. Are you a party to a lawsuit?	❑	❑	❑	❑
e. Have you directly or indirectly been obligated on any loan which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgment? (This would include such loans as home mortgage loans, SBA loans, home improvement loans, educational loans, manufactured (mobile) home loans, any mortgage, financial obligation, bond, or loan guarantee. If "Yes," provide details, including date, name and address of Lender, FHA or VA case number, if any, and reasons for the action.)	❑	❑	❑	❑
f. Are you presently delinquent or in default on any Federal debt or any other loan, mortgage, financial obligation, bond, or loan guarantee? If "Yes," give details as described in the preceding question.	❑	❑	❑	❑
g. Are you obligated to pay alimony, child support, or separate maintenance?	❑	❑	❑	❑
h. Is any part of the down payment borrowed?	❑	❑	❑	❑
i. Are you a co-maker or endorser on a note?	❑	❑	❑	❑
j. Are you a U.S. citizen?	❑	❑	❑	❑
k. Are you a permanent resident alien?	❑	❑	❑	❑
l. **Do you intend to occupy the property as your primary residence?** If "Yes," complete question m below.	❑	❑	❑	❑
m. Have you had an ownership interest in a property in the last three years?	❑	❑	❑	❑
(1) What type of property did you own—principal residence (PR), second home (SH), or investment property (IP)?				
(2) How did you hold title to the home—solely by yourself (S), jointly with your spouse (SP), or jointly with another person (O)?				

IX. ACKNOWLEDGMENT AND AGREEMENT

Each of the undersigned specifically represents to Lender and to Lender's actual or potential agents, brokers, processors, attorneys, insurers, servicers, successors and assigns and agrees and acknowledges that: (1) the information provided in this application is true and correct as of the date set forth opposite my signature and that any intentional or negligent misrepresentation of this information contained in this application may result in civil liability, including monetary damages, to any person who may suffer any loss due to reliance upon any misrepresentation that I have made on this application, and/or in criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Sec. 1001, et seq.; (2) the loan requested pursuant to this application (the "Loan") will be secured by a mortgage or deed of trust on the property described herein; (3) the property will not be used for any illegal or prohibited purpose or use; (4) all statements made in this application are made for the purpose of obtaining a residential mortgage loan; (5) the property will be occupied as indicated herein; (6) any owner or servicer of the Loan may verify or reverify any information contained in the application from any source named in this application, and Lender, its successors or assigns may retain the original and/or an electronic record of this application, even if the Loan is not approved; (7) the Lender and its agents, brokers, insurers, servicers, successors and assigns may continuously rely on the information contained in the application, and I am obligated to amend and/or supplement the information provided in this application if any of the material facts that I have represented herein should change prior to closing of the Loan; (8) in the event that my payments on the Loan become delinquent, the owner or servicer of the Loan may, in addition to any other rights and remedies that it may have relating to such delinquency, report my name and account information to one or more consumer credit reporting agencies; (9) ownership of the Loan and/or administration of the Loan account may be transferred with such notice as may be required by law; (10) neither Lender nor its agents, brokers, insurers, servicers, successors or assigns has made any representation or warranty, express or implied, to me regarding the property or the condition or value of the property; and (11) my transmission of this application as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or my facsimile transmission of this application containing a facsimile of my signature, shall be as effective, enforceable and valid as if a paper version of this application were delivered containing my original written signature.

Borrower's Signature	Date	Co-Borrower's Signature	Date
X		X	

X. INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the Federal Government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may discriminate neither on the basis of this information, nor on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, under Federal regulations, this lender is required to note the information on the basis of visual observation or surname. If you do not wish to furnish the information, please check the box below. (Lender must review the above material to assure that the disclosures satisfy all requirements to which the lender is subject under applicable state law for the particular type of loan applied for.)

BORROWER	❑ I do not wish to furnish this information.			**CO-BORROWER**	❑ I do not wish to furnish this information.		
Ethnicity:	❑ Hispanic or Latino	❑ Not Hispanic or Latino		**Ethnicity:**	❑ Hispanic or Latino	❑ Not Hispanic or Latino	
Race:	❑ American Indian or Alaska Native	❑ Asian	❑ Black or African American	**Race:**	❑ American Indian or Alaska Native	❑ Asian	❑ Black or African American
	❑ Native Hawaiian or Other Pacific Islander	❑ White			❑ Native Hawaiian or Other Pacific Islander	❑ White	
Sex:	❑ Female	❑ Male		**Sex:**	❑ Female	❑ Male	

To be Completed by Interviewer	Interviewer's Name (print or type)	Name and Address of Interviewer's Employer
This application was taken by: ❑ Face-to-face interview ❑ Mail ❑ Telephone ❑ Internet	Interviewer's Signature Date	
	Interviewer's Phone Number (incl. area code)	

Continuation Sheet/Residential Loan Application		
Use this continuation sheet if you need more space to complete the Residential Loan Application. Mark B for Borrower or C for Co-Borrower.	Borrower:	Agency Case Number:
	Co-Borrower:	Lender Case Number:

I/We fully understand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq.

Borrower's Signature	Date	Co-Borrower's Signature	Date
X		X	

APPENDIX C TO PART 1002—SAMPLE NOTIFICATION FORMS

1. This Appendix contains ten sample notification forms. Forms C–1 through C–4 are intended for use in notifying an applicant that adverse action has been taken on an application or account under §§1002.9(a)(1) and (2)(i) of this part. Form C–5 is a notice of disclosure of the right to request specific reasons for adverse action under §§1002.9(a)(1) and (2)(ii). Form C–6 is designed for use in notifying an applicant, under §1002.9(c)(2), that an application is incomplete. Forms C–7 and C–8 are intended for use in connection with applications for business credit under §1002.9(a)(3). Form C–9 is designed for use in notifying an applicant of the right to receive a copy of appraisals under §1002.14. Form C–10 is designed for use in notifying an applicant for nonmortgage credit that the creditor is requesting applicant characteristic information.

2. Form C–1 contains the Fair Credit Reporting Act disclosure as required by sections 615(a) and (b) of that act. Forms C–2 through C–5 contain only the section 615(a) disclosure (that a creditor obtained information from a consumer reporting agency that was considered in the credit decision). A creditor must provide the section 615(a) disclosure when adverse action is taken against a consumer based on information from a consumer reporting agency. A creditor must provide the section 615(b) disclosure when adverse action is taken based on information from an outside source other than a consumer reporting agency. In addition, a creditor must provide the section 615(b) disclosure if the creditor obtained information from an affiliate other than information in a consumer report or other than information concerning the affiliate's own transactions or experiences with the consumer. Creditors may comply with the disclosure requirements for adverse action based on information in a consumer report obtained from an affiliate by providing either the section 615(a) or section 615(b) disclosure. Optional language in Forms C–1 through C–5 may be used to direct the consumer to the entity that provided the credit score for any questions about the credit score, along with the entity's contact information. Creditors may use or not use this additional language without losing the safe harbor, since the language is optional.

3. The sample forms are illustrative and may not be appropriate for all creditors. They were designed to include some of the factors that creditors most commonly consider. If a creditor chooses to use the checklist of reasons provided in one of the sample forms in this appendix and if reasons commonly used by the creditor are not provided on the form, the creditor should modify the checklist by substituting or adding other reasons. For example, if ''inadequate down payment'' or ''no deposit relationship with us'' are common reasons for taking adverse action on an application, the creditor ought to add or substitute such reasons for those presently contained on the sample forms.

4. If the reasons listed on the forms are not the factors actually used, a creditor will not satisfy the notice requirement by simply checking the closest identifiable factor listed. For example, some creditors consider only references from banks or other depository institutions and disregard finance company references altogether; their statement of reasons should disclose ''insufficient bank references,'' not ''insufficient credit references.'' Similarly, a creditor that considers bank references and other credit references as distinct factors should treat the two factors separately and disclose them as appropriate. The creditor should either add such other factors to the form or check ''other'' and include the appropriate explanation. The creditor need not, however, describe how or why a factor adversely affected the application. For example, the notice may say ''length of residence'' rather than ''too short a period of residence.''

5. A creditor may design its own notification forms or use all or a portion of the forms contained in this Appendix. Proper use of Forms C–1 through C–4 will satisfy the requirement of §1002.9(a)(2)(i). Proper use of Forms C–5 and C–6 constitutes full compliance with §§1002.9(a)(2)(ii) and 1002.9(c)(2), respectively. Proper use of Forms C–7 and C–8 will satisfy the requirements of §§1002.9(a)(2)(i) and (ii), respectively, for applications for business credit. Proper use of Form C–9 will satisfy the requirements of §1002.14 of this part. Proper use of Form C–10 will satisfy the requirements of §1002.5(b)(1).

FORM C–1—SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS

Statement of Credit Denial, Termination or Change

Date: _____

Applicant's Name: _____

Applicant's Address: _____

Description of Account, Transaction, or Requested Credit: _____

Description of Action Taken: _____

PART I—PRINCIPAL REASON(S) FOR CREDIT DENIAL, TERMINATION, OR OTHER ACTION TAKEN CONCERNING CREDIT

This section must be completed in all instances.

____Credit application incomplete

____Insufficient number of credit references provided

____Unacceptable type of credit references provided

____Unable to verify credit references

____Temporary or irregular employment

___Unable to verify employment
___Length of employment
___Income insufficient for amount of credit requested
___Excessive obligations in relation to income
___Unable to verify income
___Length of residence
___Temporary residence
___Unable to verify residence
___No credit file
___Limited credit experience
___Poor credit performance with us
___Delinquent past or present credit obligations with others
___Collection action or judgment
___Garnishment or attachment
___Foreclosure or repossession
___Bankruptcy
___Number of recent inquiries on credit bureau report
___Value or type of collateral not sufficient
___Other, specify: _____

PART II—DISCLOSURE OF USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE

This section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

___Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Name: _____
Address: _____
[Toll-free] Telephone number: _____

[We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: _____
Date: _____

Scores range from a low of _____ to a high of _____.

Key factors that adversely affected your credit score:

_____
_____
_____
_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____

[[Toll-free] Telephone number: _____]

___Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

If you have any questions regarding this notice, you should contact:

Creditor's name: _____
Creditor's address: _____
Creditor's telephone number: _____

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

FORM C–2—SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS

Date

Dear Applicant: Thank you for your recent application. Your request for [a loan/a credit card/an increase in your credit limit] was carefully considered, and we regret that we are unable to approve your application at this time, for the following reason(s):

Your Income:

___is below our minimum requirement.
___is insufficient to sustain payments on the amount of credit requested.
___could not be verified.

Your Employment:

___is not of sufficient length to qualify.
___could not be verified.

Your Credit History:

___of making payments on time was not satisfactory.
___could not be verified.

Your Application:

___lacks a sufficient number of credit references.
___lacks acceptable types of credit references.

___reveals that current obligations are excessive in relation to income.
Other: _____

The consumer reporting agency contacted that provided information that influenced our decision in whole or in part was [name, address and [toll-free] telephone number of the reporting agency]. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. Any questions regarding such information should be directed to [consumer reporting agency]. If you have any questions regarding this letter, you should contact us at [creditor's name, address and telephone number].

[We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: _____
Date: _____

Scores range from a low of _____ to a high of _____.

Key factors that adversely affected your credit score:

_____
_____
_____
_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____

[[Toll-free] Telephone number: _____]

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

FORM C–3—SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS (CREDIT SCORING)

Date

Dear Applicant: Thank you for your recent application for _____. We regret that we are unable to approve your request.

[Reasons for Denial of Credit]

Your application was processed by a [credit scoring] system that assigns a numerical value to the various items of information we consider in evaluating an application. These numerical values are based upon the results of analyses of repayment histories of large numbers of customers.

The information you provided in your application did not score a sufficient number of points for approval of the application. The reasons you did not score well compared with other applicants were:

- Insufficient bank references
- Type of occupation
- Insufficient credit experience
- Number of recent inquiries on credit bureau report

[Your Right to Get Your Consumer Report]

In evaluating your application the consumer reporting agency listed below provided us with information that in whole or in part influenced our decision. The consumer reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. It can be obtained by contacting: [Name, address, and [toll-free] telephone number of the consumer reporting agency]. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

[Information about Your Credit Score]

[Information about Your Credit Score]

We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: _____
Date: _____

Scores range from a low of _____ to a high of _____.

Key factors that adversely affected your credit score:

_____

_____
_____
_____
[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:
Address: _____
[Toll-free] Telephone number: _____]

If you have any questions regarding this letter, you should contact us at
Creditor's Name: _____
Address: _____
Telephone: _____

Sincerely,

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (with certain limited exceptions); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

FORM C–4—SAMPLE NOTICE OF ACTION TAKEN, STATEMENT OF REASONS AND COUNTEROFFER

Date

Dear Applicant: Thank you for your application for _____. We are unable to offer you credit on the terms that you requested for the following reason(s):_____

We can, however, offer you credit on the following terms: _____

If this offer is acceptable to you, please notify us within [amount of time] at the following address: _____.

Our credit decision on your application was based in whole or in part on information obtained in a report from [name, address and [toll-free] telephone number of the consumer reporting agency]. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

[We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.
Your credit score: _____
Date: _____

Scores range from a low of _____ to a high of _____.

Key factors that adversely affected your credit score:

_____
_____
_____
_____
[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____
[Toll-free] Telephone number:_____]

You should know that the Federal Equal Credit Opportunity Act prohibits creditors, such as ourselves, from discriminating against credit applicants on the basis of their race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because they receive income from a public assistance program, or because they may have exercised their rights under the Consumer Credit Protection Act. If you believe there has been discrimination in handling your application you should contact the [name and address of the appropriate Federal enforcement agency listed in appendix A].

Sincerely,

FORM C–5—SAMPLE DISCLOSURE OF RIGHT TO REQUEST SPECIFIC REASONS FOR CREDIT DENIAL

Date

Dear Applicant: Thank you for applying to us for _____.

After carefully reviewing your application, we are sorry to advise you that we cannot [open an account for you/grant a loan to you/increase your credit limit] at this time. If you would like a statement of specific reasons why your application was denied, please contact [our credit service manager] shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

Creditor's name
Address
Telephone number

If we obtained information from a consumer reporting agency as part of our consideration of your application, its name, address, and [toll-free] telephone number is shown below. The reporting agency played

no part in our decision and is unable to supply specific reasons why we have denied credit to you. [You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency.] You have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you received is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. You can find out about the information contained in your file (if one was used) by contacting:

Consumer reporting agency's name
Address
[Toll-free] Telephone number

[We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.
Your credit score: _____
Date: _____

Scores range from a low of _____ to a high of _____.

Key factors that adversely affected your credit score:

_____
_____
_____
_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____
[Toll-free] Telephone number: _____]

Sincerely,

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

FORM C–6—SAMPLE NOTICE OF INCOMPLETE APPLICATION AND REQUEST FOR ADDITIONAL INFORMATION

Creditor's name
Address
Telephone number
Date

Dear Applicant: Thank you for your application for credit. The following information is needed to make a decision on your application: _____

We need to receive this information by _____ (date). If we do not receive it by that date, we will regrettably be unable to give further consideration to your credit request.

Sincerely,

FORM C–7—SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS (BUSINESS CREDIT)

Creditor's name
Creditor's address
Date

Dear Applicant: Thank you for applying to us for credit. We have given your request careful consideration, and regret that we are unable to extend credit to you at this time for the following reasons:

(Insert appropriate reason, such as: Value or type of collateral not sufficient; Lack of established earnings record; Slow or past due in trade or loan payments)

Sincerely,

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in appendix A].

FORM C–8—SAMPLE DISCLOSURE OF RIGHT TO REQUEST SPECIFIC REASONS FOR CREDIT DENIAL GIVEN AT TIME OF APPLICATION (BUSINESS CREDIT)

Creditor's name
Creditor's address

If your application for business credit is denied, you have the right to a written statement of the specific reasons for the denial. To obtain the statement, please contact [name, address and telephone number of the person or office from which the statement of reasons can be obtained] within 60 days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request for the statement.

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex,

marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in appendix A].

FORM C–9—SAMPLE DISCLOSURE OF RIGHT TO RECEIVE A COPY OF APPRAISALS

We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close.

You can pay for an additional appraisal for your own use at your own cost.

[In your letter, give us the following information:]

FORM C–10—SAMPLE DISCLOSURE ABOUT VOLUNTARY DATA NOTATION

We are requesting the following information to monitor our compliance with the Federal Equal Credit Opportunity Act, which prohibits unlawful discrimination. You are not required to provide this information. We will not take this information (or your decision not to provide this information) into account in connection with your application or credit transaction. The law provides that a creditor may not discriminate based on this information, or based on whether or not you choose to provide it. [If you choose not to provide the information, we will note it by visual observation or surname].

[76 FR 79445, Dec. 21, 2011, as amended at 78 FR 7248, Jan. 31, 2013]

APPENDIX D TO PART 1002—ISSUANCE OF OFFICIAL INTERPRETATIONS

1.*Official Interpretations.* Interpretations of this part issued by officials of the Bureau provide the protection afforded under section 706(e) of the Act. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to the regulation, which will be amended periodically.

2. *Requests for Issuance of Official Interpretations.* A request for an official interpretation should be in writing and addressed to the Assistant Director, Office of Regulations, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street, NW., Washington, DC 20006. The request should contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

3. *Scope of Interpretations.* No interpretations will be issued approving creditors' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

SUPPLEMENT I TO PART 1002—OFFICIAL INTERPRETATIONS

Following is an official interpretation of Regulation B (12 CFR part 1002) issued by the Bureau of Consumer Financial Protection. References are to sections of the regulation or the Equal Credit Opportunity Act (15 U.S.C. 1601 *et seq.*).

INTRODUCTION

1.*Official status.* Section 706(e) of the Equal Credit Opportunity Act protects a creditor from civil liability for any act done or omitted in good faith in conformity with an interpretation issued by a duly authorized official of the Bureau. This commentary is the means by which the Bureau of Consumer Financial Protection issues official interpretations of Regulation B. Good-faith compliance with this commentary affords a creditor protection under section 706(e) of the Act.

2. *Issuance of interpretations.* Under appendix D to the regulation, any person may request an official interpretation. Interpretations will be issued at the discretion of designated officials and incorporated in this commentary following publication for comment in the FEDERAL REGISTER. Except in unusual circumstances, official interpretations will be issued only by means of this commentary.

3. *Comment designations.* The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. For example, comments to §1002.2(c) are further divided by subparagraph, such as comment 2(c)(1)(ii)–1 and comment 2(c)(2)(ii–1.

Section 1002.1—Authority, Scope, and Purpose

1(a) Authority and scope.

1. *Scope.* The Equal Credit Opportunity Act and Regulation B apply to all credit—commercial as well as personal—without regard to the nature or type of the credit or the creditor, except for an entity excluded from coverage of this part (but not the Act) by section 1029 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5519). If a transaction provides for the deferral of the payment of a debt, it is credit covered by Regulation B even though it may not be a credit transaction covered by Regulation Z (Truth in Lending) (12 CFR part 1026). Further, the definition of creditor is not restricted to the

party or person to whom the obligation is initially payable, as is the case under Regulation Z. Moreover, the Act and regulation apply to all methods of credit evaluation, whether performed judgmentally or by use of a credit scoring system.

2. *Foreign applicability.* Regulation B generally does not apply to lending activities that occur outside the United States. The regulation does apply to lending activities that take place within the United States (as well as the Commonwealth of Puerto Rico and any territory or possession of the United States), whether or not the applicant is a citizen.

3. *Bureau.* The term *Bureau,* as used in this part, means the Bureau of Consumer Financial Protection.

Section 1002.2—Definitions

2(c) Adverse action.

Paragraph 2(c)(1)(i).

1. *Application for credit.* If the applicant applied in accordance with the creditor's procedures, a refusal to refinance or extend the term of a business or other loan is adverse action.

Paragraph 2(c)(1)(ii).

1. *Move from service area.* If a credit card issuer terminates the open-end account of a customer because the customer has moved out of the card issuer's service area, the termination is adverse action unless termination on this ground was explicitly provided for in the credit agreement between the parties. In cases where termination is adverse action, notification is required under §1002.9.

2. *Termination based on credit limit.* If a creditor terminates credit accounts that have low credit limits (for example, under $400) but keeps open accounts with higher credit limits, the termination is adverse action and notification is required under §1002.9.

Paragraph 2(c)(2)(ii).

1. *Default—exercise of due-on-sale clause.* If a mortgagor sells or transfers mortgaged property without the consent of the mortgagee, and the mortgagee exercises its contractual right to accelerate the mortgage loan, the mortgagee may treat the mortgagor as being in default. An adverse action notice need not be given to the mortgagor or the transferee. (See comment 2(e)–1 for treatment of a purchaser who requests to assume the loan.)

2. *Current delinquency or default.* The term adverse action does not include a creditor's termination of an account when the accountholder is currently in default or delinquent on that account. Notification in accordance with §1002.9 of the regulation generally is required, however, if the creditor's action is based on a past delinquency or default on the account.

Paragraph 2(c)(2)(iii).

1. *Point-of-sale transactions.* Denial of credit at point of sale is not adverse action except under those circumstances specified in the regulation. For example, denial at point of sale is not adverse action in the following situations:

i. A credit cardholder presents an expired card or a card that has been reported to the card issuer as lost or stolen.

ii. The amount of a transaction exceeds a cash advance or credit limit.

iii. The circumstances (such as excessive use of a credit card in a short period of time) suggest that fraud is involved.

iv. The authorization facilities are not functioning.

v. Billing statements have been returned to the creditor for lack of a forwarding address.

2. *Application for increase in available credit.* A refusal or failure to authorize an account transaction at the point of sale or loan is not adverse action except when the refusal is a denial of an application, submitted in accordance with the creditor's procedures, for an increase in the amount of credit.

Paragraph 2(c)(2)(v).

1. *Terms of credit versus type of credit offered.* When an applicant applies for credit and the creditor does not offer the credit terms requested by the applicant (for example, the interest rate, length of maturity, collateral, or amount of downpayment), a denial of the application for that reason is adverse action (unless the creditor makes a counteroffer that is accepted by the applicant) and the applicant is entitled to notification under §1002.9.

2(e) Applicant.

1. *Request to assume loan.* If a mortgagor sells or transfers the mortgaged property and the buyer makes an application to the creditor to assume the mortgage loan, the mortgagee must treat the buyer as an applicant unless its policy is not to permit assumptions.

2(f) Application.

1. *General.* A creditor has the latitude under the regulation to establish its own application process and to decide the type and amount of information it will require from credit applicants.

2. *Procedures used.* The term ''procedures'' refers to the actual practices followed by a creditor for making credit decisions as well as its stated application procedures. For example, if a creditor's stated policy is to require all applications to be in writing on the creditor's application form, but the creditor also makes credit decisions based on oral requests, the creditor's procedures are to accept both oral and written applications.

3. *When an inquiry or prequalification request becomes an application.* A creditor is encouraged to provide consumers with information about loan terms. However, if in giving information to the consumer the creditor also evaluates information about the consumer,

decides to decline the request, and communicates this to the consumer, the creditor has treated the inquiry or prequalification request as an application and must then comply with the notification requirements under §1002.9. Whether the inquiry or prequalification request becomes an application depends on how the creditor responds to the consumer, not on what the consumer says or asks. (See comment 9–5 for further discussion of prequalification requests; see comment 2(f)–5 for a discussion of preapproval requests.)

4. *Examples of inquiries that are not applications.* The following examples illustrate situations in which only an inquiry has taken place:

i. A consumer calls to ask about loan terms and an employee explains the creditor's basic loan terms, such as interest rates, loan-to-value ratio, and debt-to-income ratio.

ii. A consumer calls to ask about interest rates for car loans, and, in order to quote the appropriate rate, the loan officer asks for the make and sales price of the car and the amount of the downpayment, then gives the consumer the rate.

iii. A consumer asks about terms for a loan to purchase a home and tells the loan officer her income and intended downpayment, but the loan officer only explains the creditor's loan-to-value ratio policy and other basic lending policies, without telling the consumer whether she qualifies for the loan.

iv. A consumer calls to ask about terms for a loan to purchase vacant land and states his income and the sales price of the property to be financed, and asks whether he qualifies for a loan; the employee responds by describing the general lending policies, explaining that he would need to look at all of the consumer's qualifications before making a decision, and offering to send an application form to the consumer.

5. *Examples of an application.* An application for credit includes the following situations:

i. A person asks a financial institution to ''preapprove'' her for a loan (for example, to finance a house or a vehicle she plans to buy) and the institution reviews the request under a program in which the institution, after a comprehensive analysis of her creditworthiness, issues a written commitment valid for a designated period of time to extend a loan up to a specified amount. The written commitment may not be subject to conditions other than conditions that require the identification of adequate collateral, conditions that require no material change in the applicant's financial condition or creditworthiness prior to funding the loan, and limited conditions that are not related to the financial condition or creditworthiness of the applicant that the lender ordinarily attaches to a traditional application (such as certification of a clear termite inspection for a home purchase loan, or a maximum mileage requirement for a used car loan). But if the creditor's program does not provide for giving written commitments, requests for preapprovals are treated as prequalification requests for purposes of the regulation.

ii. Under the same facts as above, the financial institution evaluates the person's creditworthiness and determines that she does not qualify for a preapproval.

6. *Completed application—diligence requirement.* The regulation defines a completed application in terms that give a creditor the latitude to establish its own information requirements. Nevertheless, the creditor must act with reasonable diligence to collect information needed to complete the application. For example, the creditor should request information from third parties, such as a credit report, promptly after receiving the application. If additional information is needed from the applicant, such as an address or a telephone number to verify employment, the creditor should contact the applicant promptly. (But see comment 9(a)(1)–3, which discusses the creditor's option to deny an application on the basis of incompleteness.)*2(g) Business credit.*

1. *Definition.* The test for deciding whether a transaction qualifies as business credit is one of primary purpose. For example, an open-end credit account used for both personal and business purposes is not business credit unless the primary purpose of the account is business-related. A creditor may rely on an applicant's statement of the purpose for the credit requested.

2(j) Credit.

1. *General.* Regulation B covers a wider range of credit transactions than Regulation Z (Truth in Lending). Under Regulation B, a transaction is credit if there is a right to defer payment of a debt—regardless of whether the credit is for personal or commercial purposes, the number of installments required for repayment, or whether the transaction is subject to a finance charge.

2(l) Creditor.

1. *Assignees.* The term creditor includes all persons participating in the credit decision. This may include an assignee or a potential purchaser of the obligation who influences the credit decision by indicating whether or not it will purchase the obligation if the transaction is consummated.

2. *Referrals to creditors.* For certain purposes, the term creditor includes persons such as real estate brokers, automobile dealers, home builders, and home-improvement contractors who do not participate in credit decisions but who only accept applications and refer applicants to creditors, or select or offer to select creditors to whom credit requests can be made. These persons must

comply with §1002.4(a), the general rule prohibiting discrimination, and with §1002.4(b), the general rule against discouraging applications.

2(p) Empirically derived and other credit scoring systems.

1. *Purpose of definition.* The definition under §§1002.2(p)(1)(i) through (iv) sets the criteria that a credit system must meet in order to use age as a predictive factor. Credit systems that do not meet these criteria are judgmental systems and may consider age only for the purpose of determining a ''pertinent element of creditworthiness.'' (Both types of systems may favor an elderly applicant. See §1002.6(b)(2).)

2. *Periodic revalidation.* The regulation does not specify how often credit scoring systems must be revalidated. The credit scoring system must be revalidated frequently enough to ensure that it continues to meet recognized professional statistical standards for statistical soundness. To ensure that predictive ability is being maintained, the creditor must periodically review the performance of the system. This could be done, for example, by analyzing the loan portfolio to determine the delinquency rate for each score interval, or by analyzing population stability over time to detect deviations of recent applications from the applicant population used to validate the system. If this analysis indicates that the system no longer predicts risk with statistical soundness, the system must be adjusted as necessary to reestablish its predictive ability. A creditor is responsible for ensuring its system is validated and revalidated based on the creditor's own data.

3. *Pooled data scoring systems.* A scoring system or the data from which to develop such a system may be obtained from either a single credit grantor or multiple credit grantors. The resulting system will qualify as an empirically derived, demonstrably and statistically sound, credit scoring system provided the criteria set forth in paragraph (p)(1)(i) through (iv) of this section are met. A creditor is responsible for ensuring its system is validated and revalidated based on the creditor's own data when it becomes available.

4. *Effects test and disparate treatment.* An empirically derived, demonstrably and statistically sound, credit scoring system may include age as a predictive factor (provided that the age of an elderly applicant is not assigned a negative factor or value). Besides age, no other prohibited basis may be used as a variable. Generally, credit scoring systems treat all applicants objectively and thus avoid problems of disparate treatment. In cases where a credit scoring system is used in conjunction with individual discretion, disparate treatment could conceivably occur in the evaluation process. In addition, neutral factors used in credit scoring systems could nonetheless be subject to challenge under the effects test. (See comment 6(a)–2 for a discussion of the effects test).

2(w) Open-end credit.

1. *Open-end real estate mortgages.* The term ''open-end credit'' does not include negotiated advances under an open-end real estate mortgage or a letter of credit.

2(z) Prohibited basis.

1. *Persons associated with applicant.* As used in this part, prohibited basis refers not only to characteristics—the race, color, religion, national origin, sex, marital status, or age—of an applicant (or officers of an applicant in the case of a corporation) but also to the characteristics of individuals with whom an applicant is affiliated or with whom the applicant associates. This means, for example, that under the general rule stated in §1002.4(a), a creditor may not discriminate against an applicant because of that person's personal or business dealings with members of a certain religion, because of the national origin of any persons associated with the extension of credit (such as the tenants in the apartment complex being financed), or because of the race of other residents in the neighborhood where the property offered as collateral is located.

2. *National origin.* A creditor may not refuse to grant credit because an applicant comes from a particular country but may take the applicant's immigration status into account. A creditor may also take into account any applicable law, regulation, or executive order restricting dealings with citizens (or the government) of a particular country or imposing limitations regarding credit extended for their use.

3. *Public assistance program.* Any Federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need, is ''public assistance'' for purposes of the regulation. The term includes (but is not limited to) Temporary Aid to Needy Families, food stamps, rent and mortgage supplement or assistance programs, social security and supplemental security income, and unemployment compensation. Only physicians, hospitals, and others to whom the benefits are payable need consider Medicare and Medicaid as public assistance.

Section 1002.3—Limited Exceptions for Certain Classes of Transactions

1. *Scope.* Under this section, procedural requirements of the regulation do not apply to certain types of credit. All classes of transactions remain subject to §1002.4(a), the general rule barring discrimination on a prohibited basis, and to any other provision not specifically excepted.

3(a) Public-utilities credit.

1. *Definition.* This definition applies only to credit for the purchase of a utility service,

such as electricity, gas, or telephone service. Credit provided or offered by a public utility for some other purpose—such as for financing the purchase of a gas dryer, telephone equipment, or other durable goods, or for insulation or other home improvements—is not excepted.

2. *Security deposits.* A utility company is a creditor when it supplies utility service and bills the user after the service has been provided. Thus, any credit term (such as a requirement for a security deposit) is subject to the regulation's bar against discrimination on a prohibited basis.

3. *Telephone companies.* A telephone company's credit transactions qualify for the exceptions provided in §1002.3(a)(2) only if the company is regulated by a government unit or files the charges for service, delayed payment, or any discount for prompt payment with a government unit.

3(c) Incidental credit.

1. *Examples.* If a service provider (such as a hospital, doctor, lawyer, or merchant) allows the client or customer to defer the payment of a bill, this deferral of debt is credit for purposes of the regulation, even though there is no finance charge and no agreement for payment in installments. Because of the exceptions provided by this section, however, these particular credit extensions are excepted from compliance with certain procedural requirements as specified in §1002.3(c).

3(d) Government credit.

1. *Credit to governments.* The exception relates to credit extended to (not by) governmental entities. For example, credit extended to a local government is covered by this exception, but credit extended to consumers by a Federal or state housing agency does not qualify for special treatment under this category.

Section 1002.4—General Rules

Paragraph 4(a).

1. *Scope of rule.* The general rule stated in §1002.4(a) covers all dealings, without exception, between an applicant and a creditor, whether or not addressed by other provisions of the regulation. Other provisions of the regulation identify specific practices that the Bureau has decided are impermissible because they could result in credit discrimination on a basis prohibited by the Act. The general rule covers, for example, application procedures, criteria used to evaluate creditworthiness, administration of accounts, and treatment of delinquent or slow accounts. Thus, whether or not specifically prohibited elsewhere in the regulation, a credit practice that treats applicants differently on a prohibited basis violates the law because it violates the general rule. Disparate treatment on a prohibited basis is illegal whether or not it results from a conscious intent to discriminate.

2. *Examples.*

i. Disparate treatment would exist, for example, in the following situations:

A. A creditor provides information only on ''subprime'' and similar products to minority applicants who request information about the creditor's mortgage products, but provides information on a wider variety of mortgage products to similarly situated nonminority applicants.

B. A creditor provides more comprehensive information to men than to similarly situated women.

C. A creditor requires a minority applicant to provide greater documentation to obtain a loan than a similarly situated nonminority applicant.

D. A creditor waives or relaxes credit standards for a nonminority applicant but not for a similarly situated minority applicant.

ii. Treating applicants differently on a prohibited basis is unlawful if the creditor lacks a legitimate nondiscriminatory reason for its action, or if the asserted reason is found to be a pretext for discrimination.

Paragraph 4(b).

1. *Prospective applicants.* Generally, the regulation's protections apply only to persons who have requested or received an extension of credit. In keeping with the purpose of the Act—to promote the availability of credit on a nondiscriminatory basis—§1002.4(b) covers acts or practices directed at prospective applicants that could discourage a reasonable person, on a prohibited basis, from applying for credit. Practices prohibited by this section include:

i. A statement that the applicant should not bother to apply, after the applicant states that he is retired.

ii. The use of words, symbols, models or other forms of communication in advertising that express, imply, or suggest a discriminatory preference or a policy of exclusion in violation of the Act.

iii. The use of interview scripts that discourage applications on a prohibited basis.

2. *Affirmative advertising.* A creditor may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor.

Paragraph 4(c).

1. *Requirement for written applications.* Model application forms are provided in appendix B to the regulation, although use of a printed form is not required. A creditor will satisfy the requirement by writing down the information that it normally considers in making a credit decision. The creditor may complete an application on behalf of an applicant and need not require the applicant to sign the application.

2. *Telephone applications.* A creditor that accepts applications by telephone for dwelling-related credit covered by §1002.13 can

meet the requirement for written applications by writing down pertinent information that is provided by the applicant.

3. *Computerized entry.* Information entered directly into and retained by a computerized system qualifies as a written application under this paragraph. (See the commentary to §1002.13(b), *Applications through electronic media and Applications through video.*)

Paragraph 4(d).

1. *Clear and conspicuous.* This standard requires that disclosures be presented in a reasonably understandable format in a way that does not obscure the required information. No minimum type size is mandated, but the disclosures must be legible, whether typewritten, handwritten, or printed by computer.

2. *Form of disclosures.* Whether the disclosures required to be on or with an application must be in electronic form depends upon the following:

i. If an applicant accesses a credit application electronically (other than as described under ii below), such as online at a home computer, the creditor must provide the disclosures in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the creditor instead mailed paper disclosures to the applicant, this requirement would not be met.

ii. In contrast, if an applicant is physically present in the creditor's office, and accesses a credit application electronically, such as via a terminal or kiosk (or if the applicant uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the creditor to provide applications to consumers), the creditor may provide disclosures in either electronic or paper form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.

Section 1002.5—Rules Concerning Requests for Information

5(a) General rules.

Paragraph 5(a)(1).

1. *Requests for information.* This section governs the types of information that a creditor may gather. Section1002.6 governs how information may be used.

Paragraph 5(a)(2).

1. *Local laws.* Information that a creditor is allowed to collect pursuant to a ''state'' statute or regulation includes information required by a local statute, regulation, or ordinance.

2. *Information required by Regulation C.* Regulation C generally requires creditors covered by the Home Mortgage Disclosure Act (HMDA) to collect and report information about the race, ethnicity, and sex of applicants for home-improvement loans and home-purchase loans, including some types of loans not covered by §1002.13.

3. *Collecting information on behalf of creditors.* Persons such as loan brokers and correspondents do not violate the ECOA or Regulation B if they collect information that they are otherwise prohibited from collecting, where the purpose of collecting the information is to provide it to a creditor that is subject to the Home Mortgage Disclosure Act or another Federal or state statute or regulation requiring data collection.

5(d) Other limitations on information requests.

Paragraph 5(d)(1).

1. *Indirect disclosure of prohibited information.* The fact that certain credit-related information may indirectly disclose marital status does not bar a creditor from seeking such information. For example, the creditor may ask about:

i. The applicant's obligation to pay alimony, child support, or separate maintenance income.

ii. The source of income to be used as the basis for repaying the credit requested, which could disclose that it is the income of a spouse.

iii. Whether any obligation disclosed by the applicant has a co-obligor, which could disclose that the co-obligor is a spouse or former spouse.

iv. The ownership of assets, which could disclose the interest of a spouse.

Paragraph 5(d)(2).

1. *Disclosure about income.* The sample application forms in appendix B to the regulation illustrate how a creditor may inform an applicant of the right not to disclose alimony, child support, or separate maintenance income.

2. *General inquiry about source of income.* Since a general inquiry about the source of income may lead an applicant to disclose alimony, child support, or separate maintenance income, a creditor making such an inquiry on an application form should preface the request with the disclosure required by this paragraph.

3. *Specific inquiry about sources of income.* A creditor need not give the disclosure if the inquiry about income is specific and worded in a way that is unlikely to lead the applicant to disclose the fact that income is derived from alimony, child support, or separate maintenance payments. For example, an application form that asks about specific types of income such as salary, wages, or investment income need not include the disclosure.

Section 1002.6—Rules Concerning Evaluation of Applications

6(a) General rule concerning use of information.

1. *General.* When evaluating an application for credit, a creditor generally may consider

any information obtained. However, a creditor may not consider in its evaluation of creditworthiness any information that it is barred by §1002.5 from obtaining or from using for any purpose other than to conduct a self-test under §1002.15.

2. *Effects test.* The effects test is a judicial doctrine that was developed in a series of employment cases decided by the U.S. Supreme Court under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*,) and the burdens of proof for such employment cases were codified by Congress in the Civil Rights Act of 1991 (42 U.S.C. 2000e–2). Congressional intent that this doctrine apply to the credit area is documented in the Senate Report that accompanied H.R. 6516, No. 94–589, pp. 4–5; and in the House Report that accompanied H.R. 6516, No. 94–210, p.5. The Act and regulation may prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on its face, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact. For example, requiring that applicants have income in excess of a certain amount to qualify for an overdraft line of credit could mean that women and minority applicants will be rejected at a higher rate than men and nonminority applicants. If there is a demonstrable relationship between the income requirement and creditworthiness for the level of credit involved, however, use of the income standard would likely be permissible.

6(b) Specific rules concerning use of information.

Paragraph 6(b)(1).

1. *Prohibited basis*—special purpose credit. In a special purpose credit program, a creditor may consider a prohibited basis to determine whether the applicant possesses a characteristic needed for eligibility. (See §1002.8.)

Paragraph 6(b)(2).

1. *Favoring the elderly.* Any system of evaluating creditworthiness may favor a credit applicant who is age 62 or older. A credit program that offers more favorable credit terms to applicants age 62 or older is also permissible; a program that offers more favorable credit terms to applicants at an age lower than 62 is permissible only if it meets the special-purpose credit requirements of §1002.8.

2. *Consideration of age in a credit scoring system.* Age may be taken directly into account in a credit scoring system that is ''demonstrably and statistically sound,'' as defined in §1002.2(p), with one limitation: Applicants age 62 years or older must be treated at least as favorably as applicants who are under age 62. If age is scored by assigning points to an applicant's age category, elderly applicants must receive the same or a greater number of points as the most favored class of nonelderly applicants.

i. *Age-split scorecards.* Some credit systems segment the population and use different scorecards based on the age of an applicant. In such a system, one card may cover a narrow age range (for example, applicants in their twenties or younger) who are evaluated under attributes predictive for that age group. A second card may cover all other applicants, who are evaluated under the attributes predictive for that broader class. When a system uses a card covering a wide age range that encompasses elderly applicants, the credit scoring system is not deemed to score age. Thus, the system does not raise the issue of assigning a negative factor or value to the age of elderly applicants. But if a system segments the population by age into multiple scorecards, and includes elderly applicants in a narrower age range, the credit scoring system does score age. To comply with the Act and regulation in such a case, the creditor must ensure that the system does not assign a negative factor or value to the age of elderly applicants as a class.

3. *Consideration of age in a judgmental system.* In a judgmental system, defined in §1002.2(t), a creditor may not decide whether to extend credit or set the terms and conditions of credit based on age or information related exclusively to age. Age or age-related information may be considered only in evaluating other ''pertinent elements of creditworthiness'' that are drawn from the particular facts and circumstances concerning the applicant. For example, a creditor may not reject an application or terminate an account because the applicant is 60 years old. But a creditor that uses a judgmental system may relate the applicant's age to other information about the applicant that the creditor considers in evaluating creditworthiness. As the following examples illustrate, the evaluation must be made in an individualized, case-by-case manner:

i. A creditor may consider the applicant's occupation and length of time to retirement to ascertain whether the applicant's income (including retirement income) will support the extension of credit to its maturity.

ii. A creditor may consider the adequacy of any security offered when the term of the credit extension exceeds the life expectancy of the applicant and the cost of realizing on the collateral could exceed the applicant's equity. An elderly applicant might not qualify for a 5 percent down, 30-year mortgage loan but might qualify with a larger downpayment or a shorter loan maturity.

iii. A creditor may consider the applicant's age to assess the significance of length of employment (a young applicant may have just entered the job market) or length of time at an address (an elderly applicant may

recently have retired and moved from a long-term residence).

4. *Consideration of age in a reverse mortgage.* A reverse mortgage is a home-secured loan in which the borrower receives payments from the creditor, and does not become obligated to repay these amounts (other than in the case of default) until the borrower dies, moves permanently from the home, or transfers title to the home, or upon a specified maturity date. Disbursements to the borrower under a reverse mortgage typically are determined by considering the value of the borrower's home, the current interest rate, and the borrower's life expectancy. A reverse mortgage program that requires borrowers to be age 62 or older is permissible under §1002.6(b)(2)(iv). In addition, under §1002.6(b)(2)(iii), a creditor may consider a borrower's age to evaluate a pertinent element of creditworthiness, such as the amount of the credit or monthly payments that the borrower will receive, or the estimated repayment date.

5. *Consideration of age in a combined system.* A creditor using a credit scoring system that qualifies as ''empirically derived'' under §1002.2(p) may consider other factors (such as a credit report or the applicant's cash flow) on a judgmental basis. Doing so will not negate the classification of the credit scoring component of the combined system as ''demonstrably and statistically sound.'' While age could be used in the credit scoring portion, however, in the judgmental portion age may not be considered directly. It may be used only for the purpose of determining a ''pertinent element of creditworthiness.'' (See comment 6(b)(2)–3.)

6. *Consideration of public assistance.* When considering income derived from a public assistance program, a creditor may take into account, for example:

i. The length of time an applicant will likely remain eligible to receive such income.

ii. Whether the applicant will continue to qualify for benefits based on the status of the applicant's dependents (as in the case of Temporary Aid to Needy Families, or social security payments to a minor).

iii. Whether the creditor can attach or garnish the income to assure payment of the debt in the event of default.

Paragraph 6(b)(5).

1. *Consideration of an individual applicant.* A creditor must evaluate income derived from part-time employment, alimony, child support, separate maintenance payments, retirement benefits, or public assistance on an individual basis, not on the basis of aggregate statistics; and must assess its reliability or unreliability by analyzing the applicant's actual circumstances, not by analyzing statistical measures derived from a group.

2. *Payments consistently made.* In determining the likelihood of consistent payments of alimony, child support, or separate maintenance, a creditor may consider factors such as whether payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; whether the payments are regularly received by the applicant; the availability of court or other procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when it is available to the creditor.

3. *Consideration of income.*

i. A creditor need not consider income at all in evaluating creditworthiness. If a creditor does consider income, there are several acceptable methods, whether in a credit scoring or a judgmental system:

A. A creditor may score or take into account the total sum of all income stated by the applicant without taking steps to evaluate the income for reliability.

B. A creditor may evaluate each component of the applicant's income, and then score or take into account income determined to be reliable separately from other income; or the creditor may disregard that portion of income that is not reliable when it aggregates reliable income.

C. A creditor that does not evaluate all income components for reliability must treat as reliable any component of protected income that is not evaluated.

ii. In considering the separate components of an applicant's income, the creditor may not automatically discount or exclude from consideration any protected income. Any discounting or exclusion must be based on the applicant's actual circumstances.

4. *Part-time employment, sources of income.* A creditor may score or take into account the fact that an applicant has more than one source of earned income—a full-time and a part-time job or two part-time jobs. A creditor may also score or treat earned income from a secondary source differently than earned income from a primary source. The creditor may not, however, score or otherwise take into account the number of sources for income such as retirement income, social security, supplemental security income, and alimony. Nor may the creditor treat negatively the fact that an applicant's only earned income is derived from, for example, a part-time job.

Paragraph 6(b)(6).

1. *Types of credit references.* A creditor may restrict the types of credit history and credit references that it will consider, provided that the restrictions are applied to all credit applicants without regard to sex, marital status, or any other prohibited basis. On the applicant's request, however, a creditor must consider credit information not reported

through a credit bureau when the information relates to the same types of credit references and history that the creditor would consider if reported through a credit bureau.

Paragraph 6(b)(7).

1. *National origin—immigration status.* The applicant's immigration status and ties to the community (such as employment and continued residence in the area) could have a bearing on a creditor's ability to obtain repayment. Accordingly, the creditor may consider immigration status and differentiate, for example, between a noncitizen who is a long-time resident with permanent resident status and a noncitizen who is temporarily in this country on a student visa.

2. *National origin—citizenship.* A denial of credit on the ground that an applicant is not a United States citizen is not per se discrimination based on national origin.

Paragraph 6(b)(8).

1. *Prohibited basis—marital status.* A creditor may consider the marital status of an applicant or joint applicant for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit. For example, in a secured transaction involving real property, a creditor could take into account whether state law gives the applicant's spouse an interest in the property being offered as collateral.

Section 1002.7—Rules Concerning Extensions of Credit

7(a) Individual accounts.

1. *Open-end credit—authorized user.* A creditor may not require a creditworthy applicant seeking an individual credit account to provide additional signatures. But the creditor may condition the designation of an authorized user by the account holder on the authorized user's becoming contractually liable for the account, as long as the creditor does not differentiate on any prohibited basis in imposing this requirement.

2. *Open-end credit—choice of authorized user.* A creditor that permits an account holder to designate an authorized user may not restrict this designation on a prohibited basis. For example, if the creditor allows the designation of spouses as authorized users, the creditor may not refuse to accept a nonspouse as an authorized user.

3. *Overdraft authority on transaction accounts.* If a transaction account (such as a checking account or NOW account) includes an overdraft line of credit, the creditor may require that all persons authorized to draw on the transaction account assume liability for any overdraft.

7(b) Designation of name.

1. *Single name on account.* A creditor may require that joint applicants on an account designate a single name for purposes of administering the account and that a single name be embossed on any credit cards issued on the account. But the creditor may not require that the name be the husband's name. (See §1002.10 for rules governing the furnishing of credit history on accounts held by spouses.)

7(c) Action concerning existing open-end accounts.

Paragraph 7(c)(1).

1. *Termination coincidental with marital status change.* When an account holder's marital status changes, a creditor generally may not terminate the account unless it has evidence that the account holder is now unable or unwilling to repay. But the creditor may terminate an account on which both spouses are jointly liable, even if the action coincides with a change in marital status, when one or both spouses:

i. Repudiate responsibility for future charges on the joint account.

ii. Request separate accounts in their own names.

iii. Request that the joint account be closed.

2. *Updating information.* A creditor may periodically request updated information from applicants but may not use events related to a prohibited basis—such as an applicant's retirement or reaching a particular age, or a change in name or marital status—to trigger such a request.

Paragraph 7(c)(2).

1. *Procedure pending reapplication.* A creditor may require a reapplication from an account holder, even when there is no evidence of unwillingness or inability to repay, if (1) the credit was based on the qualifications of a person who is no longer available to support the credit and (2) the creditor has information indicating that the account holder's income may be insufficient to support the credit. While a reapplication is pending, the creditor must allow the account holder full access to the account under the existing contract terms. The creditor may specify a reasonable time period within which the account holder must submit the required information.

7(d) Signature of spouse or other person.

1. *Qualified applicant.* The signature rules ensure that qualified applicants are able to obtain credit in their own names. Thus, when an applicant requests individual credit, a creditor generally may not require the signature of another person unless the creditor has first determined that the applicant alone does not qualify for the credit requested.

2. *Unqualified applicant.* When an applicant requests individual credit but does not meet a creditor's standards, the creditor may require a cosigner, guarantor, endorser, or similar party—but cannot require that it be the spouse. (See commentary to §§1002.7(d)(5) and (6).)

Paragraph 7(d)(1).

1. *Signature of another person.* It is impermissible for a creditor to require an applicant who is individually creditworthy to provide a cosigner—even if the creditor applies the requirement without regard to sex, marital status, or any other prohibited basis. (But see comment 7(d)(6)–1 concerning guarantors of closely held corporations.)

2. *Joint applicant.* The term ''joint applicant'' refers to someone who applies contemporaneously with the applicant for shared or joint credit. It does not refer to someone whose signature is required by the creditor as a condition for granting the credit requested.

3. *Evidence of joint application.* A person's intent to be a joint applicant must be evidenced at the time of application. Signatures on a promissory note may not be used to show intent to apply for joint credit. On the other hand, signatures or initials on a credit application affirming applicants' intent to apply for joint credit may be used to establish intent to apply for joint credit. (See appendix B.) The method used to establish intent must be distinct from the means used by individuals to affirm the accuracy of information. For example, signatures on a joint financial statement affirming the veracity of information are not sufficient to establish intent to apply for joint credit.

Paragraph 7(d)(2).

1. *Jointly owned property.* If an applicant requests unsecured credit, does not own sufficient separate property, and relies on joint property to establish creditworthiness, the creditor must value the applicant's interest in the jointly owned property. A creditor may not request that a nonapplicant joint owner sign any instrument as a condition of the credit extension unless the applicant's interest does not support the amount and terms of the credit sought.

i. *Valuation of applicant's interest.* In determining the value of an applicant's interest in jointly owned property, a creditor may consider factors such as the form of ownership and the property's susceptibility to attachment, execution, severance, or partition; the value of the applicant's interest after such action; and the cost associated with the action. This determination must be based on the existing form of ownership, and not on the possibility of a subsequent change. For example, in determining whether a married applicant's interest in jointly owned property is sufficient to satisfy the creditor's standards of creditworthiness for individual credit, a creditor may not consider that the applicant's separate property could be transferred into tenancy by the entirety after consummation. Similarly, a creditor may not consider the possibility that the couple may divorce. Accordingly, a creditor may not require the signature of the non-applicant spouse in these or similar circumstances.

ii. *Other options to support credit.* If the applicant's interest in jointly owned property does not support the amount and terms of credit sought, the creditor may offer the applicant other options to qualify for the extension of credit. For example:

A. Providing a co-signer or other party (§1002.7(d)(5));

B. Requesting that the credit be granted on a secured basis (§1002.7(d)(4)); or

C. Providing the signature of the joint owner on an instrument that ensures access to the property in the event of the applicant's death or default, but does not impose personal liability unless necessary under state law (such as a limited guarantee). A creditor may not routinely require, however, that a joint owner sign an instrument (such as a quitclaim deed) that would result in the forfeiture of the joint owner's interest in the property.

2. *Need for signature—reasonable belief.* A creditor's reasonable belief as to what instruments need to be signed by a person other than the applicant should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

Paragraph 7(d)(3).

1. *Residency.* In assessing the creditworthiness of a person who applies for credit in a community property state, a creditor may assume that the applicant is a resident of the state unless the applicant indicates otherwise.

Paragraph 7(d)(4).

1. *Creation of enforceable lien.* Some state laws require that both spouses join in executing any instrument by which real property is encumbered. If an applicant offers such property as security for credit, a creditor may require the applicant's spouse to sign the instruments necessary to create a valid security interest in the property. The creditor may not require the spouse to sign the note evidencing the credit obligation if signing only the mortgage or other security agreement is sufficient to make the property available to satisfy the debt in the event of default. However, if under state law both spouses must sign the note to create an enforceable lien, the creditor may require the signatures.

2. *Need for signature—reasonable belief.* Generally, a signature to make the secured property available will only be needed on a security agreement. A creditor's reasonable belief that, to ensure access to the property, the spouse's signature is needed on an instrument that imposes personal liability should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

3. *Integrated instruments.* When a creditor uses an integrated instrument that combines the note and the security agreement, the

spouse cannot be asked to sign the integrated instrument if the signature is only needed to grant a security interest. But the spouse could be asked to sign an integrated instrument that makes clear—for example, by a legend placed next to the spouse's signature—that the spouse's signature is only to grant a security interest and that signing the instrument does not impose personal liability.

Paragraph 7(d)(5).

1. *Qualifications of additional parties.* In establishing guidelines for eligibility of guarantors, cosigners, or similar additional parties, a creditor may restrict the applicant's choice of additional parties but may not discriminate on the basis of sex, marital status, or any other prohibited basis. For example, the creditor could require that the additional party live in the creditor's market area.

2. *Reliance on income of another person—individual credit.* An applicant who requests individual credit relying on the income of another person (including a spouse in a noncommunity property state) may be required to provide the signature of the other person to make the income available to pay the debt. In community property states, the signature of a spouse may be required if the applicant relies on the spouse's separate income. If the applicant relies on the spouse's future earnings that as a matter of state law cannot be characterized as community property until earned, the creditor may require the spouse's signature, but need not do so—even if it is the creditor's practice to require the signature when an applicant relies on the future earnings of a person other than a spouse. (See §1002.6(c) on consideration of state property laws.)

3. *Renewals.* If the borrower's creditworthiness is reevaluated when a credit obligation is renewed, the creditor must determine whether an additional party is still warranted and, if not warranted, release the additional party.

Paragraph 7(d)(6).

1. *Guarantees.* A guarantee on an extension of credit is part of a credit transaction and therefore subject to the regulation. A creditor may require the personal guarantee of the partners, directors, or officers of a business, and the shareholders of a closely held corporation, even if the business or corporation is creditworthy. The requirement must be based on the guarantor's relationship with the business or corporation, however, and not on a prohibited basis. For example, a creditor may not require guarantees only for women-owned or minority-owned businesses. Similarly, a creditor may not require guarantees only of the married officers of a business or the married shareholders of a closely held corporation.

2. *Spousal guarantees.* The rules in §1002.7(d) bar a creditor from requiring the signature of a guarantor's spouse just as they bar the creditor from requiring the signature of an applicant's spouse. For example, although a creditor may require all officers of a closely held corporation to personally guarantee a corporate loan, the creditor may not automatically require that spouses of married officers also sign the guarantee. If an evaluation of the financial circumstances of an officer indicates that an additional signature is necessary, however, the creditor may require the signature of another person in appropriate circumstances in accordance with §1002.7(d)(2).

7(e) Insurance.

1. *Differences in terms.* Differences in the availability, rates, and other terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant does not violate Regulation B.

2. *Insurance information.* A creditor may obtain information about an applicant's age, sex, or marital status for insurance purposes. The information may only be used for determining eligibility and premium rates for insurance, however, and not in making the credit decision.

Section 1002.8—Special Purpose Credit Programs

8(a) Standards for programs.

1. *Determining qualified programs.* The Bureau does not determine whether individual programs qualify for special purpose credit status, or whether a particular program benefits an ''economically disadvantaged class of persons.'' The agency or creditor administering or offering the loan program must make these decisions regarding the status of its program.

2. *Compliance with a program authorized by Federal or state law.* A creditor does not violate Regulation B when it complies in good faith with a regulation promulgated by a government agency implementing a special purpose credit program under §1002.8(a)(1). It is the agency's responsibility to promulgate a regulation that is consistent with Federal and state law.

3. *Expressly authorized.* Credit programs authorized by Federal or state law include programs offered pursuant to Federal, state, or local statute, regulation or ordinance, or pursuant to judicial or administrative order.

4. *Creditor liability.* A refusal to grant credit to an applicant is not a violation of the Act or regulation if the applicant does not meet the eligibility requirements under a special purpose credit program.

5. *Determining need.* In designing a special purpose credit program under §1002.8(a), a for-profit organization must determine that the program will benefit a class of people who would otherwise be denied credit or would receive it on less favorable terms. This determination can be based on a broad analysis using the organization's own research or

data from outside sources, including governmental reports and studies. For example, a creditor might design new products to reach consumers who would not meet, or have not met, its traditional standards of creditworthiness due to such factors as credit inexperience or the use of credit sources that may not report to consumer reporting agencies. Or, a bank could review Home Mortgage Disclosure Act data along with demographic data for its assessment area and conclude that there is a need for a special purpose credit program for low-income minority borrowers.

6. *Elements of the program.* The written plan must contain information that supports the need for the particular program. The plan also must either state a specific period of time for which the program will last, or contain a statement regarding when the program will be reevaluated to determine if there is a continuing need for it.

8(b) Rules in other sections.

1. *Applicability of rules.* A creditor that rejects an application because the applicant does not meet the eligibility requirements (common characteristic or financial need, for example) must nevertheless notify the applicant of action taken as required by §1002.9.

8(c) Special rule concerning requests and use of information.

1. *Request of prohibited basis information.* This section permits a creditor to request and consider certain information that would otherwise be prohibited by §§1002.5 and 1002.6 to determine an applicant's eligibility for a particular program.

2. *Examples.* Examples of programs under which the creditor can ask for and consider information about a prohibited basis are:

i. Energy conservation programs to assist the elderly, for which the creditor must consider the applicant's age.

ii. Programs under a Minority Enterprise Small Business Investment Corporation, for which a creditor must consider the applicant's minority status.

8(d) Special rule in the case of financial need.

1. *Request of prohibited basis information.* This section permits a creditor to request and consider certain information that would otherwise be prohibited by §§1002.5 and 1002.6, and to require signatures that would otherwise be prohibited by §1002.7(d).

2. *Examples.* Examples of programs in which financial need is a criterion are:

i. Subsidized housing programs for low-to moderate-income households, for which a creditor may have to consider the applicant's receipt of alimony or child support, the spouse's or parents' income, etc.

ii. Student loan programs based on the family's financial need, for which a creditor may have to consider the spouse's or parents' financial resources.

3. *Student loans.* In a guaranteed student loan program, a creditor may obtain the signature of a parent as a guarantor when required by Federal or state law or agency regulation, or when the student does not meet the creditor's standards of creditworthiness. (See §§1002.7(d)(1) and (5).) The creditor may not require an additional signature when a student has a work or credit history that satisfies the creditor's standards.

Section 1002.9—Notifications

1. *Use of the term adverse action.* The regulation does not require that a creditor use the term adverse action in communicating to an applicant that a request for an extension of credit has not been approved. In notifying an applicant of adverse action as defined by §1002.2(c)(1), a creditor may use any words or phrases that describe the action taken on the application.

2. *Expressly withdrawn applications.* When an applicant expressly withdraws a credit application, the creditor is not required to comply with the notification requirements under §1002.9. (The creditor must comply, however, with the record retention requirements of the regulation. See §1002.12(b)(3).)

3. *When notification occurs.* Notification occurs when a creditor delivers or mails a notice to the applicant's last known address or, in the case of an oral notification, when the creditor communicates the credit decision to the applicant.

4. *Location of notice.* The notifications required under §1002.9 may appear on either or both sides of a form or letter.

5. *Prequalification requests.* Whether a creditor must provide a notice of action taken for a prequalification request depends on the creditor's response to the request, as discussed in comment 2(f)-3. For instance, a creditor may treat the request as an inquiry if the creditor evaluates specific information about the consumer and tells the consumer the loan amount, rate, and other terms of credit the consumer could qualify for under various loan programs, explaining the process the consumer must follow to submit a mortgage application and the information the creditor will analyze in reaching a credit decision. On the other hand, a creditor has treated a request as an application, and is subject to the adverse action notice requirements of §1002.9 if, after evaluating information, the creditor decides that it will not approve the request and communicates that decision to the consumer. For example, if the creditor tells the consumer that it would not approve an application for a mortgage because of a bankruptcy in the consumer's record, the creditor has denied an application for credit.

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

Paragraph 9(a)(1).

1. *Timing of notice—when an application is complete.* Once a creditor has obtained all the information it normally considers in making a credit decision, the application is complete and the creditor has 30 days in which to notify the applicant of the credit decision. (See also comment 2(f)-6.)

2. *Notification of approval.* Notification of approval may be express or by implication. For example, the creditor will satisfy the notification requirement when it gives the applicant the credit card, money, property, or services requested.

3. *Incomplete application—denial for incompleteness.* When an application is incomplete regarding information that the applicant can provide and the creditor lacks sufficient data for a credit decision, the creditor may deny the application giving as the reason for denial that the application is incomplete. The creditor has the option, alternatively, of providing a notice of incompleteness under §1002.9(c).

4. *Incomplete application—denial for reasons other than incompleteness.* When an application is missing information but provides sufficient data for a credit decision, the creditor may evaluate the application, make its credit decision, and notify the applicant accordingly. If credit is denied, the applicant must be given the specific reasons for the credit denial (or notice of the right to receive the reasons); in this instance missing information or ''incomplete application'' cannot be given as the reason for the denial.

5. *Length of counteroffer.* Section 1002.9(a)(1)(iv) does not require a creditor to hold a counteroffer open for 90 days or any other particular length of time.

6. *Counteroffer combined with adverse action notice.* A creditor that gives the applicant a combined counteroffer and adverse action notice that complies with §1002.9(a)(2) need not send a second adverse action notice if the applicant does not accept the counteroffer. A sample of a combined notice is contained in form C–4 of appendix C to the regulation.

7. *Denial of a telephone application.* When an application is made by telephone and adverse action is taken, the creditor must request the applicant's name and address in order to provide written notification under this section. If the applicant declines to provide that information, then the creditor has no further notification responsibility.

Paragraph 9(a)(3).

1. *Coverage.* In determining which rules in this paragraph apply to a given business credit application, a creditor may rely on the applicant's assertion about the revenue size of the business. (Applications to start a business are governed by the rules in §1002.9(a)(3)(i).) If an applicant applies for credit as a sole proprietor, the revenues of the sole proprietorship will determine which rules govern the application. However, if an applicant applies for business credit as an individual, the rules in §1002.9(a)(3)(i) apply unless the application is for trade or similar credit.

2. *Trade credit.* The term trade credit generally is limited to a financing arrangement that involves a buyer and a seller—such as a supplier who finances the sale of equipment, supplies, or inventory; it does not apply to an extension of credit by a bank or other financial institution for the financing of such items.

3. *Factoring.* Factoring refers to a purchase of accounts receivable, and thus is not subject to the Act or regulation. If there is a credit extension incident to the factoring arrangement, the notification rules in §1002.9(a)(3)(ii) apply, as do other relevant sections of the Act and regulation.

4. *Manner of compliance.* In complying with the notice provisions of the Act and regulation, creditors offering business credit may follow the rules governing consumer credit. Similarly, creditors may elect to treat all business credit the same (irrespective of revenue size) by providing notice in accordance with §1002.9(a)(3)(i).

5. *Timing of notification.* A creditor subject to §1002.9(a)(3)(ii)(A) is required to notify a business credit applicant, orally or in writing, of action taken on an application within a reasonable time of receiving a completed application. Notice provided in accordance with the timing requirements of §1002.9(a)(1) is deemed reasonable in all instances.

9(b) Form of ECOA notice and statement of specific reasons.

Paragraph 9(b)(1).

1. *Substantially similar notice.* The ECOA notice sent with a notification of a credit denial or other adverse action will comply with the regulation if it is ''substantially similar'' to the notice contained in §1002.9(b)(1). For example, a creditor may add a reference to the fact that the ECOA permits age to be considered in certain credit scoring systems, or add a reference to a similar state statute or regulation and to a state enforcement agency.

Paragraph 9(b)(2).

1. *Number of specific reasons.* A creditor must disclose the principal reasons for denying an application or taking other adverse action. The regulation does not mandate that a specific number of reasons be disclosed, but disclosure of more than four reasons is not likely to be helpful to the applicant.

2. *Source of specific reasons.* The specific reasons disclosed under §§1002.9(a)(2) and (b)(2) must relate to and accurately describe the factors actually considered or scored by a creditor.

3. *Description of reasons.* A creditor need not describe how or why a factor adversely

affected an applicant. For example, the notice may say ''length of residence'' rather than ''too short a period of residence.''

4. *Credit scoring system.* If a creditor bases the denial or other adverse action on a credit scoring system, the reasons disclosed must relate only to those factors actually scored in the system. Moreover, no factor that was a principal reason for adverse action may be excluded from disclosure. The creditor must disclose the actual reasons for denial (for example, ''age of automobile'') even if the relationship of that factor to predicting creditworthiness may not be clear to the applicant.

5. *Credit scoring—method for selecting reasons.* The regulation does not require that any one method be used for selecting reasons for a credit denial or other adverse action that is based on a credit scoring system. Various methods will meet the requirements of the regulation. One method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by applicants whose total score was at or slightly above the minimum passing score. Another method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by all applicants. These average scores could be calculated during the development or use of the system. Any other method that produces results substantially similar to either of these methods is also acceptable under the regulation.

6. *Judgmental system.* If a creditor uses a judgmental system, the reasons for the denial or other adverse action must relate to those factors in the applicant's record actually reviewed by the person making the decision.

7. *Combined credit scoring and judgmental system.* If a creditor denies an application based on a credit evaluation system that employs both credit scoring and judgmental components, the reasons for the denial must come from the component of the system that the applicant failed. For example, if a creditor initially credit scores an application and denies the credit request as a result of that scoring, the reasons disclosed to the applicant must relate to the factors scored in the system. If the application passes the credit scoring stage but the creditor then denies the credit request based on a judgmental assessment of the applicant's record, the reasons disclosed must relate to the factors reviewed judgmentally, even if the factors were also considered in the credit scoring component. If the application is not approved or denied as a result of the credit scoring, but falls into a gray band, and the creditor performs a judgmental assessment and denies the credit after that assessment, the reasons disclosed must come from both components of the system. The same result applies where a judgmental assessment is the first component of the combined system. As provided in comment 9(b)(2)–1, disclosure of more than a combined total of four reasons is not likely to be helpful to the applicant.

8. *Automatic denial.* Some credit decision methods contain features that call for automatic denial because of one or more negative factors in the applicant's record (such as the applicant's previous bad credit history with that creditor, the applicant's declaration of bankruptcy, or the fact that the applicant is a minor). When a creditor denies the credit request because of an automatic-denial factor, the creditor must disclose that specific factor.

9. *Combined ECOA–FCRA disclosures.* The ECOA requires disclosure of the principal reasons for denying or taking other adverse action on an application for an extension of credit. The Fair Credit Reporting Act (FCRA) requires a creditor to disclose when it has based its decision in whole or in part on information from a source other than the applicant or its own files. Disclosing that a credit report was obtained and used in the denial of the application, as the FCRA requires, does not satisfy the ECOA requirement to disclose specific reasons. For example, if the applicant's credit history reveals delinquent credit obligations and the application is denied for that reason, to satisfy §1002.9(b)(2) the creditor must disclose that the application was denied because of the applicant's delinquent credit obligations. The FCRA also requires a creditor to disclose, as applicable, a credit score it used in taking adverse action along with related information, including up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor). Disclosing the key factors that adversely affected the consumer's credit score does not satisfy the ECOA requirement to disclose specific reasons for denying or taking other adverse action on an application or extension of credit. Sample forms C–1 through C–5 of appendix C of the regulation provide for both the ECOA and FCRA disclosures. See also comment 9(b)(2)–1.

9(c) Incomplete applications.

Paragraph 9(c)(1).

1. *Exception for preapprovals.* The requirement to provide a notice of incompleteness does not apply to preapprovals that constitute applications under §1002.2(f).

Paragraph 9(c)(2).

1. *Reapplication.* If information requested by a creditor is submitted by an applicant after the expiration of the time period designated by the creditor, the creditor may require the applicant to make a new application.

Paragraph 9(c)(3).

1. *Oral inquiries for additional information.* If an applicant fails to provide the information in response to an oral request, a creditor must send a written notice to the applicant within the 30-day period specified in §§1002.9(c)(1) and (2). If the applicant provides the information, the creditor must take action on the application and notify the applicant in accordance with §1002.9(a).

9(g) Applications submitted through a third party.

1. *Third parties.* The notification of adverse action may be given by one of the creditors to whom an application was submitted, or by a noncreditor third party. If one notification is provided on behalf of multiple creditors, the notice must contain the name and address of each creditor. The notice must either disclose the applicant's right to a statement of specific reasons within 30 days, or give the primary reasons each creditor relied upon in taking the adverse action—clearly indicating which reasons relate to which creditor.

2. *Third party notice—enforcement agency.* If a single adverse action notice is being provided to an applicant on behalf of several creditors and they are under the jurisdiction of different Federal enforcement agencies, the notice need not name each agency; disclosure of any one of them will suffice.

3. *Third-party notice—liability.* When a notice is to be provided through a third party, a creditor is not liable for an act or omission of the third party that constitutes a violation of the regulation if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and maintains reasonable procedures adapted to prevent such violations.

Section 1002.10—Furnishing of Credit Information

1. *Scope.* The requirements of §1002.10 for designating and reporting credit information apply only to consumer credit transactions. Moreover, they apply only to creditors that opt to furnish credit information to credit bureaus or to other creditors; there is no requirement that a creditor furnish credit information on its accounts.

2. *Reporting on all accounts.* The requirements of §1002.10 apply only to accounts held or used by spouses. However, a creditor has the option to designate all joint accounts (or all accounts with an authorized user) to reflect the participation of both parties, whether or not the accounts are held by persons married to each other.

3. *Designating accounts.* In designating accounts and reporting credit information, a creditor need not distinguish between accounts on which the spouse is an authorized user and accounts on which the spouse is a contractually liable party.

4. *File and index systems.* The regulation does not require the creation or maintenance of separate files in the name of each participant on a joint or user account, or require any other particular system of record-keeping or indexing. It requires only that a creditor be able to report information in the name of each spouse on accounts covered by §1002.10. Thus, if a creditor receives a credit inquiry about the wife, it should be able to locate her credit file without asking the husband's name.

10(a) Designation of accounts.

1. *New parties.* When new parties who are spouses undertake a legal obligation on an account, as in the case of a mortgage loan assumption, the creditor must change the designation on the account to reflect the new parties and must furnish subsequent credit information on the account in the new names.

2. *Request to change designation of account.* A request to change the manner in which information concerning an account is furnished does not alter the legal liability of either spouse on the account and does not require a creditor to change the name in which the account is maintained.

Section 1002.11—Relation to State Law

11(a) Inconsistent state laws.

1. *Preemption determination—New York.* The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. The Board of Governors determined that the following provisions in the state law of New York are preempted by the Federal law, effective November 11, 1988:

i. Article 15, section 296a(1)(b). Unlawful discriminatory practices in relation to credit on the basis of race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars taking a prohibited basis into account when establishing eligibility for certain special-purpose credit programs.

ii. Article 15, section 296a(1)(c). Unlawful discriminatory practice to make any record or inquiry based on race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars a creditor from requesting and considering information regarding the particular characteristics (for example, race, national origin, or sex) required for eligibility for special-purpose credit programs.

2. *Preemption determination—Ohio.* The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. The Board of Governors determined that the following provision in the state law of Ohio

is preempted by the Federal law, effective July 23, 1990:

i. Section 4112.021(B)(1)—Unlawful discriminatory practices in credit transactions. This provision is preempted to the extent that it bars asking or favorably considering the age of an elderly applicant; prohibits the consideration of age in a credit scoring system; permits without limitation the consideration of age in real estate transactions; and limits the consideration of age in special-purpose credit programs to certain government-sponsored programs identified in the state law.

Section 1002.12—Record Retention

12(a) Retention of prohibited information.

1. *Receipt of prohibited information.* Unless the creditor specifically requested such information, a creditor does not violate this section when it receives prohibited information from a consumer reporting agency.

2. *Use of retained information.* Although a creditor may keep in its files prohibited information as provided in §1002.12(a), the creditor may use the information in evaluating credit applications only if permitted to do so by §1002.6.

12(b) Preservation of records.

1. *Copies.* Copies of the original record include carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any other accurate retrieval system, such as documents stored and reproduced by computer. A creditor that uses a computerized or mechanized system need not keep a paper copy of a document (for example, of an adverse action notice) if it can regenerate all pertinent information in a timely manner for examination or other purposes.

2. *Computerized decisions.* A creditor that enters information items from a written application into a computerized or mechanized system and makes the credit decision mechanically, based only on the items of information entered into the system, may comply with §1002.12(b) by retaining the information actually entered. It is not required to store the complete written application, nor is it required to enter the remaining items of information into the system. If the transaction is subject to §1002.13, however, the creditor is required to enter and retain the data on personal characteristics in order to comply with the requirements of that section.

Paragraph 12(b)(3).

1. *Withdrawn and brokered applications.* In most cases, the 25-month retention period for applications runs from the date a notification is sent to the applicant granting or denying the credit requested. In certain transactions, a creditor is not obligated to provide a notice of the action taken. (See, for example, comment 9–2.) In such cases, the 25-month requirement runs from the date of application, as when:

i. An application is withdrawn by the applicant.

ii. An application is submitted to more than one creditor on behalf of the applicant, and the application is approved by one of the other creditors.

12(b)(6) Self-tests.

1. The rule requires all written or recorded information about a self-test to be retained for 25 months after a self-test has been completed. For this purpose, a self-test is completed after the creditor has obtained the results and made a determination about what corrective action, if any, is appropriate. Creditors are required to retain information about the scope of the self-test, the methodology used and time period covered by the self-test, the report or results of the self-test including any analysis or conclusions, and any corrective action taken in response to the self-test.

12(b)(7) Preapplication marketing information.

1. *Prescreened credit solicitations.* The rule requires creditors to retain copies of prescreened credit solicitations. For purposes of this part, a prescreened solicitation is an ''offer of credit'' as described in 15 U.S.C. 1681a(1) of the Fair Credit Reporting Act. A creditor complies with this rule if it retains a copy of each solicitation mailing that contains different terms, such as the amount of credit offered, annual percentage rate, or annual fee.

2. *List of criteria.* A creditor must retain the list of criteria used to select potential recipients. This includes the criteria used by the creditor both to determine the potential recipients of the particular solicitation and to determine who will actually be offered credit.

3. *Correspondence.* A creditor may retain correspondence relating to consumers' complaints about prescreened solicitations in any manner that is reasonably accessible and is understandable to examiners. There is no requirement to establish a separate database or set of files for such correspondence, or to match consumer complaints with specific solicitation programs.

Section 1002.13—Information for Monitoring Purposes

13(a) Information to be requested.

1. *Natural person.* Section1002.13 applies only to applications from natural persons.

2. *Principal residence.* The requirements of §1002.13 apply only if an application relates to a dwelling that is or will be occupied by the applicant as the principal residence. A credit application related to a vacation home or a rental unit is not covered. In the case of a two-to four-unit dwelling, the application is covered if the applicant intends to occupy one of the units as a principal residence.

3. *Temporary financing.* An application for temporary financing to construct a dwelling is not subject to §1002.13. But an application for both a temporary loan to finance construction of a dwelling and a permanent mortgage loan to take effect upon the completion of construction is subject to §1002.13.

4. *New principal residence.* A person can have only one principal residence at a time. However, if a person buys or builds a new dwelling that will become that person's principal residence within a year or upon completion of construction, the new dwelling is considered the principal residence for purposes of §1002.13.

5. *Transactions not covered.* The information-collection requirements of this section apply to applications for credit primarily for the purchase or refinancing of a dwelling that is or will become the applicant's principal residence. Therefore, applications for credit secured by the applicant's principal residence but made primarily for a purpose other than the purchase or refinancing of the principal residence (such as loans for home improvement and debt consolidation) are not subject to the information-collection requirements. An application for an open-end home equity line of credit is not subject to this section unless it is readily apparent to the creditor when the application is taken that the primary purpose of the line is for the purchase or refinancing of a principal dwelling.

6. *Refinancings.* A refinancing occurs when an existing obligation is satisfied and replaced by a new obligation undertaken by the same borrower. A creditor that receives an application to refinance an existing extension of credit made by that creditor for the purchase of the applicant's dwelling may request the monitoring information again but is not required to do so if it was obtained in the earlier transaction.

7. *Data collection under Regulation C. See* comment 5(a)(2)–2.

13(b) Obtaining of information.

1. *Forms for collecting data.* A creditor may collect the information specified in §1002.13(a) either on an application form or on a separate form referring to the application. The applicant must be offered the option to select more than one racial designation.

2. *Written applications.* The regulation requires written applications for the types of credit covered by §1002.13. A creditor can satisfy this requirement by recording on paper or by means of computer the information that the applicant provides orally and that the creditor normally considers in a credit decision.

3. *Telephone, mail applications.*

i. A creditor that accepts an application by telephone or mail must request the monitoring information.

ii. A creditor that accepts an application by mail need not make a special request for the monitoring information if the applicant has failed to provide it on the application form returned to the creditor.

iii. If it is not evident on the face of an application that it was received by mail, telephone, or via an electronic medium, the creditor should indicate on the form or other application record how the application was received.

4. *Video and other electronic-application processes.*

i. If a creditor takes an application through an electronic medium that allows the creditor to see the applicant, the creditor must treat the application as taken in person. The creditor must note the monitoring information on the basis of visual observation or surname, if the applicant chooses not to provide the information.

ii. If an applicant applies through an electronic medium without video capability, the creditor treats the application as if it were received by mail.

5. *Applications through loan-shopping services.* When a creditor receives an application through an unaffiliated loan-shopping service, it does not have to request the monitoring information for purposes of the ECOA or Regulation B. Creditors subject to the Home Mortgage Disclosure Act should be aware, however, that data collection may be called for under Regulation C (12 CFR part 1003), which generally requires creditors to report, among other things, the sex and race of an applicant on brokered applications or applications received through a correspondent.

6. *Inadvertent notation.* If a creditor inadvertently obtains the monitoring information in a dwelling-related transaction not covered by §1002.13, the creditor may process and retain the application without violating the regulation.

13(c) Disclosure to applicants.

1. *Procedures for providing disclosures.* The disclosure to an applicant regarding the monitoring information may be provided in writing. appendix B contains a sample disclosure. A creditor may devise its own disclosure so long as it is substantially similar. The creditor need not orally request the monitoring information if it is requested in writing.

13(d) Substitute monitoring program.

1. *Substitute program.* An enforcement agency may adopt, under its established rulemaking or enforcement procedures, a program requiring creditors under its jurisdiction to collect information in addition to information required by this section.

Section 1002.14—Rules on Providing Appraisals and Valuations

14(a) Providing appraisals and other valuations.

1. *Multiple applicants.* If there is more than one applicant, the written disclosure about written appraisals, and the copies of appraisals and other written valuations, need only be given to one applicant. However, these materials must be given to the primary applicant where one is readily apparent. Similarly, if there is more than one applicant for credit in the transaction, one applicant may provide a waiver under §1002.14(a)(1), but it must be the primary applicant where one is readily apparent.

14(a)(1) In general.

1. *Coverage.* Section 1002.14 covers applications for credit to be secured by a first lien on a dwelling, as that term is defined in §1002.14(b)(2), whether the credit is for a business purpose (for example, a loan to start a business) or a consumer purpose (for example, a loan to purchase a home).

2. *Renewals.* Section 1002.14(a)(1) applies when an applicant requests the renewal of an existing extension of credit and the creditor develops a new appraisal or other written valuation. Section 1002.14(a)(1) does not apply to the extent a creditor uses the appraisals and other written valuations that were previously developed in connection with the prior extension of credit to evaluate the renewal request.

3. *Written.* For purposes of §1002.14, an ''appraisal or other written valuation'' includes, without limitation, an appraisal or other valuation received or developed by the creditor in paper form (hard copy); electronically, such as CD or email; or by any other similar media. See §1002.14(a)(5) regarding the provision of copies of appraisals and other written valuations to applicants via electronic means.

4. *Timing.* Section 1002.14(a)(1) requires that the creditor ''provide'' copies of appraisals and other written valuations to the applicant ''promptly upon completion,'' or no later than three business days before consummation (for closed-end credit) or account opening (for open-end credit), whichever is earlier.

i. For purposes of this timing requirement, ''provide'' means ''deliver.'' Delivery occurs three business days after mailing or delivering the copies to the last-known address of the applicant, or when evidence indicates actual receipt by the applicant, whichever is earlier. Delivery to or actual receipt by the applicant by electronic means must comply with the E-Sign Act, as provided for in §1002.14(a)(5).

ii. The application and meaning of the ''promptly upon completion'' standard depends upon the facts and circumstances, including but not limited to when the creditor receives the appraisal or other written valuation, and the extent of any review or revision after the creditor receives it.

iii. ''Completion'' occurs when the last version is received by the creditor, or when the creditor has reviewed and accepted the appraisal or other written valuation to include any changes or corrections required, whichever is later. *See also* comment 14(a)(1)–7.

iv. In a transaction that is being consummated (for closed-end credit) or in which the account is being opened (for open-end credit), if an appraisal or other written valuation has been developed but is not yet complete, the deadline for providing a copy of three business days before consummation or account opening still applies, unless the applicant waived that deadline as provided under §1002.14(a)(1), in which case the copy must be provided at or before consummation or account opening.

v. Even if the transaction will not be consummated (for closed-end credit) or the account will not be opened (for open-end credit), the copy must be provided ''promptly upon completion'' as provided for in §1002.14(a)(1), unless the applicant has waived that deadline as provided under §1002.14(a)(1), in which case as provided for in §1002.14(a)(1) the copy must be provided to the applicant no later than 30 days after the creditor determines the transaction will not be consummated or the account will not be opened.

5. *Promptly upon completion–examples.* Examples in which the ''promptly upon completion'' standard would be satisfied include, but are not limited to, those in subparagraphs i, ii, and iii below. Examples in which the ''promptly upon completion'' standard would not be satisfied include, but are not limited to, those in subparagraphs iv and v below.

i. *Sending a copy of an appraisal within a week of completion with sufficient time before consummation (or account opening for open-end credit).* On day 15 after receipt of the application, the creditor's underwriting department reviews an appraisal and determines it is acceptable. One week later, the creditor sends a copy of the appraisal to the applicant. The applicant actually receives the copy more than three business days before the date of consummation (or account opening). The creditor has provided the copy of the appraisal promptly upon completion.

ii. *Sending a copy of a revised appraisal within a week after completion and with sufficient time before consummation (or account opening for open-end credit).* An appraisal is being revised, and the creditor does not receive the revised appraisal until day 45 after the application, when the creditor immediately determines the revised appraisal is acceptable. A week later, the creditor sends a copy of the revised appraisal to the applicant, and does not send a copy of the initial appraisal to the applicant. The applicant actually receives the copy of the revised appraisal three business days before the date of consummation

(or account opening). The creditor has provided the appraisal copy promptly upon completion.

iii. *Sending a copy of an AVM report within a week after its receipt and with sufficient time before consummation (or account opening for open-end credit).* The creditor receives an automated valuation model (AVM) report on day 5 after receipt of the application and treats the AVM report as complete when it is received. On day 12 after receipt of the application, the creditor sends the applicant a copy of the valuation. The applicant actually receives the valuation more than three business days before the date of consummation (or account opening). The creditor has provided the copy of the AVM report promptly upon completion.

iv. *Delay in sending an appraisal.* On day 12 after receipt of the application, the creditor's underwriting department reviews an appraisal and determines it is acceptable. Although the creditor has determined the appraisal is complete, the creditor waits to provide a copy to the applicant until day 42, when the creditor schedules the consummation (or account opening) to occur on day 50. The creditor has not provided the copy of the appraisal promptly upon completion.

v. *Delay in sending an AVM report while waiting for completion of a second valuation.* The creditor receives an AVM report on day 5 after application and completes its review of the AVM report the day it is received. The creditor also has ordered an appraisal, but the initial version of the appraisal received by the creditor is found to be deficient and is sent for review. The creditor waits 30 days to provide a copy of the completed AVM report, until the appraisal is completed on day 35. The creditor then provides the applicant with copies of the AVM report and the revised appraisal. While the appraisal report was provided promptly upon completion, the AVM report was not.

6. *Waiver.* Section 1002.14(a)(1) permits the applicant to waive the timing requirement if the creditor provides the copies at or before consummation or account opening, except where otherwise prohibited by law. Except where otherwise prohibited by law, an applicant's waiver is effective under §1002.14(a)(1) in either of the following two situations:

i. If, no later than three business days prior to consummation or account opening, the applicant provides the creditor an affirmative oral or written statement waiving the timing requirement under this rule; or

ii. If, within three business days of consummation or account opening, the applicant provides the creditor an affirmative oral or written statement waiving the timing requirement under this rule and the waiver pertains solely to the applicant's receipt of a copy of an appraisal or other written valuation that contains only clerical changes from a previous version of the appraisal or other written valuation provided to the applicant three or more business days prior to consummation or account opening. For purpose of this second type of waiver, revisions will only be considered to be clerical in nature if they have no impact on the estimated value, and have no impact on the calculation or methodology used to derive the estimate. In addition, under §1002.14(a)(1) the applicant still must receive the copy of the revision at or prior to consummation or account opening.

7. *Multiple versions of appraisals or valuations.* For purposes of §1002.14(a)(1), the reference to ''all'' appraisals and other written valuations does not refer to all versions of the same appraisal or other valuation. If a creditor has received multiple versions of an appraisal or other written valuation, the creditor is required to provide only a copy of the latest version received. If, however, a creditor already has provided a copy of one version of an appraisal or other written valuation to an applicant, and the creditor later receives a revision of that appraisal or other written valuation, then the creditor also must provide the applicant with a copy of the revision to comply with §1002.14(a)(1). If a creditor receives only one version of an appraisal or other valuation that is developed in connection with the applicant's application, then that version must be provided to the applicant to comply with §1002.14(a)(1). *See also* comment 14(a)(1)–4 above.

14(a)(2) Disclosure.

1. *Appraisal independence requirements not affected.* Nothing in the text of the disclosure required by §1002.14(a)(2) should be construed to affect, modify, limit, or supersede the operation of any legal, regulatory, or other requirements or standards relating to independence in the conduct of appraisers or the use of applicant-ordered appraisals by creditors.

14(a)(3) Reimbursement.

1. *Photocopy, postage, or other costs.* Creditors may not charge for photocopy, postage, or other costs incurred in providing a copy of an appraisal or other written valuation in accordance with section 14(a)(1).

2. *Reasonable fee for reimbursement.* Section 1002.14(a)(3) does not prohibit a creditor from imposing a reasonable fee to reimburse the creditor's costs of the appraisal or other written valuation, so long as the fee is not increased to cover the costs of providing copies of such appraisals or other written valuations under §1002.14(a)(1). A creditor's cost may include an administration fee charged to the creditor by an appraisal management company as defined in 12 U.S.C. 3350(11). Section 1002.14(a)(3) does not, however, legally obligate the applicant to pay such fees. Further, creditors may not impose fees for reimbursement of the costs of an appraisal or other valuation where otherwise prohibited by law. For instance, a creditor may not

charge a consumer a fee for the performance of a second appraisal if the second appraisal is required under 15 U.S.C. 1639h(b)(2) and 12 CFR 1026.35(c).

14(b) Definitions.

14(b)(1) Consummation.

1. *State law governs.* When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; §1002.14 does not make this determination. A contractual commitment agreement, for example, that under applicable law binds the consumer to the credit terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.

2. *Credit vs. sale.* Consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement.

14(b)(2) Dwelling.

1. *''Motor vehicles'' not covered.* The requirements of §1002.14 do not apply to ''motor vehicles'' as defined by 12 U.S.C. 5519(f)(1).

14(b)(3) Valuation.

1. *Valuations—examples.* Examples of valuations include but are not limited to:

i. A report prepared by an appraiser (whether or not licensed or certified) including the appraiser's estimate of the property's value or opinion of value.

ii. A document prepared by the creditor's staff that assigns value to the property.

iii. A report approved by a government-sponsored enterprise for describing to the applicant the estimate of the property's value developed pursuant to the proprietary methodology or mechanism of the government-sponsored enterprise.

iv. A report generated by use of an automated valuation model to estimate the property's value.

v. A broker price opinion prepared by a real estate broker, agent, or sales person to estimate the property's value.

2. *Attachments and exhibits.* The term ''valuation'' includes any attachments and exhibits that are an integrated part of the valuation.

3. *Other documentation.* Not all documents that discuss or restate a valuation of an applicant's property constitute a ''valuation'' for purposes of §1002.14(b)(3). Examples of documents that discuss the valuation of the applicant's property or may reflect its value but nonetheless are not ''valuations'' include but are not limited to:

i. Internal documents that merely restate the estimated value of the dwelling contained in an appraisal or written valuation being provided to the applicant.

ii. Governmental agency statements of appraised value that are publically available.

iii. Publicly-available lists of valuations (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges).

iv. Manufacturers' invoices for manufactured homes.

v. Reports reflecting property inspections that do not provide an estimate of the value of the property and are not used to develop an estimate of the value of the property.

vi. Appraisal reviews that do not include the appraiser's estimate of the property's value or opinion of value.

14(c) Definitions.

1. *Appraisal reports.* Examples of appraisal reports are:

i. A report prepared by an appraiser (whether or not licensed or certified), including written comments and other documents submitted to the creditor in support of the appraiser's estimate or opinion of the property's value.

ii. A document prepared by the creditor's staff that assigns value to the property, if a third-party appraisal report has not been used.

iii. An internal review document reflecting that the creditor's valuation is different from a valuation in a third party's appraisal report (or different from valuations that are publicly available or valuations such as manufacturers' invoices for mobile homes).

2. *Other reports.* The term ''appraisal report'' does not cover all documents relating to the value of the applicant's property. Examples of reports not covered are:

i. Internal documents, if a third-party appraisal report was used to establish the value of the property.

ii. Governmental agency statements of appraised value.

iii. Valuations lists that are publicly available (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges) and valuations such as manufacturers' invoices for mobile homes.

Section 1002.15—Incentives for Self-Testing and Self-Correction

15(a) General rules.

15(a)(1) Voluntary self-testing and correction.

1. Activities required by any governmental authority are not voluntary self-tests. A governmental authority includes both administrative and judicial authorities for Federal, State, and local governments.

15(a)(2) Corrective action required.

1. To qualify for the privilege, appropriate corrective action is required when the results of a self-test show that it is more likely than not that there has been a violation of the ECOA or this part. A self-test is also privileged when it identifies no violations.

2. In some cases, the issue of whether certain information is privileged may arise before the self-test is complete or corrective actions are fully under way. This would not necessarily prevent a creditor from asserting the privilege. In situations where the self-test is not complete, for the privilege to apply the lender must satisfy the regulation's requirements within a reasonable period of time. To assert the privilege where the self-test shows a likely violation, the rule requires, at a minimum, that the creditor establish a plan for corrective action and a method to demonstrate progress in implementing the plan. Creditors must take appropriate corrective action on a timely basis after the results of the self-test are known.

3. A creditor's determination about the type of corrective action needed, or a finding that no corrective action is required, is not conclusive in determining whether the requirements of this paragraph have been satisfied. If a creditor's claim of privilege is challenged, an assessment of the need for corrective action or the type of corrective action that is appropriate must be based on a review of the self-testing results, which may require an *in camera* inspection of the privileged documents.

15(a)(3) Other privileges.

1. A creditor may assert the privilege established under this section in addition to asserting any other privilege that may apply, such as the attorney-client privilege or the work-product privilege. Self-testing data may be privileged under this section whether or not the creditor's assertion of another privilege is upheld.

15(b) Self-test defined.

15(b)(1) Definition.

Paragraph 15(b)(1)(i).

1. To qualify for the privilege, a self-test must be sufficient to constitute a determination of the extent or effectiveness of the creditor's compliance with the Act and Regulation B. Accordingly, a self-test is only privileged if it was designed and used for that purpose. A self-test that is designed or used to determine compliance with other laws or regulations or for other purposes is not privileged under this rule. For example, a self-test designed to evaluate employee efficiency or customers' satisfaction with the level of service provided by the creditor is not privileged even if evidence of discrimination is uncovered incidentally. If a self-test is designed for multiple purposes, only the portion designed to determine compliance with the ECOA is eligible for the privilege.

Paragraph 15(b)(1)(ii).

1. The principal attribute of self-testing is that it constitutes a voluntary undertaking by the creditor to produce new data or factual information that otherwise would not be available and could not be derived from loan or application files or other records related to credit transactions. Self-testing includes, but is not limited to, the practice of using fictitious applicants for credit (testers), either with or without the use of matched pairs. A creditor may elect to test a defined segment of its business, for example, loan applications processed by a specific branch or loan officer, or applications made for a particular type of credit or loan program. A creditor also may use other methods of generating information that is not available in loan and application files, such as surveying mortgage loan applicants. To the extent permitted by law, creditors might also develop new methods that go beyond traditional pre-application testing, such as hiring testers to submit fictitious loan applications for processing.

2. The privilege does not protect a creditor's analysis performed as part of processing or underwriting a credit application. A creditor's evaluation or analysis of its loan files, Home Mortgage Disclosure Act data, or similar types of records (such as broker or loan officer compensation records) does not produce new information about a creditor's compliance and is not a self-test for purposes of this section. Similarly, a statistical analysis of data derived from existing loan files is not privileged.

15(b)(3) Types of information not privileged.

Paragraph 15(b)(3)(i).

1. The information listed in this paragraph is not privileged and may be used to determine whether the prerequisites for the privilege have been satisfied. Accordingly, a creditor might be asked to identify the self-testing method, for example, whether preapplication testers were used or data were compiled by surveying loan applicants. Information about the scope of the self-test (such as the types of credit transactions examined, or the geographic area covered by the test) also is not privileged.

Paragraph 15(b)(3)(ii).

1. Property appraisal reports, minutes of loan committee meetings or other documents reflecting the basis for a decision to approve or deny an application, loan policies or procedures, underwriting standards, and broker compensation records are examples of the types of records that are not privileged. If a creditor arranges for testers to submit loan applications for processing, the records are not related to actual credit transactions for purposes of this paragraph and may be privileged self-testing records.

15(c) Appropriate corrective action.

1. The rule only addresses the corrective actions required for a creditor to take advantage of the privilege in this section. A creditor may be required to take other actions or provide additional relief if a formal finding of discrimination is made.

15(c)(1) General requirement.

1. Appropriate corrective action is required even though no violation has been formally adjudicated or admitted by the creditor. In

determining whether it is more likely than not that a violation occurred, a creditor must treat testers as if they are actual applicants for credit. A creditor may not refuse to take appropriate corrective action under this section because the self-test used fictitious loan applicants. The fact that a tester's agreement with the creditor waives the tester's legal right to assert a violation does not eliminate the requirement for the creditor to take corrective action, although no remedial relief for the tester is required under paragraph 15(c)(3).

15(c)(2) Determining the scope of appropriate corrective action.

1. Whether a creditor has taken or is taking corrective action that is appropriate will be determined on a case-by-case basis. Generally, the scope of the corrective action that is needed to preserve the privilege is governed by the scope of the self-test. For example, a creditor that self-tests mortgage loans and discovers evidence of discrimination may focus its corrective actions on mortgage loans, and is not required to expand its testing to other types of loans.

2. In identifying the policies or practices that are a likely cause of the violation, a creditor might identify inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes. The extent and scope of a likely violation may be assessed by determining which areas of operations are likely to be affected by those policies and practices, for example, by determining the types of loans and stages of the application process involved and the branches or offices where the violations may have occurred.

3. Depending on the method and scope of the self-test and the results of the test, appropriate corrective action may include one or more of the following:

i. If the self-test identifies individuals whose applications were inappropriately processed, offering to extend credit if the application was improperly denied and compensating such persons for out-of-pocket costs and other compensatory damages;

ii. Correcting institutional policies or procedures that may have contributed to the likely violation, and adopting new policies as appropriate;

iii. Identifying and then training and/or disciplining the employees involved;

iv. Developing outreach programs, marketing strategies, or loan products to serve more effectively segments of the lender's markets that may have been affected by the likely discrimination; and

v. Improving audit and oversight systems to avoid a recurrence of the likely violations.

15(c)(3) Types of relief.

Paragraph 15(c)(3)(ii).

1. The use of pre-application testers to identify policies and practices that illegally discriminate does not require creditors to review existing loan files for the purpose of identifying and compensating applicants who might have been adversely affected.

2. If a self-test identifies a specific applicant who was discriminated against on a prohibited basis, to qualify for the privilege in this section the creditor must provide appropriate remedial relief to that applicant; the creditor is not required to identify other applicants who might also have been adversely affected.

Paragraph 15(c)(3)(iii).

1. A creditor is not required to provide remedial relief to an applicant that would not be available by law. An applicant might also be ineligible for certain types of relief due to changed circumstances. For example, a creditor is not required to offer credit to a denied applicant if the applicant no longer qualifies for the credit due to a change in financial circumstances, although some other type of relief might be appropriate.

15(d)(1) Scope of privilege.

1. The privilege applies with respect to any examination, investigation or proceeding by Federal, State, or local government agencies relating to compliance with the Act or this part. Accordingly, in a case brought under the ECOA, the privilege established under this section preempts any inconsistent laws or court rules to the extent they might require disclosure of privileged self-testing data. The privilege does not apply in other cases (such as in litigation filed solely under a State's fair lending statute). In such cases, if a court orders a creditor to disclose self-test results, the disclosure is not a voluntary disclosure or waiver of the privilege for purposes of paragraph 15(d)(2); a creditor may protect the information by seeking a protective order to limit availability and use of the self-testing data and prevent dissemination beyond what is necessary in that case. Paragraph 15(d)(1) precludes a party who has obtained privileged information from using it in a case brought under the ECOA, provided the creditor has not lost the privilege through voluntary disclosure under paragraph 15(d)(2).

15(d)(2) Loss of privilege.

Paragraph 15(d)(2)(i).

1. A creditor's corrective action, by itself, is not considered a voluntary disclosure of the self-test report or results. For example, a creditor does not disclose the results of a self-test merely by offering to extend credit to a denied applicant or by inviting the applicant to reapply for credit. Voluntary disclosure could occur under this paragraph, however, if the creditor disclosed the self-test results in connection with a new offer of credit.

2. The disclosure of self-testing results to an independent contractor acting as an auditor or consultant for the creditor on compliance matters does not result in loss of the privilege.

Paragraph 15(d)(2)(ii).

1. The privilege is lost if the creditor discloses privileged information, such as the results of the self-test. The privilege is not lost if the creditor merely reveals or refers to the existence of the self-test.

Paragraph 15(d)(2)(iii).

1. A creditor's claim of privilege may be challenged in a court or administrative law proceeding with appropriate jurisdiction. In resolving the issue, the presiding officer may require the creditor to produce privileged information about the self-test.

Paragraph 15(d)(3) Limited use of privileged information.

1. A creditor may be required to produce privileged documents for the purpose of determining a penalty or remedy after a violation of the ECOA or Regulation B has been formally adjudicated or admitted. A creditor's compliance with such a requirement does not evidence the creditor's intent to forfeit the privilege.

Section 1002.16—Enforcement, Penalties, and Liabilities

16(c) Failure of compliance.

1. *Inadvertent errors.* Inadvertent errors include, but are not limited to, clerical mistake, calculation error, computer malfunction, and printing error. An error of legal judgment is not an inadvertent error under the regulation.

2. *Correction of error.* For inadvertent errors that occur under §§1002.12 and 1002.13, this section requires that they be corrected prospectively.

APPENDIX B—MODEL APPLICATION FORMS

1. *Freddie Mac/Fannie Mae form—residential loan application.* The uniform residential loan application form (Freddie Mac 65/Fannie Mae 1003), including supplemental form (Freddie Mac 65A/Fannie Mae 1003A), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated October 1992 may be used by creditors without violating this part. Creditors that are governed by the monitoring requirements of this part (which limits collection to applications primarily for the purchase or refinancing of the applicant's principal residence) should delete, strike, or modify the data-collection section on the form when using it for transactions not covered by §1002.13(a) to ensure that they do not collect the information. Creditors that are subject to more extensive collection requirements by a substitute monitoring program under §1002.13(d) or by the Home Mortgage Disclosure Act (HMDA) may use the form as issued, in compliance with the substitute program or HMDA.

2. *FHLMC/FNMA form—home improvement loan application.* The home-improvement and energy loan application form (FHLMC 703/FNMA 1012), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated October 1986, complies with the requirements of the regulation for some creditors but not others because of the form's section ''Information for Government Monitoring Purposes.'' Creditors that are governed by §1002.13(a) of the regulation (which limits collection to applications primarily for the purchase or refinancing of the applicant's principal residence) should delete, strike, or modify the data-collection section on the form when using it for transactions not covered by §1002.13(a) to ensure that they do not collect the information. Creditors that are subject to more extensive collection requirements by a substitute monitoring program under §1002.13(d) may use the form as issued, in compliance with that substitute program.

APPENDIX C—SAMPLE NOTIFICATION FORMS

1. *Form C–9.* If not otherwise provided under other applicable disclosure requirements, creditors may design their own form, add to, or modify the model form to reflect their individual policies and procedures. For example, a creditor may want to add:

i. A telephone number that applicants may call to leave their name and the address to which a copy of the appraisal or other written valuation should be sent.

ii. A notice of the cost the applicant will be required to pay the creditor for the appraisal or other valuation

[76 FR 79445, Dec. 21, 2011, as amended at 78 FR 7248, Jan. 31, 2013]

PART 1003—HOME MORTGAGE DISCLOSURE (REGULATION C)

Sec.

1003.1 Authority, purpose, and scope.
1003.2 Definitions.
1003.3 Exempt institutions.
1003.4 Compilation of loan data.
1003.5 Disclosure and reporting.
1003.6 Enforcement.

APPENDIX A TO PART 1003—FORM AND INSTRUCTIONS FOR COMPLETION OF HMDA LOAN/APPLICATION REGISTER

APPENDIX B TO PART 1003—FORM AND INSTRUCTIONS FOR DATA COLLECTION ON ETHNICITY, RACE, AND SEX

APPENDIX C TO PART 1003—PROCEDURES FOR GENERATING A CHECK DIGIT AND VALIDATING A ULI

SUPPLEMENT I TO PART 1003—STAFF COMMENTARY

AUTHORITY: 12 U.S.C. 2803, 2804, 2805, 5512, 5581.

SOURCE: 76 FR 78468, Dec. 19, 2011, unless otherwise noted.

§ 1003.1 Authority, purpose, and scope.

(a) *Authority*. This part, known as Regulation C, is issued by the Bureau of Consumer Financial Protection (Bureau) pursuant to the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801 *et seq*.,) as amended. The information-collection requirements have been approved by the U.S. Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq*. and have been assigned OMB numbers for institutions reporting data to the Office of the Comptroller of the Currency (1557–0159), the Federal Deposit Insurance Corporation (3064–0046), the Federal Reserve System (7100–0247), the Department of Housing and Urban Development (HUD) (2502–0529), the National Credit Union Administration (3133–0166), and the Bureau of Consumer Financial Protection (3170–0008).

(b) *Purpose*. (1) This part implements the Home Mortgage Disclosure Act, which is intended to provide the public with loan data that can be used:

(i) To help determine whether financial institutions are serving the housing needs of their communities;

(ii) To assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and

(iii) To assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

(2) Neither the act nor this part is intended to encourage unsound lending practices or the allocation of credit.

(c) *Scope*. This part applies to certain financial institutions, including banks, savings associations, credit unions, and other mortgage lending institutions, as defined in §1003.2. The regulation requires an institution to report data to the appropriate Federal agency about home purchase loans, home improvement loans, and refinancings that it originates or purchases, or for which it receives applications; and to disclose certain data to the public.

EFFECTIVE DATE NOTE: At 80 FR 66308, Oct. 28, 2015, §1003.1 was amended by revising paragraph (c), effective Jan. 1, 2018. For the convenience of the user, the revised text is set forth as follows:

§ 1003.1 Authority, purpose, and scope.

* * * * *

(c) *Scope*. This part applies to financial institutions as defined in §1003.2(g). This part requires a financial institution to submit data to the appropriate Federal agency for the financial institution as defined in §1003.5(a)(4), and to disclose certain data to the public, about covered loans for which the financial institution receives applications, or that it originates or purchases, and that are secured by a dwelling located in a State of the United States of America, the District of Columbia, or the Commonwealth of Puerto Rico.

§ 1003.2 Definitions.

In this part:

Act means the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801 *et seq*.,) as amended.

Application. (1) *In general*. Application means an oral or written request for a home purchase loan, a home improvement loan, or a refinancing that is made in accordance with procedures used by a financial institution for the type of credit requested.

(2) *Preapproval programs*. A request for preapproval for a home purchase loan is an application under this section if the request is reviewed under a program in which the financial institution, after a comprehensive analysis of the creditworthiness of the applicant, issues a written commitment to the applicant valid for a designated period of time to extend a home purchase loan up to a specified amount. The written commitment may not be subject to conditions other than:

(i) Conditions that require the identification of a suitable property;

(ii) Conditions that require that no material change has occurred in the applicant's financial condition or creditworthiness prior to closing; and

(iii) Limited conditions that are not related to the financial condition or creditworthiness of the applicant that the lender ordinarily attaches to a traditional home mortgage application (such as certification of a clear termite inspection).

Branch office means:

(1) Any office of a bank, savings association, or credit union that is approved as a branch by a Federal or state supervisory agency, but excludes free-standing electronic terminals such as automated teller machines; and

(2) Any office of a for-profit mortgage-lending institution (other than a bank, savings association, or credit union) that takes applications from the public for home purchase loans, home improvement loans, or refinancings. A for-profit mortgage-lending institution is also deemed to have a branch office in an MSA or in a Metropolitan Division, if, in the preceding calendar year, it received applications for, originated, or purchased five or more home purchase loans, home improvement loans, or refinancings related to property located in that MSA or Metropolitan Division, respectively.

Dwelling means a residential structure (whether or not attached to real property) located in a state of the United States of America, the District of Columbia, or the Commonwealth of Puerto Rico. The term includes an individual condominium unit, cooperative unit, or mobile or manufactured home.

Financial institution means:

(1) A bank, savings association, or credit union that:

(i) On the preceding December 31 had assets in excess of the asset threshold established and published annually by the Bureau for coverage by the act, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve month period ending in November, with rounding to the nearest million;

(ii) On the preceding December 31, had a home or branch office in an MSA;

(iii) In the preceding calendar year, originated at least one home purchase loan (excluding temporary financing such as a construction loan) or refinancing of a home purchase loan, secured by a first lien on a one-to four-family dwelling; and

(iv) Meets one or more of the following three criteria:

(A) The institution is Federally insured or regulated;

(B) The mortgage loan referred to in paragraph (1)(iii) of this definition was insured, guaranteed, or supplemented by a Federal agency; or

(C) The mortgage loan referred to in paragraph (1)(iii) of this definition was intended by the institution for sale to Fannie Mae or Freddie Mac; and

(2) A for-profit mortgage-lending institution (other than a bank, savings association, or credit union) that:

(i) In the preceding calendar year, either:

(A) Originated home purchase loans, including refinancings of home purchase loans, that equaled at least 10 percent of its loan-origination volume, measured in dollars; or

(B) Originated home purchase loans, including refinancings of home purchase loans, that equaled at least $25 million; and

(ii) On the preceding December 31, had a home or branch office in an MSA; and

(iii) Either:

(A) On the preceding December 31, had total assets of more than $10 million, counting the assets of any parent corporation; or

(B) In the preceding calendar year, originated at least 100 home purchase loans, including refinancings of home purchase loans.

Home-equity line of credit means an open-end credit plan secured by a dwelling as defined in Regulation Z (Truth in Lending), 12 CFR part 1026.

Home improvement loan means:

(1) A loan secured by a lien on a dwelling that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which it is located; and

(2) A non-dwelling secured loan that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which it is located, and that is classified by the financial institution as a home improvement loan.

Home purchase loan means a loan secured by and made for the purpose of purchasing a dwelling.

Manufactured home means any residential structure as defined under regulations of the Department of Housing

and Urban Development establishing manufactured home construction and safety standards (24 CFR 3280.2).

Metropolitan Statistical Area or *MSA* and *Metropolitan Division* or *MD*—(1) *Metropolitan Statistical Area* or *MSA* means a metropolitan statistical area as defined by the U.S. Office of Management and Budget.

(2) *Metropolitan Division* or *MD* means a metropolitan division of an MSA, as defined by the U.S. Office of Management and Budget.

Refinancing means a new obligation that satisfies and replaces an existing obligation by the same borrower, in which:

(1) For coverage purposes, the existing obligation is a home purchase loan (as determined by the lender, for example, by reference to available documents; or as stated by the applicant), and both the existing obligation and the new obligation are secured by first liens on dwellings; and

(2) For reporting purposes, both the existing obligation and the new obligation are secured by liens on dwellings.

EFFECTIVE DATE NOTE 1: At 80 FR 66308, Oct. 28, 2015, §1003.2 was amended by revising paragraph (1)(iii) and adding paragraph (1)(v) to the definition of ''financial institution'', effective Jan. 1, 2017. For the convenience of the user, the added and revised text is set forth as follows:

§ 1003.2 Definitions.

* * * * *

Financial institution means:

(1) * * *

(iii) In the preceding calendar year, originated at least one home purchase loan (excluding temporary financing such as a construction loan) or refinancing of a home purchase loan, secured by a first lien on a one-to four-family dwelling;

* * * * *

(v) In each of the two preceding calendar years, originated at least 25 home purchase loans, including refinancings of home purchase loans, that are not excluded from this part pursuant to §1003.4(d); and

* * * * *

EFFECTIVE DATE NOTE 2: At 80 FR 66308, Oct. 28, 2015, §1003.2 was revised, effective Jan. 1, 2018. For the convenience of the user, the revised text is set forth as follows:

§ 1003.2 Definitions.

In this part:

(a) *Act* means the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801 *et seq.*), as amended.

(b) *Application*—(1) *In general.* Application means an oral or written request for a covered loan that is made in accordance with procedures used by a financial institution for the type of credit requested.

(2) *Preapproval programs.* A request for preapproval for a home purchase loan, 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:

(i) Conditions that require the identification of a suitable property;

(ii) Conditions that require that no material change has occurred in the applicant's financial condition or creditworthiness prior to closing; and

(iii) Limited conditions that are not related to the financial condition or creditworthiness of the applicant that the financial institution ordinarily attaches to a traditional home mortgage application.

(c) *Branch office* means:

(1) Any office of a bank, savings association, or credit union that is considered a branch by the Federal or State supervisory agency applicable to that institution, excluding automated teller machines and other free-standing electronic terminals; and

(2) Any office of a for-profit mortgage-lending institution (other than a bank, savings association, or credit union) that takes applications from the public for covered loans. A for-profit mortgage-lending institution (other than a bank, savings association, or credit union) is also deemed to have a branch office in an MSA or in an MD, if, in the preceding calendar year, it received applications for, originated, or purchased five or more covered loans related to property located in that MSA or MD, respectively.

(d) *Closed-end mortgage loan* means an extension of credit that is secured by a lien on a dwelling and that is not an open-end line of credit under paragraph (o) of this section.

(e) *Covered loan* means a closed-end mortgage loan or an open-end line of credit that is not an excluded transaction under §1003.3(c).

(f) *Dwelling* means a residential structure, whether or not attached to real property. The term includes but is not limited to a detached home, an individual condominium or cooperative unit, a manufactured home or

other factory-built home, or a multifamily residential structure or community.

(g) *Financial institution* means a depository financial institution or a nondepository financial institution, where:

(1) *Depository financial institution* means a bank, savings association, or credit union that:

(i) On the preceding December 31 had assets in excess of the asset threshold established and published annually by the Bureau for coverage by the Act, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve month period ending in November, with rounding to the nearest million;

(ii) On the preceding December 31, had a home or branch office in an MSA;

(iii) In the preceding calendar year, originated at least one home purchase loan or refinancing of a home purchase loan, secured by a first lien on a one- to four-unit dwelling;

(iv) Meets one or more of the following two criteria:

(A) The institution is federally insured or regulated; or

(B) Any loan referred to in paragraph (g)(1)(iii) of this section was insured, guaranteed, or supplemented by a Federal agency, or was intended by the institution for sale to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and

(v) Meets at least one of the following criteria:

(A) In each of the two preceding calendar years, originated at least 25 closed-end mortgage loans that are not excluded from this part pursuant to §1003.3(c)(1) through (10); or

(B) In each of the two preceding calendar years, originated at least 100 open-end lines of credit that are not excluded from this part pursuant to §1003.3(c)(1) through (10); and

(2) *Nondepository financial institution* means a for-profit mortgage-lending institution (other than a bank, savings association, or credit union) that:

(i) On the preceding December 31, had a home or branch office in an MSA; and

(ii) Meets at least one of the following criteria:

(A) In each of the two preceding calendar years, originated at least 25 closed-end mortgage loans that are not excluded from this part pursuant to §1003.3(c)(1) through (10); or

(B) In each of the two preceding calendar years, originated at least 100 open-end lines of credit that are not excluded from this part pursuant to §1003.3(c)(1) through (10).

(h) [Reserved]

(i) *Home improvement loan* means a closed-end mortgage loan or an open-end line of credit that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which the dwelling is located.

(j) *Home purchase loan* means a closed-end mortgage loan or an open-end line of credit that is for the purpose, in whole or in part, of purchasing a dwelling.

(k) *Loan/Application Register* means both the record of information required to be collected pursuant to §1003.4 and the record submitted annually or quarterly, as applicable, pursuant to §1003.5(a).

(l) *Manufactured home* means any residential structure as defined under regulations of the U.S. Department of Housing and Urban Development establishing manufactured home construction and safety standards (24 CFR 3280.2). For purposes of §1003.4(a)(5), the term also includes a multifamily dwelling that is a manufactured home community.

(m) *Metropolitan Statistical Area (MSA)* and *Metropolitan Division (MD).* (1) *Metropolitan Statistical Area* or *MSA* means a Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget.

(2) *Metropolitan Division (MD)* means a Metropolitan Division of an MSA, as defined by the U.S. Office of Management and Budget.

(n) *Multifamily dwelling* means a dwelling, regardless of construction method, that contains five or more individual dwelling units.

(o) *Open-end line of credit* means an extension of credit that:

(1) Is secured by a lien on a dwelling; and

(2) Is an open-end credit plan as defined in Regulation Z, 12 CFR 1026.2(a)(20), but without regard to whether the credit is consumer credit, as defined in §1026.2(a)(12), is extended by a creditor, as defined in §1026.2(a)(17), or is extended to a consumer, as defined in §1026.2(a)(11).

(p) *Refinancing* means a closed-end mortgage loan or an open-end line of credit in which a new, dwelling-secured debt obligation satisfies and replaces an existing, dwelling-secured debt obligation by the same borrower.

(q) *Reverse mortgage* means a closed-end mortgage loan or an open-end line of credit that is a reverse mortgage transaction as defined in Regulation Z, 12 CFR 1026.33(a), but without regard to whether the security interest is created in a principal dwelling.

§1003.3 Exempt institutions.

(a) *Exemption based on state law.* (1) A state-chartered or state-licensed financial institution is exempt from the requirements of this part if the Bureau determines that the institution is subject to a state disclosure law that contains requirements substantially similar to those imposed by this part and that contains adequate provisions for enforcement.

(2) Any state, state-chartered or state-licensed financial institution, or association of such institutions, may apply to the Bureau for an exemption under paragraph (a) of this section.

(3) An institution that is exempt under paragraph (a) of this section shall use the disclosure form required by its state law and shall submit the data required by that law to its state supervisory agency for purposes of aggregation.

(b) *Loss of exemption.* An institution losing a state-law exemption under paragraph (a) of this section shall comply with this part beginning with the calendar year following the year for which it last reported loan data under the state disclosure law.

EFFECTIVE DATE NOTE: At 80 FR 66309, Oct. 28, 2015, §1003.3 was amended by revising the section heading and adding paragraph (c), effective Jan. 1, 2018. For the convenience of the user, the added and revised text is set forth as follows:

§1003.3 Exempt institutions and excluded transactions.

* * * * *

(c) *Excluded transactions.* The requirements of this part do not apply to:

(1) A closed-end mortgage loan or open-end line of credit originated or purchased by a financial institution acting in a fiduciary capacity;

(2) A closed-end mortgage loan or open-end line of credit secured by a lien on unimproved land;

(3) Temporary financing;

(4) The purchase of an interest in a pool of closed-end mortgage loans or open-end lines of credit;

(5) The purchase solely of the right to service closed-end mortgage loans or open-end lines of credit;

(6) The purchase of closed-end mortgage loans or open-end lines of credit as part of a merger or acquisition, or as part of the acquisition of all of the assets and liabilities of a branch office as defined in §1003.2(c);

(7) A closed-end mortgage loan or open-end line of credit, or an application for a closed-end mortgage loan or open-end line of credit, for which the total dollar amount is less than $500;

(8) The purchase of a partial interest in a closed-end mortgage loan or open-end line of credit;

(9) A closed-end mortgage loan or open-end line of credit used primarily for agricultural purposes;

(10) A closed-end mortgage loan or open-end line of credit that is or will be made primarily for a business or commercial purpose, unless the closed-end mortgage loan or open-end line of credit is a home improvement loan under §1003.2(i), a home purchase loan under §1003.2(j), or a refinancing under §1003.2(p);

(11) A closed-end mortgage loan, if the financial institution originated fewer than 25 closed-end mortgage loans in each of the two preceding calendar years; or

(12) An open-end line of credit, if the financial institution originated fewer than 100 open-end lines of credit in each of the two preceding calendar years.

§1003.4 Compilation of loan data.

(a) *Data format and itemization.* A financial institution shall collect data regarding applications for, and originations and purchases of, home purchase loans, home improvement loans, and refinancings for each calendar year. An institution is required to collect data regarding requests under a preapproval program (as defined in §1003.2) only if the preapproval request is denied or results in the origination of a home purchase loan. All reportable transactions shall be recorded, within thirty calendar days after the end of the calendar quarter in which final action is taken (such as origination or purchase of a loan, or denial or withdrawal of an application), on a register in the format prescribed in appendix A of this part. The data recorded shall include the following items:

(1) An identifying number for the loan or loan application, and the date the application was received.

(2) The type of loan or application.

(3) The purpose of the loan or application.

(4) Whether the application is a request for preapproval and whether it resulted in a denial or in an origination.

(5) The property type to which the loan or application relates.

(6) The owner-occupancy status of the property to which the loan or application relates.

(7) The amount of the loan or the amount applied for.

(8) The type of action taken, and the date.

(9) The location of the property to which the loan or application relates, by MSA or by Metropolitan Division,

by state, by county, and by census tract, if the institution has a home or branch office in that MSA or Metropolitan Division.

(10) The ethnicity, race, and sex of the applicant or borrower, and the gross annual income relied on in processing the application.

(11) The type of entity purchasing a loan that the institution originates or purchases and then sells within the same calendar year (this information need not be included in quarterly updates).

(12)(i) For originated loans subject to Regulation Z, 12 CFR part 1026, the difference between the loan's annual percentage rate (APR) and the average prime offer rate for a comparable transaction as of the date the interest rate is set, if that difference is equal to or greater than 1.5 percentage points for loans secured by a first lien on a dwelling, or equal to or greater than 3.5 percentage points for loans secured by a subordinate lien on a dwelling.

(ii) ''Average prime offer rate'' means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage loans that have low-risk pricing characteristics. The Bureau publishes average prime offer rates for a broad range of types of transactions in tables updated at least weekly, as well as the methodology the Bureau uses to derive these rates.

(13) Whether the loan is subject to the Home Ownership and Equity Protection Act of 1994, as implemented in Regulation Z (12 CFR 1026.32).

(14) The lien status of the loan or application (first lien, subordinate lien, or not secured by a lien on a dwelling).

(b) *Collection of data on ethnicity, race, sex, and income.* (1) A financial institution shall collect data about the ethnicity, race, and sex of the applicant or borrower as prescribed in appendix B of this part.

(2) Ethnicity, race, sex, and income data may but need not be collected for loans purchased by the financial institution.

(c) *Optional data.* A financial institution may report:

(1) The reasons it denied a loan application;

(2) Requests for preapproval that are approved by the institution but not accepted by the applicant; and

(3) Home-equity lines of credit made in whole or in part for the purpose of home improvement or home purchase.

(d) *Excluded data.* A financial institution shall not report:

(1) Loans originated or purchased by the financial institution acting in a fiduciary capacity (such as trustee);

(2) Loans on unimproved land;

(3) Temporary financing (such as bridge or construction loans);

(4) The purchase of an interest in a pool of loans (such as mortgage-participation certificates, mortgage-backed securities, or real estate mortgage investment conduits);

(5) The purchase solely of the right to service loans; or

(6) Loans acquired as part of a merger or acquisition, or as part of the acquisition of all of the assets and liabilities of a branch office as defined in §1003.2.

(e) *Data reporting for banks and savings associations that are required to report data on small business, small farm, and community development lending under CRA.* Banks and savings associations that are required to report data on small business, small farm, and community development lending under regulations that implement the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) shall also collect the location of property located outside MSAs and Metropolitan Divisions in which the institution has a home or branch office, or outside any MSA.

EFFECTIVE DATE NOTE: At 80 FR 66310, Oct. 28, 2015, §1003.4 was revised, effective Jan. 1, 2018. For the convenience of the user, the revised text is set forth as follows:

§ 1003.4 Compilation of reportable data.

(a) *Data format and itemization.* A financial institution shall collect data regarding applications for covered loans that it receives, covered loans that it originates, and covered loans that it purchases for each calendar year. A financial institution shall collect data regarding requests under a preapproval program, as defined in §1003.2(b)(2), only if the preapproval request is denied, is approved by the financial institution but not accepted by the applicant, or results in the origination of a home purchase loan. The

data collected shall include the following items:

(1)(i) A universal loan identifier (ULI) for the covered loan or application that can be used to identify and retrieve the covered loan or application file. Except for a purchased covered loan or application described in paragraphs (a)(1)(i)(D) and (E) of this section, the financial institution shall assign and report a ULI that:

(A) Begins with the financial institution's Legal Entity Identifier (LEI) that is issued by:

(*1*) A utility endorsed by the LEI Regulatory Oversight Committee; or

(*2*) A utility endorsed or otherwise governed by the Global LEI Foundation (GLEIF) (or any successor of the GLEIF) after the GLEIF assumes operational governance of the global LEI system.

(B) Follows the LEI with up to 23 additional characters to identify the covered loan or application, which:

(*1*) May be letters, numerals, or a combination of letters and numerals;

(*2*) Must be unique within the financial institution; and

(*3*) Must not include any information that could be used to directly identify the applicant or borrower; and

(C) Ends with a two-character check digit, as prescribed in appendix C to this part.

(D) For a purchased covered loan that any financial institution has previously assigned or reported with a ULI under this part, the financial institution that purchases the covered loan must use the ULI that was assigned or previously reported for the covered loan.

(E) For an application that was previously reported with a ULI under this part and that results in an origination during the same calendar year that is reported in a subsequent reporting period pursuant to §1003.5(a)(1)(ii), the financial institution may report the same ULI for the origination that was previously reported for the application.

(ii) Except for purchased covered loans, the date the application was received or the date shown on the application form.

(2) Whether the covered loan is, or in the case of an application would have been, insured by the Federal Housing Administration, guaranteed by the Veterans Administration, or guaranteed by the Rural Housing Service or the Farm Service Agency.

(3) Whether the covered loan is, or the application is for, a home purchase loan, a home improvement loan, a refinancing, a cash-out refinancing, or for a purpose other than home purchase, home improvement, refinancing, or cash-out refinancing.

(4) Whether the application or covered loan involved a request for a preapproval of a home purchase loan under a preapproval program.

(5) Whether the construction method for the dwelling related to the property identified in paragraph (a)(9) of this section is site-built or a manufactured home.

(6) Whether the property identified in paragraph (a)(9) of this section is or will be used by the applicant or borrower as a principal residence, as a second residence, or as an investment property.

(7) The amount of the covered loan or the amount applied for, as applicable.

(i) For a closed-end mortgage loan, other than a purchased loan, an assumption, or a reverse mortgage, the amount to be repaid as disclosed on the legal obligation. For a purchased closed-end mortgage loan or an assumption of a closed-end mortgage loan, the unpaid principal balance at the time of purchase or assumption.

(ii) For an open-end line of credit, other than a reverse mortgage open-end line of credit, the amount of credit available to the borrower under the terms of the plan.

(iii) For a reverse mortgage, the initial principal limit, as determined pursuant to section 255 of the National Housing Act (12 U.S.C. 1715z–20) and implementing regulations and mortgagee letters issued by the U.S. Department of Housing and Urban Development.

(8) The following information about the financial institution's action:

(i) The action taken by the financial institution, recorded as one of the following:

(A) Whether a covered loan was originated or purchased;

(B) Whether an application for a covered loan that did not result in the origination of a covered loan was approved but not accepted, denied, withdrawn by the applicant, or closed for incompleteness; and

(C) Whether a preapproval request that did not result in the origination of a home purchase loan was denied or approved but not accepted.

(ii) The date of the action taken by the financial institution.

(9) The following information about the location of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan:

(i) The property address; and

(ii) If the property is located in an MSA or MD in which the financial institution has a home or branch office, or if the institution is subject to paragraph (e) of this section, the location of the property by:

(A) State;

(B) County; and

(C) Census tract if the property is located in a county with a population of more than 30,000 according to the most recent decennial census conducted by the U.S. Census Bureau.

(10) The following information about the applicant or borrower:

(i) Ethnicity, race, and sex, and whether this information was collected on the basis of visual observation or surname;

(ii) Age; and

(iii) Except for covered loans or applications for which the credit decision did not consider or would not have considered income, the gross annual income relied on in making the credit decision or, if a credit decision was not made, the gross annual income relied on in processing the application.

(11) The type of entity purchasing a covered loan that the financial institution originates or purchases and then sells within the same calendar year.

(12)(i) For covered loans subject to Regulation Z, 12 CFR part 1026, other than assumptions, purchased covered loans, and reverse mortgages, the difference between the covered loan's annual percentage rate and the average prime offer rate for a comparable transaction as of the date the interest rate is set.

(ii) ''Average prime offer rate'' means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage loans that have low-risk pricing characteristics. The Bureau publishes average prime offer rates for a broad range of types of transactions in tables updated at least weekly, as well as the methodology the Bureau uses to derive these rates.

(13) For covered loans subject to the Home Ownership and Equity Protection Act of 1994, as implemented in Regulation Z, 12 CFR 1026.32, whether the covered loan is a high-cost mortgage under Regulation Z, 12 CFR 1026.32(a).

(14) The lien status (first or subordinate lien) of the property identified under paragraph (a)(9) of this section.

(15)(i) Except for purchased covered loans, the credit score or scores relied on in making the credit decision and the name and version of the scoring model used to generate each credit score.

(ii) For purposes of this paragraph (a)(15), ''credit score'' has the meaning set forth in 15 U.S.C. 1681g(f)(2)(A).

(16) The principal reason or reasons the financial institution denied the application, if applicable.

(17) For covered loans subject to Regulation Z, 12 CFR 1026.43(c), the following information:

(i) If a disclosure is provided for the covered loan pursuant to Regulation Z, 12 CFR 1026.19(f), the amount of total loan costs, as disclosed pursuant to Regulation Z, 12 CFR 1026.38(f)(4); or

(ii) If the covered loan is not subject to the disclosure requirements in Regulation Z, 12 CFR 1026.19(f), and is not a purchased covered loan, the total points and fees charged in connection with the covered loan, expressed in dollars and calculated pursuant to Regulation Z, 12 CFR 1026.32(b)(1).

(18) For covered loans subject to the disclosure requirements in Regulation Z, 12 CFR 1026.19(f), the total of all itemized amounts that are designated borrower-paid at or before closing, as disclosed pursuant to Regulation Z, 12 CFR 1026.38(f)(1).

(19) For covered loans subject to the disclosure requirements in Regulation Z, 12 CFR 1026.19(f), the points paid to the creditor to reduce the interest rate, expressed in dollars, as described in Regulation Z, 12 CFR 1026.37(f)(1)(i), and disclosed pursuant to Regulation Z, 12 CFR 1026.38(f)(1).

(20) For covered loans subject to the disclosure requirements in Regulation Z, 12 CFR 1026.19(f), the amount of lender credits, as disclosed pursuant to Regulation Z, 12 CFR 1026.38(h)(3).

(21) The interest rate applicable to the approved application, or to the covered loan at closing or account opening.

(22) For covered loans or applications subject to Regulation Z, 12 CFR part 1026, other than reverse mortgages or purchased covered loans, the term in months of any prepayment penalty, as defined in Regulation Z, 12 CFR 1026.32(b)(6)(i) or (ii), as applicable.

(23) Except for purchased covered loans, the ratio of the applicant's or borrower's total monthly debt to the total monthly income relied on in making the credit decision.

(24) Except for purchased covered loans, the ratio of the total amount of debt secured by the property to the value of the property relied on in making the credit decision.

(25) The scheduled number of months after which the legal obligation will mature or terminate or would have matured or terminated.

(26) The number of months, or proposed number of months in the case of an application, until the first date the interest rate may change after closing or account opening.

(27) Whether the contractual terms include or would have included any of the following:

(i) A balloon payment as defined in Regulation Z, 12 CFR 1026.18(s)(5)(i);

(ii) Interest-only payments as defined in Regulation Z, 12 CFR 1026.18(s)(7)(iv);

(iii) A contractual term that would cause the covered loan to be a negative amortization loan as defined in Regulation Z, 12 CFR 1026.18(s)(7)(v); or

(iv) Any other contractual term that would allow for payments other than fully amortizing payments, as defined in Regulation Z, 12 CFR 1026.43(b)(2), during the loan term, other than the contractual terms described in this paragraph (a)(27)(i), (ii), and (iii).

(28) The value of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan relied on in making the credit decision.

(29) If the dwelling related to the property identified in paragraph (a)(9) of this section is a manufactured home and not a multifamily dwelling, whether the covered loan is, or in the case of an application would have been, secured by a manufactured home and land, or by a manufactured home and not land.

(30) If the dwelling related to the property identified in paragraph (a)(9) of this section is a manufactured home and not a multifamily dwelling, whether the applicant or borrower:

(i) Owns the land on which it is or will be located or, in the case of an application, did or would have owned the land on which it would have been located, through a direct or indirect ownership interest; or

(ii) Leases or, in the case of an application, leases or would have leased the land through a paid or unpaid leasehold.

(31) The number of individual dwelling units related to the property securing the covered loan or, in the case of an application, proposed to secure the covered loan.

(32) If the property securing the covered loan or, in the case of an application, proposed to secure the covered loan includes a multifamily dwelling, the number of individual dwelling units related to the property that are income-restricted pursuant to Federal, State, or local affordable housing programs.

(33) Except for purchased covered loans, the following information about the application channel of the covered loan or application:

(i) Whether the applicant or borrower submitted the application for the covered loan directly to the financial institution; and

(ii) Whether the obligation arising from the covered loan was, or in the case of an application, would have been initially payable to the financial institution.

(34) For a covered loan or application, the unique identifier assigned by the Nationwide Mortgage Licensing System and Registry for the mortgage loan originator, as defined in Regulation G, 12 CFR 1007.102, or Regulation H, 12 CFR 1008.23, as applicable.

(35)(i) Except for purchased covered loans, the name of the automated underwriting system used by the financial institution to evaluate the application and the result generated by that automated underwriting system.

(ii) For purposes of this paragraph (a)(35), an ''automated underwriting system'' means an electronic tool developed by a securitizer, Federal government insurer, or Federal government guarantor that provides a result regarding the credit risk of the applicant and whether the covered loan is eligible to be originated, purchased, insured, or guaranteed by that securitizer, Federal government insurer, or Federal government guarantor.

(36) Whether the covered loan is, or the application is for, a reverse mortgage.

(37) Whether the covered loan is, or the application is for, an open-end line of credit.

(38) Whether the covered loan is, or the application is for a covered loan that will be, made primarily for a business or commercial purpose.

(b) *Collection of data on ethnicity, race, sex, age, and income.* (1) A financial institution shall collect data about the ethnicity, race, and sex of the applicant or borrower as prescribed in appendix B to this part.

(2) Ethnicity, race, sex, age, and income data may but need not be collected for covered loans purchased by a financial institution.

(c)–(d) [Reserved]

(e) *Data reporting for banks and savings associations that are required to report data on small business, small farm, and community development lending under CRA.* Banks and savings associations that are required to report data on small business, small farm, and community development lending under regulations that implement the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) shall also collect the information required by paragraph 4(a)(9) of this section for property located outside MSAs and MDs in which the institution has a home or branch office, or outside any MSA.

(f) *Quarterly recording of data.* A financial institution shall record the data collected pursuant to this section on a loan/application register within 30 calendar days after the end of the calendar quarter in which final action is taken (such as origination or purchase of a covered loan, sale of a covered loan in the same calendar year it is originated or purchased, or denial or withdrawal of an application).

§ 1003.5 Disclosure and reporting.

(a) *Reporting to agency.* (1) By March 1 following the calendar year for which the loan data are compiled, a financial institution shall send its complete loan/application register to the agency office specified in appendix A of this part. The institution shall retain a copy for its records for at least three years.

(2) A subsidiary of a bank or savings association shall complete a separate loan/application register. The subsidiary shall submit the register, directly or through its parent, to the same agency as its parent.

(b) *Public disclosure of statement.* (1) The Federal Financial Institutions Examination Council (FFIEC) will prepare a disclosure statement from the

data each financial institution submits.

(2) An institution shall make its disclosure statement (prepared by the FFIEC) available to the public at the institution's home office no later than three business days after receiving the disclosure statement from the FFIEC.

(3) In addition, an institution shall either:

(i) Make its disclosure statement available to the public, within ten business days of receiving it, in at least one branch office in each other MSA and each other Metropolitan Division where the institution has offices (the disclosure statement need only contain data relating to the MSA or Metropolitan Division where the branch is located); or

(ii) Post the address for sending written requests in the lobby of each branch office in other MSAs and Metropolitan Divisions where the institution has offices; and mail or deliver a copy of the disclosure statement within fifteen calendar days of receiving a written request (the disclosure statement need only contain data relating to the MSA or Metropolitan Division for which the request is made). Including the address in the general notice required under paragraph (e) of this section satisfies this requirement.

(c) *Public disclosure of modified loan/application register.* A financial institution shall make its loan/application register available to the public after removing the following information regarding each entry: The application or loan number, the date that the application was received, and the date action was taken. An institution shall make its modified register available following the calendar year for which the data are compiled, by March 31 for a request received on or before March 1, and within thirty calendar days for a request received after March 1. The modified register need only contain data relating to the MSA or Metropolitan Division for which the request is made.

(d) *Availability of data.* A financial institution shall make its modified register available to the public for a period of three years and its disclosure statement available for a period of five years. An institution shall make the data available for inspection and copying during the hours the office is normally open to the public for business. It may impose a reasonable fee for any cost incurred in providing or reproducing the data.

(e) *Notice of availability.* A financial institution shall post a general notice about the availability of its HMDA data in the lobby of its home office and of each branch office located in an MSA and Metropolitan Division. An institution shall provide promptly upon request the location of the institution's offices where the statement is available for inspection and copying, or it may include the location in the lobby notice.

(f) *Loan aggregation and central data depositories.* Using the loan data submitted by financial institutions, the FFIEC will produce reports for individual institutions and reports of aggregate data for each MSA and Metropolitan Division, showing lending patterns by property location, age of housing stock, and income level, sex, ethnicity, and race. These reports will be available to the public at central data depositories located in each MSA and Metropolitan Division. A listing of central data depositories can be obtained from the Federal Financial Institutions Examination Council, Washington, DC 20006.

EFFECTIVE DATE NOTE 1: At 80 FR 66312, Oct. 28, 2015, §1003.5 was amended by revising paragraphs (b) through (f), effective Jan. 1, 2018. For the convenience of the user, the revised text is set forth as follows:

§ 1003.5 Disclosure and reporting.

* * * * *

(b) *Disclosure statement.* (1) The Federal Financial Institutions Examination Council (FFIEC) will make available a disclosure statement based on the data each financial institution submits for the preceding calendar year pursuant to paragraph (a) of this section.

(2) No later than three business days after receiving notice from the FFIEC that a financial institution's disclosure statement is available, the financial institution shall make available to the public upon request at its home office, and each branch office physically located in each MSA and each MD, a written notice that clearly conveys that the institution's disclosure statement may be

obtained on the Bureau's Web site at *www.consumerfinance.gov/hmda*.

(c) *Modified loan/application register*. (1) A financial institution shall make available to the public upon request at its home office, and each branch office physically located in each MSA and each MD, a written notice that clearly conveys that the institution's loan/application register, as modified by the Bureau to protect applicant and borrower privacy, may be obtained on the Bureau's Web site at *www.consumerfinance.gov/hmda*.

(2) A financial institution shall make available the notice required by paragraph (c)(1) of this section following the calendar year for which the data are collected.

(d) *Availability of written notices*. (1) A financial institution shall make the notice required by paragraph (c) of this section available to the public for a period of three years and the notice required by paragraph (b)(2) of this section available to the public for a period of five years. An institution shall make these notices available during the hours the office is normally open to the public for business.

(2) A financial institution may make available to the public, at its discretion and in addition to the written notices required by paragraphs (b)(2) or (c)(1) of this section, as applicable, its disclosure statement or its loan/application register, as modified by the Bureau to protect applicant and borrower privacy. A financial institution may impose a reasonable fee for any cost incurred in providing or reproducing these data.

(e) *Posted notice of availability of data*. A financial institution shall post a general notice about the availability of its HMDA data in the lobby of its home office and of each branch office physically located in each MSA and each MD. This notice must clearly convey that the institution's HMDA data is available on the Bureau's Web site at *www.consumerfinance.gov/hmda*.

(f) *Aggregated data*. Using data submitted by financial institutions pursuant to paragraph (a) of this section, the FFIEC will make available aggregate data for each MSA and MD, showing lending patterns by property location, age of housing stock, and income level, sex, ethnicity, and race.

EFFECTIVE DATE NOTE 2: At 80 FR 66312, Oct. 28, 2015, §1003.5 was revised, effective Jan. 1, 2019. For the convenience of the user, the revised text is set forth as follows:

§ 1003.5 Disclosure and reporting.

(a) *Reporting to agency*—(1)(i) *Annual reporting*. By March 1 following the calendar year for which data are collected and recorded as required by §1003.4, a financial institution shall submit its annual loan/application register in electronic format to the appropriate Federal agency at the address identified by such agency. An authorized representative of the financial institution with knowledge of the data submitted shall certify to the accuracy and completeness of data submitted pursuant to this paragraph (a)(1)(i). The financial institution shall retain a copy of its annual loan/application register submitted pursuant to this paragraph (a)(1)(i) for its records for at least three years.

(ii) [Reserved]

(iii) When the last day for submission of data prescribed under this paragraph (a)(1) falls on a Saturday or Sunday, a submission shall be considered timely if it is submitted on the next succeeding Monday.

(2) A financial institution that is a subsidiary of a bank or savings association shall complete a separate loan/application register. The subsidiary shall submit the loan/application register, directly or through its parent, to the appropriate Federal agency for the subsidiary's parent at the address identified by the agency.

(3) A financial institution shall provide with its submission:

(i) Its name;

(ii) The calendar year the data submission covers pursuant to paragraph (a)(1)(i) of this section or calendar quarter and year the data submission covers pursuant to paragraph (a)(1)(ii) of this section;

(iii) The name and contact information of a person who may be contacted with questions about the institution's submission;

(iv) Its appropriate Federal agency;

(v) The total number of entries contained in the submission;

(vi) Its Federal Taxpayer Identification number; and

(vii) Its Legal Entity Identifier (LEI) as described in §1003.4(a)(1)(i)(A).

(4) For purposes of paragraph (a) of this section, ''appropriate Federal agency'' means the appropriate agency for the financial institution as determined pursuant to section 304(h)(2) of the Home Mortgage Disclosure Act (12 U.S.C. 2803(h)(2)) or, with respect to a financial institution subject to the Bureau's supervisory authority under section 1025(a) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5515(a)), the Bureau.

(5) Procedures for the submission of data pursuant to paragraph (a) of this section are available at *www.consumerfinance.gov/hmda*.

(b) *Disclosure statement*. (1) The Federal Financial Institutions Examination Council (FFIEC) will make available a disclosure statement based on the data each financial institution submits for the preceding calendar year pursuant to paragraph (a)(1)(i) of this section.

(2) No later than three business days after receiving notice from the FFIEC that a financial institution's disclosure statement is available, the financial institution shall make available to the public upon request at

its home office, and each branch office physically located in each MSA and each MD, a written notice that clearly conveys that the institution's disclosure statement may be obtained on the Bureau's Web site at *www.consumerfinance.gov/hmda*.

(c) *Modified loan/application register*. (1) A financial institution shall make available to the public upon request at its home office, and each branch office physically located in each MSA and each MD, a written notice that clearly conveys that the institution's loan/application register, as modified by the Bureau to protect applicant and borrower privacy, may be obtained on the Bureau's Web site at *www.consumerfinance.gov/hmda*.

(2) A financial institution shall make available the notice required by paragraph (c)(1) of this section following the calendar year for which the data are collected.

(d) *Availability of written notices*. (1) A financial institution shall make the notice required by paragraph (c) of this section available to the public for a period of three years and the notice required by paragraph (b)(2) of this section available to the public for a period of five years. An institution shall make these notices available during the hours the office is normally open to the public for business.

(2) A financial institution may make available to the public, at its discretion and in addition to the written notices required by paragraphs (b)(2) or (c)(1) of this section, as applicable, its disclosure statement or its loan/application register, as modified by the Bureau to protect applicant and borrower privacy. A financial institution may impose a reasonable fee for any cost incurred in providing or reproducing these data.

(e) *Posted notice of availability of data*. A financial institution shall post a general notice about the availability of its HMDA data in the lobby of its home office and of each branch office physically located in each MSA and each MD. This notice must clearly convey that the institution's HMDA data is available on the Bureau's Web site at *www.consumerfinance.gov/hmda*.

(f) *Aggregated data*. Using data submitted by financial institutions pursuant to paragraph (a)(1)(i) of this section, the FFIEC will make available aggregate data for each MSA and MD, showing lending patterns by property location, age of housing stock, and income level, sex, ethnicity, and race.

EFFECTIVE DATE NOTE 3: At 80 FR 66313, Oct. 28, 2015, §1003.5 was amended by adding paragraph (a)(1)(ii), effective Jan. 1, 2020. For the convenience of the user, the added text is set forth as follows:

§ 1003.5 Disclosure and reporting.

(a) * * *

(1) * * *

(ii) *Quarterly reporting*. Within 60 calendar days after the end of each calendar quarter except the fourth quarter, a financial institution that reported for the preceding calendar year at least 60,000 covered loans and applications, combined, excluding purchased covered loans, shall submit to the appropriate Federal agency its loan/application register containing all data required to be recorded for that quarter pursuant to §1003.4(f). The financial institution shall submit its quarterly loan/application register pursuant to this paragraph (a)(1)(ii) in electronic format at the address identified by the appropriate Federal agency for the institution.

* * * * *

§ 1003.6 Enforcement.

(a) *Administrative enforcement*. A violation of the Act or this part is subject to administrative sanctions as provided in section 305 of the Act, including the imposition of civil money penalties, where applicable. Compliance is enforced by the agencies listed in section 305 of the Act (12 U.S.C. 2804).

(b) *Bona fide errors*. (1) An error in compiling or recording loan data is not a violation of the act or this part if the error was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such errors.

(2) An incorrect entry for a census tract number is deemed a *bona fide* error, and is not a violation of the act or this part, provided that the institution maintains procedures reasonably adapted to avoid such errors.

(3) If an institution makes a good-faith effort to record all data concerning covered transactions fully and accurately within thirty calendar days after the end of each calendar quarter, and some data are nevertheless inaccurate or incomplete, the error or omission is not a violation of the act or this part provided that the institution corrects or completes the information prior to submitting the loan/application register to its regulatory agency.

EFFECTIVE DATE NOTE: At 80 FR 66313, Oct. 28, 2015, §1003.6 was revised, effective Jan. 1, 2019. For the convenience of the user, the revised text is set forth as follows:

§ 1003.6 Enforcement.

(a) *Administrative enforcement.* A violation of the Act or this part is subject to administrative sanctions as provided in section 305 of the Act (12 U.S.C. 2804), including the imposition of civil money penalties, where applicable. Compliance is enforced by the agencies listed in section 305 of the Act.

(b) *Bona fide errors.* (1) An error in compiling or recording data for a covered loan or application is not a violation of the Act or this part if the error was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such an error.

(2) An incorrect entry for a census tract number is deemed a bona fide error, and is not a violation of the Act or this part, provided that the financial institution maintains procedures reasonably adapted to avoid such an error.

(c) *Quarterly recording and reporting.* (1) If a financial institution makes a good-faith effort to record all data required to be recorded pursuant to §1003.4(f) fully and accurately within 30 calendar days after the end of each calendar quarter, and some data are nevertheless inaccurate or incomplete, the inaccuracy or omission is not a violation of the Act or this part provided that the institution corrects or completes the data prior to submitting its annual loan/application register pursuant to §1003.5(a)(1)(i).

(2) If a financial institution required to comply with §1003.5(a)(1)(ii) makes a good-faith effort to report all data required to be reported pursuant to §1003.5(a)(1)(ii) fully and accurately within 60 calendar days after the end of each calendar quarter, and some data are nevertheless inaccurate or incomplete, the inaccuracy or omission is not a violation of the Act or this part provided that the institution corrects or completes the data prior to submitting its annual loan/application register pursuant to §1003.5(a)(1)(i).

APPENDIX A TO PART 1003—FORM AND INSTRUCTIONS FOR COMPLETION OF HMDA LOAN/APPLICATION REGISTER

PAPERWORK REDUCTION ACT NOTICE

This report is required by law (12 U.S.C. 2801–2810 and 12 CFR 1003). An agency may not conduct or sponsor, and an organization is not required to respond to, a collection of information unless it displays a valid Office of Management and Budget (OMB) Control Number. See 12 CFR 1003.1(a) for the valid OMB Control Numbers applicable to this information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the respective agencies and to OMB, Office of Information and Regulatory Affairs, Paperwork Reduction Project, Washington, DC 20503. Be sure to reference the applicable agency and the OMB Control Number, as found in 12 CFR 1003.1(a), when submitting comments to OMB.

I. INSTRUCTIONS FOR COMPLETION OF LOAN/APPLICATION REGISTER

A. Application or Loan Information

1. Application or Loan Number. Enter an identifying loan number that can be used later to retrieve the loan or application file. It can be any number of your institution's choosing (not exceeding 25 characters). You may use letters, numerals, or a combination of both.

2. Date Application Received. Enter the date the loan application was received by your institution by month, day, and year. If your institution normally records the date shown on the application form you may use that date instead. Enter ''NA'' for loans purchased by your institution. For paper submissions only, use numerals in the form MM/DD/YYYY (for example, 01/15/2003). For submissions in electronic form, the proper format is YYYYMMDD.

3. Type of Loan or Application. Indicate the type of loan or application by entering the applicable Code from the following:

Code 1—Conventional (any loan other than FHA, VA, FSA, or RHS loans)
Code 2—FHA-insured (Federal Housing Administration)
Code 3—VA-guaranteed (Veterans Administration)
Code 4—FSA/RHS-guaranteed (Farm Service Agency or Rural Housing Service)

4. Property Type. Indicate the property type by entering the applicable Code from the following:

Code 1—One-to four-family dwelling (other than manufactured housing)
Code 2—Manufactured housing
Code 3—Multifamily dwelling

a. Use Code 1, not Code 3, for loans on individual condominium or cooperative units.

b. If you cannot determine (despite reasonable efforts to find out) whether the loan or application relates to a manufactured home, use Code 1.

5. Purpose of Loan or Application. Indicate the purpose of the loan or application by entering the applicable Code from the following:

Code 1—Home purchase
Code 2—Home improvement
Code 3—Refinancing

a. Do not report a refinancing if, under the loan agreement, you were unconditionally obligated to refinance the obligation, or you were obligated to refinance the obligation

subject to conditions within the borrower's control.

6. Owner Occupancy. Indicate whether the property to which the loan or loan application relates is to be owner-occupied as a principal residence by entering the applicable Code from the following:

Code 1—Owner-occupied as a principal dwelling
Code 2—Not owner-occupied as a principal dwelling
Code 3—Not applicable

a. For purchased loans, use Code 1 unless the loan documents or application indicate that the property will not be owner-occupied as a principal residence.

b. Use Code 2 for second homes or vacation homes, as well as for rental properties.

c. Use Code 3 if the property to which the loan relates is a multifamily dwelling; is not located in an MSA; or is located in an MSA or an MD in which your institution has neither a home nor a branch office. Alternatively, at your institution's option, you may report the actual occupancy status, using Code 1 or 2 as applicable.

7. Loan Amount. Enter the amount of the loan or application. Do not report loans below $500. Show the amount in thousands, rounding to the nearest thousand (round $500 up to the next $1,000). For example, a loan for $167,300 should be entered as 167 and one for $15,500 as 16.

a. For a home purchase loan that you originated, enter the principal amount of the loan.

b. For a home purchase loan that you purchased, enter the unpaid principal balance of the loan at the time of purchase.

c. For a home improvement loan, enter the entire amount of the loan—including unpaid finance charges if that is how such loans are recorded on your books—even if only a part of the proceeds is intended for home improvement.

d. If you opt to report home-equity lines of credit, report only the portion of the line intended for home improvement or home purchase.

e. For a refinancing, indicate the total amount of the refinancing, including both the amount outstanding on the original loan and any amount of ''new money.''

f. For a loan application that was denied or withdrawn, enter the amount for which the applicant applied.

8. Request for Preapproval of a Home Purchase Loan. Indicate whether the application or loan involved a request for preapproval of a home purchase loan by entering the applicable Code from the following:

Code 1—Preapproval requested
Code 2—Preapproval not requested
Code 3—Not applicable

a. Enter Code 2 if your institution has a covered preapproval program but the applicant does not request a preapproval.

b. Enter Code 3 if your institution does not have a preapproval program as defined in §1003.2.

c. Enter Code 3 for applications or loans for home improvement or refinancing, and for purchased loans.

B. Action Taken

1. Type of Action. Indicate the type of action taken on the application or loan by using one of the following Codes.

Code 1—Loan originated
Code 2—Application approved but not accepted
Code 3—Application denied
Code 4—Application withdrawn
Code 5—File closed for incompleteness
Code 6—Loan purchased by your institution
Code 7—Preapproval request denied
Code 8—Preapproval request approved but not accepted (optional reporting)

a. Use Code 1 for a loan that is originated, including one resulting from a request for preapproval.

b. For a counteroffer (your offer to the applicant to make the loan on different terms or in a different amount from the terms or amount applied for), use Code 1 if the applicant accepts. Use Code 3 if the applicant turns down the counteroffer or does not respond.

c. Use Code 2 when the application is approved but the applicant (or the loan broker or correspondent) fails to respond to your notification of approval or your commitment letter within the specified time. Do not use this Code for a preapproval request.

d. Use Code 4 only when the application is expressly withdrawn by the applicant before a credit decision is made. Do not use Code 4 if a request for preapproval is withdrawn; preapproval requests that are withdrawn are not reported under HMDA.

e. Use Code 5 if you sent a written notice of incompleteness under §1002.9(c)(2) of Regulation B (Equal Credit Opportunity) and the applicant did not respond to your request for additional information within the period of time specified in your notice. Do not use this Code for requests for preapproval that are incomplete; these preapproval requests are not reported under HMDA.

2. Date of Action. For paper submissions only, enter the date by month, day, and year, using numerals in the form MM/DD/YYYY (for example, 02/22/2003). For submissions in electronic form, the proper format is YYYYMMDD.

a. For loans originated, enter the settlement or closing date.

b. For loans purchased, enter the date of purchase by your institution.

c. For applications and preapprovals denied, applications and preapprovals approved but not accepted by the applicant, and files closed for incompleteness, enter the date that the action was taken by your institution or the date the notice was sent to the applicant.

d. For applications withdrawn, enter the date you received the applicant's express withdrawal, or enter the date shown on the notification from the applicant, in the case of a written withdrawal.

e. For preapprovals that lead to a loan origination, enter the date of the origination.

C. Property Location

Except as otherwise provided, enter in these columns the applicable Codes for the MSA, or the MD if the MSA is divided into MDs, state, county, and census tract to indicate the location of the property to which a loan relates.

1. MSA or Metropolitan Division.—For each loan or loan application, enter the MSA, or the MD number if the MSA is divided into MDs. MSA and MD boundaries are defined by OMB; use the boundaries that were in effect on January 1 of the calendar year for which you are reporting. A listing of MSAs and MDs is available from the appropriate Federal agency to which you report data or the FFIEC.

2. State and County. Use the Federal Information Processing Standard (FIPS) two-digit numerical code for the state and the three-digit numerical code for the county. These codes are available from the appropriate Federal agency to which you report data or the FFIEC.

3. Census Tract.—Indicate the census tract where the property is located. Notwithstanding paragraph 6, if the property is located in a county with a population of 30,000 or less in the 2000 Census, enter ''NA'' (even if the population has increased above 30,000 since 2000), or enter the census tract number. County population data can be obtained from the U.S. Census Bureau.

4. Census Tract Number.—For the census tract number, consult the resources provided by the U.S. Census Bureau or the FFIEC.

5. Property Located Outside MSAs or Metropolitan Divisions.—For loans on property located outside the MSAs and MDs in which an institution has a home or branch office, or for property located outside of any MSA or MD, the institution may choose one of the following two options. Under option one, the institution may enter the MSA or MD, state and county codes and the census tract number; and if the property is not located in any MSA or MD, the institution may enter ''NA'' in the MSA or MD column. (Codes exist for all states and counties and numbers exist for all census tracts.) Under this first option, the codes and census tract number must accurately identify the property location. Under the second option, which is not available if paragraph 6 applies, an institution may enter ''NA'' in all four columns, whether or not the codes or numbers exist for the property location.

6. Data Reporting for Banks and Savings Associations Required To Report Data on Small Business, Small Farm, and Community Development Lending Under the CRA Regulations.—If your institution is a bank or savings association that is required to report data under the regulations that implement the CRA, you must enter the property location on your HMDA/LAR even if the property is outside the MSAs or MDs in which you have a home or branch office, or is not located in any MSA.

7. Requests for Preapproval. Notwithstanding paragraphs 1 through 6, if the application is a request for preapproval that is denied or that is approved but not accepted by the applicant, you may enter ''NA'' in all four columns.

D. Applicant Information—Ethnicity, Race, Sex, and Income

Appendix B contains instructions for the collection of data on ethnicity, race, and sex, and also contains a sample form for data collection.

1. Applicability. Report this information for loans that you originate as well as for applications that do not result in an origination.

a. You need not collect or report this information for loans purchased. If you choose not to report this information, use the Codes for ''not applicable.''

b. If the borrower or applicant is not a natural person (a corporation or partnership, for example), use the Codes for ''not applicable.''

2. Mail, Internet, or Telephone Applications.—All loan applications, including applications taken by mail, internet, or telephone must use a collection form similar to that shown in appendix B regarding ethnicity, race, and sex. For applications taken by telephone, the information in the collection form must be stated orally by the lender, except for information that pertains uniquely to applications taken in writing. If the applicant does not provide these data in an application taken by mail or telephone or on the internet, enter the Code for ''information not provided by applicant in mail, internet, or telephone application'' specified in paragraphs I.D.3., 4., and 5. of this appendix. (See appendix B for complete information on the collection of these data in mail, Internet, or telephone applications.)

3. Ethnicity of Borrower or Applicant. Use the following Codes to indicate the ethnicity of the applicant or borrower under column ''A'' and of any co-applicant or co-borrower under column ''CA.''

Code 1—Hispanic or Latino
Code 2—Not Hispanic or Latino
Code 3—Information not provided by applicant in mail, internet, or telephone application
Code 4—Not applicable
Code 5—No co-applicant

4. Race of Borrower or Applicant. Use the following Codes to indicate the race of the applicant or borrower under column ''A'' and of any co-applicant or co-borrower under column ''CA.''

Code 1—American Indian or Alaska Native
Code 2—Asian
Code 3—Black or African American
Code 4—Native Hawaiian or Other Pacific Islander
Code 5—White
Code 6—Information not provided by applicant in mail, internet, or telephone application
Code 7—Not applicable
Code 8—No co-applicant

a. If an applicant selects more than one racial designation, enter all Codes corresponding to the applicant's selections.

b. Use Code 4 (for ethnicity) and Code 7 (for race) for ''not applicable'' only when the applicant or co-applicant is not a natural person or when applicant or co-applicant information is unavailable because the loan has been purchased by your institution.

c. If there is more than one co-applicant, provide the required information only for the first co-applicant listed on the application form. If there are no co-applicants or co-borrowers, use Code 5 (for ethnicity) and Code 8 (for race) for ''no co-applicant'' in the co-applicant column.

5. Sex of Borrower or Applicant. Use the following Codes to indicate the sex of the applicant or borrower under column ''A'' and of any co-applicant or co-borrower under column ''CA.''

Code 1—Male
Code 2—Female
Code 3—Information not provided by applicant in mail, internet, or telephone application
Code 4—Not applicable
Code 5—No co-applicant or co-borrower

a. Use Code 4 for ''not applicable'' only when the applicant or co-applicant is not a natural person or when applicant or co-applicant information is unavailable because the loan has been purchased by your institution.

b. If there is more than one co-applicant, provide the required information only for the first co-applicant listed on the application form. If there are no co-applicants or co-borrowers, use Code 5 for ''no co-applicant'' in the co-applicant column.

6. Income. Enter the gross annual income that your institution relied on in making the credit decision.

a. Round all dollar amounts to the nearest thousand (round $500 up to the next $1,000), and show in thousands. For example, report $35,500 as 36.

b. For loans on multifamily dwellings, enter ''NA.''

c. If no income information is asked for or relied on in the credit decision, enter ''NA.''

d. If the applicant or co-applicant is not a natural person or the applicant or co-applicant information is unavailable because the loan has been purchased by your institution, enter ''NA.''

E. Type of Purchaser

Enter the applicable Code to indicate whether a loan that your institution originated or purchased was then sold to a secondary market entity within the same calendar year:

Code 0—Loan was not originated or was not sold in calendar year covered by register
Code 1—Fannie Mae
Code 2—Ginnie Mae
Code 3—Freddie Mac
Code 4—Farmer Mac
Code 5—Private securitization
Code 6—Commercial bank, savings bank, or savings association
Code 7—Life insurance company, credit union, mortgage bank, or finance company
Code 8—Affiliate institution
Code 9—Other type of purchaser

a. Use Code 0 for applications that were denied, withdrawn, or approved but not accepted by the applicant; and for files closed for incompleteness.

b. Use Code 0 if you originated or purchased a loan and did not sell it during that same calendar year. If you sell the loan in a succeeding year, you need not report the sale.

c. Use Code 2 if you conditionally assign a loan to Ginnie Mae in connection with a mortgage-backed security transaction.

d. Use Code 8 for loans sold to an institution affiliated with you, such as your subsidiary or a subsidiary of your parent corporation.

F. Reasons for Denial

1. You may report the reason for denial, and you may indicate up to three reasons, using the following Codes. Leave this column blank if the ''action taken'' on the application is not a denial. For example, do not complete this column if the application was withdrawn or the file was closed for incompleteness.

Code 1—Debt-to-income ratio
Code 2—Employment history
Code 3—Credit history
Code 4—Collateral
Code 5—Insufficient cash (downpayment, closing costs)
Code 6—Unverifiable information

Code 7—Credit application incomplete
Code 8—Mortgage insurance denied
Code 9—Other

2. If your institution uses the model form for adverse action contained in appendix C to Regulation B (Form C–1, Sample Notification Form), use the foregoing Codes as follows:

a. Code 1 for: Income insufficient for amount of credit requested, and Excessive obligations in relation to income.

b. Code 2 for: Temporary or irregular employment, and Length of employment.

c. Code 3 for: Insufficient number of credit references provided; Unacceptable type of credit references provided; No credit file; Limited credit experience; Poor credit performance with us; Delinquent past or present credit obligations with others; Garnishment, attachment, foreclosure, repossession, collection action, or judgment; and Bankruptcy.

d. Code 4 for: Value or type of collateral not sufficient.

e. Code 6 for: Unable to verify credit references; Unable to verify employment; Unable to verify income; and Unable to verify residence.

f. Code 7 for: Credit application incomplete.

g. Code 9 for: Length of residence; Temporary residence; and Other reasons specified on notice.

G. Pricing-Related Data

1. Rate Spread. a. For a home-purchase loan, a refinancing, or a dwelling-secured home improvement loan that you originated, report the spread between the annual percentage rate (APR) and the average prime offer rate for a comparable transaction if the spread is equal to or greater than 1.5 percentage points for first-lien loans or 3.5 percentage points for subordinate-lien loans. To determine whether the rate spread meets this threshold, use the average prime offer rate in effect for the type of transaction as of the date the interest rate was set, and use the APR for the loan, as calculated and disclosed to the consumer under §§1026.6 or 1026.18, as applicable, of Regulation Z (12 CFR part 1026). Current and historic average prime offer rates are set forth in the tables published on the FFIEC's Web site (*http://www.ffiec.gov/hmda*) entitled ''Average Prime Offer Rates-Fixed'' and ''Average Prime Offer Rates-Adjustable.'' Use the most recently available average prime offer rate. ''Most recently available'' means the average prime offer rate set forth in the applicable table with the most recent effective date as of the date the interest rate was set. Do not use an average prime offer rate before its effective date.

b. If the loan is not subject to Regulation Z, or is a home improvement loan that is not dwelling-secured, or is a loan that you purchased, enter ''NA.''

c. Enter ''NA'' in the case of an application that does not result in a loan origination.

d. Enter the rate spread to two decimal places, and use a leading zero. For example, enter 03.29. If the difference between the APR and the average prime offer rate is a figure with more than two decimal places, round the figure or truncate the digits beyond two decimal places.

e. If the difference between the APR and the average prime offer rate is less than 1.5 percentage points for a first-lien loan and less than 3.5 percentage points for a subordinate-lien loan, enter ''NA.''

2. Date the interest rate was set. The relevant date to use to determine the average prime offer rate for a comparable transaction is the date on which the loan's interest rate was set by the financial institution for the final time before closing. If an interest rate is set pursuant to a ''lock-in'' agreement between the lender and the borrower, then the date on which the agreement fixes the interest rate is the date the rate was set. If a rate is re-set after a lock-in agreement is executed (for example, because the borrower exercises a float-down option or the agreement expires), then the relevant date is the date the rate is re-set for the final time before closing. If no lock-in agreement is executed, then the relevant date is the date on which the institution sets the rate for the final time before closing.

3. HOEPA Status. a. For a loan that you originated or purchased that is subject to the Home Ownership and Equity Protection Act of 1994 (HOEPA), as implemented in Regulation Z (12 CFR 1026.32), because the APR or the points and fees on the loan exceed the HOEPA triggers, enter Code 1.

b. Enter Code 2 in all other cases. For example, enter Code 2 for a loan that you originated or purchased that is not subject to the requirements of HOEPA for any reason; also enter Code 2 in the case of an application that does not result in a loan origination.

H. Lien Status

Use the following Codes for loans that you originate and for applications that do not result in an origination:

Code 1—Secured by a first lien.
Code 2—Secured by a subordinate lien.
Code 3—Not secured by a lien.
Code 4—Not applicable (purchased loan).

a. Use Codes 1 through 3 for loans that you originate, as well as for applications that do not result in an origination (applications that are approved but not accepted, denied, withdrawn, or closed for incompleteness).

b. Use Code 4 for loans that you purchase.

II. APPROPRIATE FEDERAL AGENCIES FOR HMDA REPORTING

A. You are strongly encouraged to submit your loan/application register via email. If you elect to use this method of transmission and the appropriate Federal agency for your institution is the Bureau of Consumer Financial Protection, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, then you should submit your institution's files to the email address dedicated to that purpose by the Bureau, which can be found on the Web site of the FFIEC. If one of the foregoing agencies is the appropriate Federal agency for your institution and you elect to submit your data by regular mail, then use the following address: HMDA, Federal Reserve Board, Attention: HMDA Processing, (insert name of the appropriate Federal agency for your institution), 20th & Constitution Ave NW., MS N502, Washington, DC 20551–0001.

B. If the Federal Reserve System (but not the Bureau of Consumer Financial Protection) is the appropriate Federal agency for your institution, you should use the email or regular mail address of your district bank indicated on the Web site of the FFIEC. If the Department of Housing and Urban Development is the appropriate Federal agency for your institution, then you should use the email or regular mail address indicated on the Web site of the FFIEC.

Form FR HMDA-LAR
OMB Nos. 1557-0159 (OCC), 3064-0046 (FDIC), 7100-0247 (FRB), 2502-0529 (HUD), 3133-0166 (NCUA), and 3170-0008 (CFPB).

LOAN/APPLICATION REGISTER TRANSMITTAL SHEET

You must complete this transmittal sheet (please type or print) and attach it to the Loan/Application Register, required by the Home Mortgage Disclosure Act, that you submit to your supervisory agency.

Reporter's Identification Number	Agency Code	Reporter's Tax Identification Number	Total line entries contained in attached Loan/Application Register
⌊⌋⌊⌋⌊⌋⌊⌋⌊⌋⌊⌋⌊⌋⌊⌋⌊⌋⌊⌋ –	⌊⌋	⌊⌋⌊⌋ – ⌊⌋⌊⌋⌊⌋⌊⌋⌊⌋⌊⌋⌊⌋	_____

The Loan/Application Register that is attached covers activity during the year_____ and contains a total of _____ pages.

Enter the name and address of your institution. The disclosure statement that is produced by the Federal Financial Institutions Examination Council will be mailed to the address you supply below:

_____
Name of Institution

_____
Address

_____
City, State, ZIP

Enter the name and address of any parent company:

_____
Name of Parent Company

_____
Address

_____
City, State, ZIP

Enter the name, telephone number, facsimile number, and e-mail address of a person who may be contacted about questions regarding your register:

_____	( ) _____	( ) _____	_____
Name	Telephone Number	Facsimile Number	E-Mail Address

An officer of your institution must complete the following section.

I certify to the accuracy of the data contained in this register.

_____	_____	_____
Name of Officer	Signature	Date

LOAN/APPLICATION REGISTER Page___of___

Form FR HMDA-LAR

Agency Code

Name of Reporting Institution

City, State, ZIP

Reporter's Identification Number

All columns (except Reasons for Denial) must be completed for each entry. See the instructions for details.

Application or Loan Information										Action Taken		Property Location				Applicant Information A = Applicant CA = Co-Applicant								Other Data			
																Ethnicity		Race			Sex						
Application or Loan Number	Date Application or Request Received (mm/dd/ccyy)	Loan Type	Prop ety Type	Pur pose	Occu pancy	Loan Amount in Thou sands	Pre ap proval	Type	Date (mm/dd/ccyy)	Five Digit MSA/MD Number	Two Digit State Code	Three Digit County Code	Six Digit Census Tract	A	CA	A	CA	A	CA	A	CA	Gross Annual Income in Thou sands	Type of Purchaser	Reasons for Denial (optional)	Rate Spread	HOEPA Status	Lien Status
Example of Loan Originated Following Preapproval																											
1,B,-,6,8,7,4,3,9	01/15/2004	1	1	1	1	65	1	1	02/22/2004	47894	51	059	4,2,1,9,.,8,5	2	5	3,5	8			1	5	24	7		N/A	2	1
Example of Preapproval Request Denied																											
5,6,7,8,9,0,4,3,2,1,-,1,2,3,4,0,9,8,7,6,5	05/01/2004	1	1	1	1	125	1	7	06/20/2004	NA	NA	NA	N/A	2	2	3	2			1	2	40	0	1,3	N/A	2	1
Example of Application Denied Following Preapproval																											
9,1,2,3,4,5,6,7,8,9,-,9,8,7,6,5,4,3,2,1,0	03/20/2004	1	1	1	1	50	1	3	04/30/2004	11500	01	015	0,0,2,1,.,0,0	1	1	5	3			2	1	30	0	4,5	N/A	2	1

LOAN/APPLICATION REGISTER CODE SHEET

Use the following codes to complete the Loan/Application Register. The instructions to the HMDA-LAR explain the proper use of each code.

Application or Loan Information

Loan Type:
1—Conventional (any loan other than FHA, VA, FSA, or RHS loans)
2—FHA-insured (Federal Housing Administration)
3—VA-guaranteed (Veterans Administration)
4—FSA/RHS (Farm Service Agency or Rural Housing Service)

Property Type:
1—One to four-family (other than manufactured housing)
2—Manufactured housing
3—Multifamily

Purpose of Loan:
1—Home purchase
2—Home improvement
3—Refinancing

Owner-Occupancy:
1—Owner-occupied as a principal dwelling
2—Not owner-occupied
3—Not applicable

Preapproval (home purchase loans only):
1—Preapproval was requested
2—Preapproval was not requested
3—Not applicable

Action Taken:
1—Loan originated
2—Application approved but not accepted
3—Application denied by financial institution
4—Application withdrawn by applicant
5—File closed for incompleteness
6—Loan purchased by financial institution
7—Preapproval request denied by financial institution
8—Preapproval request approved but not accepted (optional reporting)

Applicant Information

Ethnicity:
1—Hispanic or Latino
2—Not Hispanic or Latino
3—Information not provided by applicant in mail, Internet, or telephone application
4—Not applicable (see App. A, I.D.)
5—No co-applicant

Race:
1—American Indian or Alaska Native
2—Asian
3—Black or African American
4—Native Hawaiian or Other Pacific Islander
5—White
6—Information not provided by applicant in mail, Internet, or telephone application
7—Not applicable (see App. A, I.D.)
8—No co-applicant

Sex:
1—Male
2—Female
3—Information not provided by applicant in mail, Internet, or telephone application
4—Not applicable (see App. A, I.D.)
5—No co-applicant

Type of Purchaser

0—Loan was not originated or was not sold in calendar year covered by register
1—Fannie Mae
2—Ginnie Mae
3—Freddie Mac
4—Farmer Mac
5—Private securitization
6—Commercial bank, savings bank or savings association
7—Life insurance company, credit union, mortgage bank, or finance company
8—Affiliate institution
9—Other type of purchaser

Reasons for Denial (optional reporting)

1—Debt-to-income ratio
2—Employment history
3—Credit history
4—Collateral
5—Insufficient cash (downpayment, closing costs)
6—Unverifiable information
7—Credit application incomplete
8—Mortgage insurance denied
9—Other

Other Data

HOEPA Status (only for loans originated or purchased):
1—HOEPA loan
2—Not a HOEPA loan

Lien Status (only for applications and originations):
1—Secured by a first lien
2—Secured by a subordinate lien
3—Not secured by a lien
4—Not applicable (purchased loans)

EFFECTIVE DATE NOTE 1: At 80 FR 66313, Oct. 28, 2015, appendix A to part 1003 was amended by adding a new subheading and paragraph 1 under that subheading, revising paragraphs II.A and B, and adding paragraph II.C , effective Jan. 1, 2018. For the convenience of the user, the added and revised text is set forth as follows:

APPENDIX A TO PART 1003—FORM AND INSTRUCTIONS FOR COMPLETION OF HMDA LOAN/APPLICATION REGISTER

Paperwork Reduction Act Notice

* * * * *

Transition Requirements for Data Collected in 2017 and Submitted in 2018

1. The instructions for completion of the loan/application register in part I of this appendix applies to data collected during the 2017 calendar year and reported in 2018. Part I of this appendix does not apply to data collected pursuant to the amendments to Regulation C effective January 1, 2018.

* * * * *

II. Appropriate Federal Agencies for HMDA Reporting

A. A financial institution shall submit its loan/application register in electronic format to the appropriate Federal agency at the address identified by such agency. The appropriate Federal agency for a financial institution is determined pursuant to section 304(h)(2) of the Home Mortgage Disclosure Act (12 U.S.C. 2803(h)(2)) or, with respect to a financial institution subject to the Bureau's supervisory authority under section 1025(a) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5515(a)), is the Bureau.

B. Procedures for the submission of the loan/application register are available at *www.consumerfinance.gov/hmda*.

C. An authorized representative of the financial institution with knowledge of the data submitted shall certify to the accuracy and completeness of the data submitted.

* * * * *

EFFECTIVE DATE NOTE 2: At 80 FR 66314, Oct. 28, 2015, appendix A to part 1003 was removed and reserved, effective Jan. 1, 2019.

APPENDIX B TO PART 1003—FORM AND INSTRUCTIONS FOR DATA COLLECTION ON ETHNICITY, RACE, AND SEX

I. INSTRUCTIONS ON COLLECTION OF DATA ON ETHNICITY, RACE, AND SEX

You may list questions regarding the ethnicity, race, and sex of the applicant on your loan application form, or on a separate form that refers to the application. (See the sample form below for model language.)

II. PROCEDURES

A. You must ask the applicant for this information (but you cannot require the applicant to provide it) whether the application is taken in person, by mail or telephone, or on the internet. For applications taken by telephone, the information in the collection form must be stated orally by the lender, except for that information which pertains uniquely to applications taken in writing.

B. Inform the applicant that the Federal government requests this information in order to monitor compliance with Federal statutes that prohibit lenders from discriminating against applicants on these bases. Inform the applicant that if the information is not provided where the application is taken in person, you are required to note the data on the basis of visual observation or surname.

C. You must offer the applicant the option of selecting one or more racial designations.

D. If the applicant chooses not to provide the information for an application taken in person, note this fact on the form and then note the applicant's ethnicity, race, and sex on the basis of visual observation and surname, to the extent possible.

E. If the applicant declines to answer these questions or fails to provide the information on an application taken by mail or telephone or on the internet, the data need not be provided. In such a case, indicate that the application was received by mail, telephone, or Internet, if it is not otherwise evident on the face of the application.

SAMPLE DATA-COLLECTION FORM
INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing, and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. You may select one or more designations for "Race." The law provides that a lender may not discriminate on the basis of this information, or on whether you choose to furnish it. However, if you choose not to furnish the information and you have made this application in person, under federal regulations the lender is required to note ethnicity, race, and sex on the basis of visual observation or surname. If you do not wish to furnish the information, please check below.

APPLICANT:

☐ I do not wish to furnish this information

Ethnicity:

☐ Hispanic or Latino
☐ Not Hispanic or Latino

Race:

☐ American Indian or Alaska Native
☐ Asian
☐ Black or African American
☐ Native Hawaiian or Other Pacific Islander
☐ White

Sex:

☐ Female
☐ Male

CO-APPLICANT:

☐ I do not wish to furnish this information

Ethnicity:

☐ Hispanic or Latino
☐ Not Hispanic or Latino

Race:

☐ American Indian or Alaska Native
☐ Asian
☐ Black or African American
☐ Native Hawaiian or Other Pacific Islander
☐ White

Sex:

☐ Female
☐ Male

[76 FR 78468, Dec. 19, 2011, as amended at 77 FR 8722, Feb. 15, 2012]

EFFECTIVE DATE NOTE: At 80 FR 66314, Oct. 28, 2015, appendix B to part 1003 was revised, effective Jan. 1, 2018. For the convenience of the user, the revised text is set forth as follows:

APPENDIX B TO PART 1003—FORM AND INSTRUCTIONS FOR DATA COLLECTION ON ETHNICITY, RACE, AND SEX

You may list questions regarding the ethnicity, race, and sex of the applicant on your loan application form, or on a separate form that refers to the application. (See the sample data collection form below for model language.)

1. You must ask the applicant for this information (but you cannot require the applicant to provide it) whether the application is taken in person, by mail or telephone, or on the internet. For applications taken by telephone, you must state the information in the collection form orally, except for that information which pertains uniquely to applications taken in writing, for example, the italicized language in the sample data collection form.

2. Inform the applicant that Federal law requires this information to be collected in order to protect consumers and to monitor compliance with Federal statutes that prohibit discrimination against applicants on these bases. Inform the applicant that if the information is not provided where the application is taken in person, you are required to note the information on the basis of visual observation or surname.

3. If you accept an application through electronic media with a video component, you must treat the application as taken in person. If you accept an application through electronic media without a video component (for example, facsimile), you must treat the application as accepted by mail.

4. For purposes of §1003.4(a)(10)(i), if a covered loan or application includes a guarantor, you do not report the guarantor's ethnicity, race, and sex.

5. If there are no co-applicants, you must report that there is no co-applicant. If there is more than one co-applicant, you must provide the ethnicity, race, and sex only for the first co-applicant listed on the collection form. A co-applicant may provide an absent co-applicant's ethnicity, race, and sex on behalf of the absent co-applicant. If the information is not provided for an absent co-applicant, you must report ''information not provided by applicant in mail, internet, or telephone application'' for the absent co-applicant.

6. When you purchase a covered loan and you choose not to report the applicant's or co-applicant's ethnicity, race, and sex, you must report that the requirement is not applicable.

7. You must report that the requirement to report the applicant's or co-applicant's ethnicity, race, and sex is not applicable when the applicant or co-applicant is not a natural person (for example, a corporation, partnership, or trust). For example, for a transaction involving a trust, you must report that the requirement to report the applicant's ethnicity, race, and sex is not applicable if the trust is the applicant. On the other hand, if the applicant is a natural person, and is the beneficiary of a trust, you must report the applicant's ethnicity, race, and sex.

8. You must report the ethnicity, race, and sex of an applicant as provided by the applicant. For example, if an applicant selects the ''Mexican'' box the institution reports ''Mexican'' for the ethnicity of the applicant. If an applicant selects the ''Asian'' box the institution reports ''Asian'' for the race of the applicant. Only an applicant may self-identify as being of a particular Hispanic or Latino subcategory (Mexican, Puerto Rican, Cuban, Other Hispanic or Latino) or of a particular Asian subcategory (Asian Indian, Chinese, Filipino, Japanese, Korean, Vietnamese, Other Asian) or of a particular Native Hawaiian or Other Pacific Islander subcategory (Native Hawaiian, Guamanian or Chamorro, Samoan, Other Pacific Islander) or of a particular American Indian or Alaska Native enrolled or principal tribe.

9. You must offer the applicant the option of selecting more than one ethnicity or race. If an applicant selects more than one ethnicity or race, you must report each selected designation, subject to the limits described below.

i. *Ethnicity—Aggregate categories and subcategories.* There are two aggregate ethnicity categories: Hispanic or Latino; and Not Hispanic or Latino. If an applicant selects Hispanic or Latino, the applicant may also select up to four ethnicity subcategories: Mexican; Puerto Rican; Cuban; and Other Hispanic or Latino. You must report each aggregate ethnicity category and each ethnicity subcategory selected by the applicant.

ii. *Ethnicity—Other subcategories.* If an applicant selects the Other Hispanic or Latino ethnicity subcategory, the applicant may also provide a particular Hispanic or Latino ethnicity not listed in the standard subcategories. In such a case, you must report both the selection of Other Hispanic or Latino and the additional information provided by the applicant.

iii. *Race—Aggregate categories and subcategories.* There are five aggregate race categories: American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; and White. The Asian and the Native Hawaiian or Other Pacific Islander aggregate categories have seven and four subcategories, respectively. The Asian race subcategories are: Asian Indian; Chinese, Filipino; Japanese; Korean; Vietnamese; and Other Asian. The Native Hawaiian or Other Pacific Islander race subcategories are: Native Hawaiian; Guamanian or Chamorro; Samoan; and Other Pacific Islander. You must report every aggregate race category selected by the applicant. If the applicant also selects one or more race subcategories, you must report each race subcategory selected by the applicant, except that you must not report more than a total of five aggregate race categories and race subcategories combined. For example, if the applicant selects all five aggregate race categories and also selects some race subcategories, you report only the five aggregate race categories. On the other

hand, if the applicant selects the White, Asian, and Native Hawaiian or Other Pacific Islander aggregate race categories, and the applicant also selects the Korean, Vietnamese, and Samoan race subcategories, you must report White, Asian, Native Hawaiian or Other Pacific Islander, and any two, at your option, of the three race subcategories selected by the applicant. In this example, you must report White, Asian, and Native Hawaiian or Other Pacific Islander, and in addition you must report (at your option) either Korean and Vietnamese, Korean and Samoan, or Vietnamese and Samoan. To determine how to report an Other race subcategory for purposes of the five-race maximum, see paragraph 9.iv below.

iv. *Race—Other subcategories.* If an applicant selects the Other Asian race subcategory or the Other Pacific Islander race subcategory, the applicant may also provide a particular Other Asian or Other Pacific Islander race not listed in the standard subcategories. In either such case, you must report both the selection of Other Asian or Other Pacific Islander, as applicable, and the additional information provided by the applicant, subject to the five-race maximum. In all such cases where the applicant has selected an Other race subcategory and also provided additional information, for purposes of the maximum of five reportable race categories and race subcategories combined set forth above, the Other race subcategory and additional information provided by the applicant together constitute only one selection. Thus, using the same facts in the example offered in paragraph 9.iii above, if the applicant also selected Other Asian and entered ''Thai'' in the space provided, Other Asian and Thai are considered one selection. You must report any two (at your option) of the four race subcategories selected by the applicant, Korean, Vietnamese, Other Asian-Thai, and Samoan, in addition to the three aggregate race categories selected by the applicant.

10. If the applicant chooses not to provide the information for an application taken in person, note this fact on the collection form and then collect the applicant's ethnicity, race, and sex on the basis of visual observation or surname. You must report whether the applicant's ethnicity, race, and sex was collected on the basis of visual observation or surname. When you collect an applicant's ethnicity, race, and sex on the basis of visual observation or surname, you must select from the following aggregate categories: Ethnicity (Hispanic or Latino; not Hispanic or Latino); race (American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; White); sex (male; female).

11. If the applicant declines to answer these questions by checking the ''I do not wish to provide this information'' box on an application that is taken by mail or on the internet, or declines to provide this information by stating orally that he or she does not wish to provide this information on an application that is taken by telephone, you must report ''information not provided by applicant in mail, internet, or telephone application.''

12. If the applicant begins an application by mail, internet, or telephone, and does not provide the requested information on the application but does not check or select the ''I do not wish to provide this information'' box on the application, and the applicant meets in person with you to complete the application, you must request the applicant's ethnicity, race, and sex. If the applicant does not provide the requested information during the in-person meeting, you must collect the information on the basis of visual observation or surname. If the meeting occurs after the application process is complete, for example, at closing or account opening, you are not required to obtain the applicant's ethnicity, race, and sex.

13. When an applicant provides the requested information for some but not all fields, you report the information that was provided by the applicant, whether partial or complete. If an applicant provides partial or complete information on ethnicity, race, and sex and also checks the ''I do not wish to provide this information'' box on an application that is taken by mail or on the internet, or makes that selection when applying by telephone, you must report the information on ethnicity, race, and sex that was provided by the applicant.

SAMPLE DATA COLLECTION FORM
DEMOGRAPHIC INFORMATION OF APPLICANT AND CO-APPLICANT

The purpose of collecting this information is to help ensure that all applicants are treated fairly and that the housing needs of communities and neighborhoods are being fulfilled. For residential mortgage lending, Federal law requires that we ask applicants for their demographic information (ethnicity, race, and sex) in order to monitor our compliance with equal credit opportunity, fair housing, and home mortgage disclosure laws. You are not required to provide this information, but are encouraged to do so. You may select one or more "Hispanic or Latino" origins, and one or more designations for "Race."

The law provides that we may not discriminate on the basis of this information, or on whether you choose to provide it. However, if you choose not to provide the information and you have made this application in person, Federal regulations require us to note your ethnicity, race, and sex on the basis of visual observation or surname. If you do not wish to provide some or all of this information, please check below.

Applicant:

Ethnicity:
☐ Hispanic or Latino – *Check one or more*
- ☐ Mexican
- ☐ Puerto Rican
- ☐ Cuban
- ☐ Other Hispanic or Latino – *Print origin, for example, Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on:*

☐ Not Hispanic or Latino

☐ I do not wish to provide this information

Race: *Check one or more*
☐ American Indian or Alaska Native – *Print name of enrolled or principal tribe:*

☐ Asian
- ☐ Asian Indian
- ☐ Chinese
- ☐ Filipino
- ☐ Japanese
- ☐ Korean
- ☐ Vietnamese
- ☐ Other Asian – *Print race, for example, Hmong, Laotian, Thai, Pakistani, Cambodian, and so on:*

☐ Black or African American
☐ Native Hawaiian or Other Pacific Islander
- ☐ Native Hawaiian
- ☐ Guamanian or Chamorro
- ☐ Samoan
- ☐ Other Pacific Islander – *Print race, for example, Fijian, Tongan, and so on:*

☐ White

☐ I do not wish to provide this information

Sex:
☐ Female
☐ Male

☐ I do not wish to provide this information

Co-Applicant:

Ethnicity:
☐ Hispanic or Latino
- ☐ Mexican
- ☐ Puerto Rican
- ☐ Cuban
- ☐ Other Hispanic or Latino – *Print origin, for example, Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on:*

☐ Not Hispanic or Latino

☐ I do not wish to provide this information

Race:
☐ American Indian or Alaska Native – *Print name of enrolled or principal tribe:*

☐ Asian
- ☐ Asian Indian
- ☐ Chinese
- ☐ Filipino
- ☐ Japanese
- ☐ Korean
- ☐ Vietnamese
- ☐ Other Asian – *Print race, for example, Hmong, Laotian, Thai, Pakistani, Cambodian, and so on:*

☐ Black or African American
☐ Native Hawaiian or Other Pacific Islander
- ☐ Native Hawaiian
- ☐ Guamanian or Chamorro
- ☐ Samoan
- ☐ Other Pacific Islander – *Print race, for example, Fijian, Tongan, and so on:*

☐ White

☐ I do not wish to provide this information

Sex:
☐ Female
☐ Male

☐ I do not wish to provide this information

To Be Completed by Financial Institution (for an application taken in person):

Was the ethnicity of the applicant collected on the basis of visual observation or surname?
☐ Yes
☐ No

Was the race of the applicant collected on the basis of visual observation or surname?
☐ Yes
☐ No

Was the sex of the applicant collected on the basis of visual observation or surname?
☐ Yes
☐ No

Was the ethnicity of the co-applicant collected on the basis of visual observation or surname?
☐ Yes
☐ No

Was the race of the co-applicant collected on the basis of visual observation or surname?
☐ Yes
☐ No

Was the sex of the co-applicant collected on the basis of visual observation or surname?
☐ Yes
☐ No

APPENDIX C TO PART 1003—PROCEDURES FOR GENERATING A CHECK DIGIT AND VALIDATING A ULI

The check digit for the Universal Loan Identifier (ULI) pursuant to §1003.4(a)(1)(i)(C) is calculated using the ISO/IEC 7064, MOD 97–10 as it appears on the International Standard ISO/IEC 7064:2003, which is published by the International Organization for Standardization (ISO).

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GENERATING A CHECK DIGIT

Step 1: Starting with the leftmost character in the string that consists of the combination of the Legal Entity Identifier (LEI) pursuant to §1003.4(a)(1)(i)(A) and the additional characters identifying the covered loan or application pursuant to §1003.4(a)(1)(i)(B), replace each alphabetic character with numbers in accordance with Table I below to obtain all numeric values in the string.

TABLE I—ALPHABETIC TO NUMERIC CONVERSION TABLE

The alphabetic characters are not case-sensitive and each letter, whether it is capitalized or in lower-case, is equal to the same value as each letter illustrates in the conversion table. For example, A and a are each equal to 10.

A = 10	H = 17	O = 24	V = 31
B = 11	I = 18	P = 25	W = 32
C = 12	J = 19	Q = 26	X = 33
D = 13	K = 20	R = 27	Y = 34
E = 14	L = 21	S = 28	Z = 35
F = 15	M = 22	T = 29	
G = 16	N = 23	U = 30	

Step 2: After converting the combined string of characters to all numeric values, append two zeros to the rightmost positions.

Step 3: Apply the mathematical function mod=(n,97) where n= the number obtained in step 2 above and 97 is the divisor.

Alternatively, to calculate without using the modulus operator, divide the numbers in step 2 above by 97. Truncate the remainder to three digits and multiply it by .97. Round the result to the nearest whole number.

Step 4: Subtract the result in step 3 from 98. If the result is one digit, add a leading 0 to make it two digits.

Step 5: The two digits in the result from step 4 is the check digit. Append the resulting check digit to the rightmost position in the combined string of characters described in step 1 above to generate the ULI.

EXAMPLE

For example, assume the LEI for a financial institution is 10Bx939c5543TqA1144M and the financial institution assigned the following string of characters to identify the covered loan: 999143X. The combined string of characters is 10Bx939c5543TqA 1144M999143X.

Step 1: Starting with the leftmost character in the combined string of characters, replace each alphabetic character with numbers in accordance with Table I above to obtain all numeric values in the string. The result is 10113393912554329261011442299914333.

Step 2: Append two zeros to the rightmost positions in the combined string. The result is 1011339391255432926101144229991433300.

Step 3: Apply the mathematical function mod=(n,97) where n= the number obtained in step 2 above and 97 is the divisor. The result is 60.

Alternatively, to calculate without using the modulus operator, divide the numbers in step 2 above by 97. The result is 104261 792912931229494633226795292 0.618556701030928. Truncate the remainder to three digits, which is .618, and multiply it by .97. The result is 59.946. Round this result to the nearest whole number, which is 60.

Step 4: Subtract the result in step 3 from 98. The result is 38.

Step 5: The two digits in the result from step 4 is the check digit. Append the check digit to the rightmost positions in the combined string of characters that consists of the LEI and the string of characters assigned by the financial institution to identify the covered loan to obtain the ULI. In this example, the ULI would be 10Bx939c5543TqA11 44M999143X38.

VALIDATING A ULI

To determine whether the ULI contains a transcription error using the check digit calculation, the procedures are described below.

Step 1: Starting with the leftmost character in the ULI, replace each alphabetic character with numbers in accordance with Table I above to obtain all numeric values in the string.

Step 2: Apply the mathematical function mod=(n,97) where n=the number obtained in step 1 above and 97 is the divisor.

Step 3: If the result is 1, the ULI does not contain transcription errors.

EXAMPLE

For example, the ULI assigned to a covered loan is 10Bx939c5543TqA1144M999143X38.

Step 1: Starting with the leftmost character in the ULI, replace each alphabetic character with numbers in accordance with Table I above to obtain all numeric values in the string. The result is 10113393912554329261011442299914333 8.

Step 2: Apply the mathematical function mod=(*n*,97) where *n* is the number obtained in step 1 above and 97 is the divisor.

Step 3: The result is 1. The ULI does not contain transcription errors.

EFFECTIVE DATE NOTE: At 80 FR 66316, Oct. 28, 2015, appendix C to part 1003 was added, effective Jan. 1, 2018.

SUPPLEMENT I TO PART 1003—STAFF COMMENTARY

INTRODUCTION

1. *Status.* The commentary in this supplement is the vehicle by which the Bureau of Consumer Financial Protection issues formal staff interpretations of Regulation C (12 CFR part 1003).

Section 1003.1—Authority, Purpose, and Scope

1(c) *Scope.*

1. *General.* The comments in this section address issues affecting coverage of institutions and exemptions from coverage.

2. *The broker rule and the meaning of ''broker'' and ''investor.''* For the purposes of the guidance given in this commentary, an institution that takes and processes a loan application and arranges for another institution to acquire the loan at or after closing is acting as a ''broker,'' and an institution that acquires a loan from a broker at or after closing is acting as an ''investor.'' (The terms used in this commentary may have different meanings in certain parts of the mortgage lending industry, and other terms may be used in place of these terms, for example in the Federal Housing Administration mortgage insurance programs.) Depending on the facts, a broker may or may not make a credit decision on an application (and thus it may or may not have reporting responsibilities). If the broker makes a credit decision, it reports that decision; if it does not make a credit decision, it does not report. If an investor reviews an application and makes a credit decision prior to closing, the investor reports that decision. If the investor does not review the application prior to closing, it reports only the loans that it purchases; it does not report the loans it does not purchase. An institution that makes a credit decision on an application prior to closing reports that decision regardless of whose name the loan closes in.

3. *Illustrations of the broker rule.* Assume that, prior to closing, four investors receive the same application from a broker; two deny it, one approves it, and one approves it and acquires the loan. In these circumstances, the first two report denials, the third reports the transaction as approved but not accepted, and the fourth reports an origination (whether the loan closes in the name of the broker or the investor). Alternatively, assume that the broker denies a loan before sending it to an investor; in this situation, the broker reports a denial.

4. *Broker's use of investor's underwriting criteria.* If a broker makes a credit decision based on underwriting criteria set by an investor, but without the investor's review prior to closing, the broker has made the credit decision. The broker reports as an origination a loan that it approves and closes, and reports as a denial an application that it turns down (either because the application does not meet the investor's underwriting guidelines or for some other reason). The investor reports as purchases only those loans it purchases.

5. *Insurance and other criteria.* If an institution evaluates an application based on the criteria or actions of a third party other than an investor (such as a government or private insurer or guarantor), the institution must report the action taken on the application (loan originated, approved but not accepted, or denied, for example).

6. *Credit decision of agent is decision of principal.* If an institution approves loans through the actions of an agent, the institution must report the action taken on the application (loan originated, approved but not accepted, or denied, for example). State law determines whether one party is the agent of another.

7. *Affiliate bank underwriting (250.250 review).* If an institution makes an independent evaluation of the creditworthiness of an applicant (for example, as part of a preclosing review by an affiliate bank under 12 CFR 250.250, a regulation of the Board of Governors of the Federal Reserve System that interprets section 23A of the Federal Reserve Act), the institution is making a credit decision. If the institution then acquires the loan, it reports the loan as an origination whether the loan closes in the name of the institution or its affiliate. An institution that does not acquire the loan but takes some other action reports that action.

8. *Participation loan.* An institution that originates a loan and then sells partial interests to other institutions reports the loan as an origination. An institution that acquires only a partial interest in such a loan does not report the transaction even if it has participated in the underwriting and origination of the loan.

9. *Assumptions.* An assumption occurs when an institution enters into a written agreement accepting a new borrower as the obligor on an existing obligation. An institution reports an assumption (or an application for an assumption) as a home purchase loan in the amount of the outstanding principal. If a transaction does not involve a written agreement between a new borrower and the institution, it is not an assumption for HMDA purposes and is not reported.

Section 1003.2—Definitions

Application.

1. *Consistency With Regulation B.* Bureau interpretations that appear in the official staff commentary to Regulation B (Equal Credit Opportunity, 12 CFR part 1002, Supplement I) are generally applicable to the definition of an application under Regulation C. However, under Regulation C the definition of an application does not include prequalification requests.

2. *Prequalification.* A prequalification request is a request by a prospective loan applicant (other than a request for preapproval) for a preliminary determination on whether the prospective applicant would likely qualify for credit under an institution's standards, or for a determination on the amount of credit for which the prospective applicant would likely qualify. Some institutions evaluate prequalification requests through a procedure that is separate from the institution's normal loan application process; others use the same process. In either case, Regulation C does not require an institution to report prequalification requests on the HMDA/LAR, even though these requests may constitute applications under Regulation B for purposes of adverse action notices.

3. *Requests for preapproval.* To be a covered preapproval program, the written commitment issued under the program must result from a full review of the creditworthiness of the applicant, including such verification of income, resources and other matters as is typically done by the institution as part of its normal credit evaluation program. In addition to conditions involving the identification of a suitable property and verification that no material change has occurred in the applicant's financial condition or creditworthiness, the written commitment may be subject only to other conditions (unrelated to the financial condition or creditworthiness of the applicant) that the lender ordinarily attaches to a traditional home mortgage application approval. These conditions are limited to conditions such as requiring an acceptable title insurance binder or a certificate indicating clear termite inspection, and, in the case where the applicant plans to use the proceeds from the sale of the applicant's present home to purchase a new home, a settlement statement showing adequate proceeds from the sale of the present home.

Branch office.

1. *Credit union.* For purposes of Regulation C, a ''branch'' of a credit union is any office where member accounts are established or loans are made, whether or not the office has been approved as a branch by a Federal or state agency. (See 12 U.S.C. 1752.)

2. *Depository institution.* A branch of a depository institution does not include a loan-production office, the office of an affiliate, or the office of a third party such as a loan broker. (But see appendix A, paragraph I.C.6, which requires certain depository institutions to report property location even for properties located outside those MSAs or Metropolitan Divisions in which the institution has a home or branch office.)

3. *Nondepository institution.* For a nondepository institution, ''branch office'' does not include the office of an affiliate or other third party such as a loan broker. (But note that certain nondepository institutions must report property location even in MSAs or Metropolitan Divisions where they do not have a physical location.)

Dwelling.

1. *Coverage.* The definition of ''dwelling'' is not limited to the principal or other residence of the applicant or borrower, and thus includes vacation or second homes and rental properties. A dwelling also includes a multifamily structure such as an apartment building.

2. *Exclusions.* Recreational vehicles such as boats or campers are not dwellings for purposes of HMDA. Also excluded are transitory residences such as hotels, hospitals, and college dormitories, whose occupants have principal residences elsewhere.

Financial institution.

1. *General.* An institution that met the test for coverage under HMDA in year 1, and then ceases to meet the test (for example, because its assets fall below the threshold on December 31 of year 2) stops collecting HMDA data beginning with year 3. Similarly, an institution that did not meet the coverage test for a given year, and then meets the test in the succeeding year, begins collecting HMDA data in the calendar year following the year in which it meets the test for coverage. For example, a for-profit mortgage lending institution (other than a bank, savings association, or credit union) that, in year 1, falls below the thresholds specified in the definition of Financial institution in §1003.2, but meets one of them in year 2, need not collect data in year 2, but begins collecting data in year 3.

2. *Adjustment of exemption threshold for banks, savings associations, and credit unions.* For data collection in 2016, the asset-size exemption threshold is $44 million. Banks, savings associations, and credit unions with assets at or below $44 million as of December 31, 2015, are exempt from collecting data for 2016.

3. *Coverage after a merger.* Several scenarios of data-collection responsibilities for the calendar year of a merger are described below. Under all the scenarios, if the merger results in a covered institution, that institution must begin data collection January 1 of the following calendar year.

i. Two institutions are not covered by Regulation C because of asset size. The institutions merge. No data collection is required

for the year of the merger (even if the merger results in a covered institution).

ii. A covered institution and an exempt institution merge. The covered institution is the surviving institution. For the year of the merger, data collection is required for the covered institution's transactions. Data collection is optional for transactions handled in offices of the previously exempt institution.

iii. A covered institution and an exempt institution merge. The exempt institution is the surviving institution, or a new institution is formed. Data collection is required for transactions of the covered institution that take place prior to the merger. Data collection is optional for transactions taking place after the merger date.

iv. Two covered institutions merge. Data collection is required for the entire year. The surviving or resulting institution files either a consolidated submission or separate submissions for that year.

4. *Originations.* HMDA coverage depends in part on whether an institution has originated home purchase loans. To determine whether activities with respect to a particular loan constitute an origination, institutions should consult, among other parts of the staff commentary, the discussion of the broker rule under §§1003.1(c) and 1003.4(a).

5. *Branches of foreign banks—treated as banks.* A Federal branch or a state-licensed insured branch of a foreign bank is a ''bank'' under section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)), and is covered by HMDA if it meets the tests for a depository institution found in §1003.2 of Regulation C.

6. *Branches and offices of foreign banks—treated as for-profit mortgage lending institutions.* Federal agencies, state-licensed agencies, state-licensed uninsured branches of foreign banks, commercial lending companies owned or controlled by foreign banks, and entities operating under section 25 or 25A of the Federal Reserve Act, 12 U.S.C. 601 and 611 (Edge Act and agreement corporations) are not ''banks'' under the Federal Deposit Insurance Act. These entities are nonetheless covered by HMDA if they meet the tests for a for-profit nondepository mortgage lending institution found in §1003.2 of Regulation C.

Home improvement loan.

1. Classification requirement for loans not secured by a lien on a dwelling. An institution has ''classified'' a loan that is not secured by a lien on a dwelling as a home improvement loan if it has entered the loan on its books as a home improvement loan, or has otherwise coded or identified the loan as a home improvement loan. For example, an institution that has booked a loan or reported it on a ''call report'' as a home improvement loan has classified it as a home improvement loan. An institution may also classify loans as home improvement loans in other ways (for example, by color-coding loan files).

2. *Improvements to real property.* Home improvements include improvements both to a dwelling and to the real property on which the dwelling is located (for example, installation of a swimming pool, construction of a garage, or landscaping).

3. *Commercial and other loans.* A home improvement loan may include a loan originated outside an institution's residential mortgage lending division (such as a loan to improve an apartment building made through the commercial loan department).

4. *Mixed-use property.* A loan to improve property used for residential and commercial purposes (for example, a building containing apartment units and retail space) is a home improvement loan if the loan proceeds are used primarily to improve the residential portion of the property. If the loan proceeds are used to improve the entire property (for example, to replace the heating system), the loan is a home improvement loan if the property itself is primarily residential. An institution may use any reasonable standard to determine the primary use of the property, such as by square footage or by the income generated. An institution may select the standard to apply on a case-by-case basis. If the loan is unsecured, to report the loan as a home improvement loan the institution must also have classified it as such.

5. *Multiple-category loans.* If a loan is a home improvement loan as well as a refinancing, an institution reports the loan as a home improvement loan.

Home purchase loan.

1. *Multiple properties.* A home purchase loan includes a loan secured by one dwelling and used to purchase another dwelling.

2. *Mixed-use property.* A dwelling-secured loan to purchase property used primarily for residential purposes (for example, an apartment building containing a convenience store) is a home purchase loan. An institution may use any reasonable standard to determine the primary use of the property, such as by square footage or by the income generated. An institution may select the standard to apply on a case-by-case basis.

3. *Farm loan.* A loan to purchase property used primarily for agricultural purposes is not a home purchase loan even if the property includes a dwelling. An institution may use any reasonable standard to determine the primary use of the property, such as by reference to the exemption from Regulation X (Real Estate Settlement Procedures, 12 CFR 1024.5(b)(1)) for a loan on property of 25 acres or more. An institution may select the standard to apply on a case-by-case basis.

4. *Commercial and other loans.* A home purchase loan may include a loan originated outside an institution's residential mortgage

lending division (such as a loan for the purchase of an apartment building made through the commercial loan department).

5. *Construction and permanent financing.* A home purchase loan includes both a combined construction/permanent loan and the permanent financing that replaces a construction-only loan. It does not include a construction-only loan, which is considered ''temporary financing'' under Regulation C and is not reported.

6. *Second mortgages that finance the downpayments on first mortgages.* If an institution making a first mortgage loan to a home purchaser also makes a second mortgage loan to the same purchaser to finance part or all of the home purchaser's downpayment, the institution reports each loan separately as a home purchase loan.

7. *Multiple-category loans.* If a loan is a home purchase loan as well as a home improvement loan, or a refinancing, an institution reports the loan as a home purchase loan.

Manufactured home.

1. *Definition of a manufactured home.* The definition in §1003.2 refers to the Federal building code for factory-built housing established by the Department of Housing and Urban Development (HUD). The HUD code requires generally that housing be essentially ready for occupancy upon leaving the factory and being transported to a building site. Modular homes that meet all of the HUD code standards are included in the definition because they are ready for occupancy upon leaving the factory. Other factory-built homes, such as panelized and pre-cut homes, generally do not meet the HUD code because they require a significant amount of construction on site before they are ready for occupancy. Loans and applications relating to manufactured homes that do not meet the HUD code should not be identified as manufactured housing under HMDA.

Metropolitan Statistical Areas and Metropolitan Divisions.

1. *Use of terms ''Metropolitan Statistical Area'' and ''Metropolitan Division.''* The U.S. Office of Management and Budget defines Metropolitan Statistical Areas and Metropolitan Divisions to provide nationally consistent definitions for collecting, tabulating, and publishing Federal statistics for a set of geographic areas. OMB divides every Metropolitan Statistical Area (MSA) with a population of 2.5 million or more into Metropolitan Divisions (MDs); MSAs with populations under 2.5 million population are not so divided. 67 FR 82228 (December 27, 2000). For all purposes under Regulation C, if an MSA is divided by OMB into MDs, the appropriate geographic unit to be used is the MD; if an MSA is not so divided by OMB into MDs, the appropriate geographic unit to be used is the MSA.

Section 1003.4—Compilation of Loan Data

4(a) Data format and itemization.

1. *Reporting requirements.* i. An institution reports data on loans that it originated and loans that it purchased during the calendar year described in the report. An institution reports these data even if the loans were subsequently sold by the institution.

ii. An institution reports the data for loan applications that did not result in originations—for example, applications that the institution denied or that the applicant withdrew during the calendar year covered by the report.

iii. In the case of brokered loan applications or applications forwarded through a correspondent, the institution reports as originations the loans that it approved and subsequently acquired per a pre-closing arrangement (whether or not they closed in the institution's name). Additionally, the institution reports the data for all applications that did not result in originations—for example, applications that the institution denied or that the applicant withdrew during the calendar year covered by the report (whether or not they would have closed in the institution's name). For all of these loans and applications, the institution reports the required data regarding the borrower's or applicant's ethnicity, race, sex, and income.

iv. Loan originations are to be reported only once. If the institution is the loan broker or correspondent, it does not report as originations the loans that it forwarded to another lender for approval prior to closing, and that were approved and subsequently acquired by that lender (whether or not they closed in the institution's name).

v. An institution reports applications that were received in the previous calendar year but were acted upon during the calendar year covered by the current register.

vi. A financial institution submits all required data to the appropriate Federal agency in one package, with the prescribed transmittal sheet. An officer of the institution certifies to the accuracy of the data.

vii. The transmittal sheet states the total number of line entries contained in the accompanying data transmission.

2. *Updating—agency requirements.* Certain state or Federal regulations, such as the Federal Deposit Insurance Corporation's regulations, may require an institution to update its data more frequently than is required under Regulation C.

3. *Form of quarterly updating.* An institution may maintain the quarterly updates of the HMDA/LAR in electronic or any other format, provided the institution can make the information available to its regulatory agency in a timely manner upon request.

Paragraph 4(a)(1).

1. *Application date—consistency.* In reporting the date of application, an institution reports the date the application was received or the date shown on the application. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans).

2. *Application date—application forwarded by a broker.* For an application forwarded by a broker, an institution reports the date the application was received by the broker, the date the application was received by the institution, or the date shown on the application. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans).

3. *Application date—reinstated application.* If, within the same calendar year, an applicant asks an institution to reinstate a counteroffer that the applicant previously did not accept (or asks the institution to reconsider an application that was denied, withdrawn, or closed for incompleteness), the institution may treat that request as the continuation of the earlier transaction or as a new transaction. If the institution treats the request for reinstatement or reconsideration as a new transaction, it reports the date of the request as the application date.

4. *Application or loan number.* An institution must ensure that each identifying number is unique within the institution. If an institution's register contains data for branch offices, for example, the institution could use a letter or a numerical code to identify the loans or applications of different branches, or could assign a certain series of numbers to particular branches to avoid duplicate numbers. Institutions are strongly encouraged not to use the applicant's or borrower's name or social security number, for privacy reasons.

5. *Application—year action taken.* An institution must report an application in the calendar year in which the institution takes final action on the application.

Paragraph 4(a)(3).

1. *Purpose—statement of applicant.* An institution may rely on the oral or written statement of an applicant regarding the proposed use of loan proceeds. For example, a lender could use a check-box, or a purpose line, on a loan application to determine whether or not the applicant intends to use loan proceeds for home improvement purposes.

2. *Purpose—multiple-purpose loan.* If a loan is a home purchase loan as well as a home improvement loan, or a refinancing, an institution reports the loan as a home purchase loan. If a loan is a home improvement loan as well as a refinancing, an institution reports the loan as a home improvement loan.

Paragraph 4(a)(6).

1. *Occupancy—multiple properties.* If a loan relates to multiple properties, the institution reports the owner occupancy status of the property for which property location is being reported. (See the comments to paragraph 4(a)(9)).

Paragraph 4(a)(7).

1. *Loan amount—counteroffer.* If an applicant accepts a counteroffer for an amount different from the amount initially requested, the institution reports the loan amount granted. If an applicant does not accept a counteroffer or fails to respond, the institution reports the loan amount initially requested.

2. *Loan amount—multiple-purpose loan.* Except in the case of a home-equity line of credit, an institution reports the entire amount of the loan, even if only a part of the proceeds is intended for home purchase or home improvement.

3. *Loan amount—home-equity line.* An institution that has chosen to report home-equity lines of credit reports only the part that is intended for home-improvement or home-purchase purposes.

4. *Loan amount—assumption.* An institution that enters into a written agreement accepting a new party as the obligor on a loan reports the amount of the outstanding principal on the assumption as the loan amount.

Paragraph 4(a)(8).

1. *Action taken—counteroffers.* If an institution makes a counteroffer to lend on terms different from the applicant's initial request (for example, for a shorter loan maturity or in a different amount) and the applicant does not accept the counteroffer or fails to respond, the institution reports the action taken as a denial on the original terms requested by the applicant.

2. *Action taken—rescinded transactions.* If a borrower rescinds a transaction after closing, the institution may report the transaction either as an origination or as an application that was approved but not accepted.

3. *Action taken—purchased loans.* An institution reports the loans that it purchased during the calendar year, and does not report the loans that it declined to purchase.

4. *Action taken—conditional approvals.* If an institution issues a loan approval subject to the applicant's meeting underwriting conditions (other than customary loan commitment or loan-closing conditions, such as a clear-title requirement or an acceptable property survey) and the applicant does not meet them, the institution reports the action taken as a denial.

5. *Action taken date—approved but not accepted.* For a loan approved by an institution but not accepted by the applicant, the institution reports any reasonable date, such as

the approval date, the deadline for accepting the offer, or the date the file was closed. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans).

6. *Action taken date—originations.* For loan originations, an institution generally reports the settlement or closing date. For loan originations that an institution acquires through a broker, the institution reports either the settlement or closing date, or the date the institution acquired the loan from the broker. If the disbursement of funds takes place on a date later than the settlement or closing date, the institution may use the date of disbursement. For a construction/permanent loan, the institution reports either the settlement or closing date, or the date the loan converts to the permanent financing. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans). Notwithstanding this flexibility regarding the use of the closing date in connection with reporting the date action was taken, the year in which an origination goes to closing is the year in which the institution must report the origination.

7. *Action taken—pending applications.* An institution does not report any loan application still pending at the end of the calendar year; it reports that application on its register for the year in which final action is taken.

Paragraph 4(a)(9).

1. *Property location—multiple properties (home improvement/refinance of home improvement).* For a home improvement loan, an institution reports the property being improved. If more than one property is being improved, the institution reports the location of one of the properties or reports the loan using multiple entries on its HMDA/LAR (with unique identifiers) and allocating the loan amount among the properties.

2. *Property location—multiple properties (home purchase/refinance of home purchase).* For a home purchase loan, an institution reports the property taken as security. If an institution takes more than one property as security, the institution reports the location of the property being purchased if there is just one. If the loan is to purchase multiple properties and is secured by multiple properties, the institution reports the location of one of the properties or reports the loan using multiple entries on its HMDA/LAR (with unique identifiers) and allocating the loan amount among the properties.

3. *Property location—loans purchased from another institution.* The requirement to report the property location by census tract in an MSA or Metropolitan Division where the institution has a home or branch office applies not only to loan applications and originations but also to loans purchased from another institution. This includes loans purchased from an institution that did not have a home or branch office in that MSA or Metropolitan Division and did not collect the property-location information.

4. *Property location—mobile or manufactured home.* If information about the potential site of a mobile or manufactured home is not available, an institution reports using the Code for ''not applicable.''

Paragraph 4(a)(10).

1. *Applicant data—completion by applicant.* An institution reports the monitoring information as provided by the applicant. For example, if an applicant checks the ''Asian'' box the institution reports using the ''Asian'' Code.

2. *Applicant data—completion by lender.* If an applicant fails to provide the requested information for an application taken in person, the institution reports the data on the basis of visual observation or surname.

3. *Applicant data—application completed in person.* When an applicant meets in person with a lender to complete an application that was begun by mail, internet, or telephone, the institution must request the monitoring information. If the meeting occurs after the application process is complete, for example, at closing, the institution is not required to obtain monitoring information.

4. *Applicant data—joint applicant.* A joint applicant may enter the government monitoring information on behalf of an absent joint applicant. If the information is not provided, the institution reports using the Code for ''information not provided by applicant in mail, internet, or telephone application.''

5. *Applicant data—video and other electronic-application processes.* An institution that accepts applications through electronic media with a video component treats the applications as taken in person and collects the information about the ethnicity, race, and sex of applicants. An institution that accepts applications through electronic media without a video component (for example, the internet or facsimile) treats the applications as accepted by mail.

6. *Income data—income relied on.* An institution reports the gross annual income relied on in evaluating the creditworthiness of applicants. For example, if an institution relies on an applicant's salary to compute a debt-to-income ratio but also relies on the applicant's annual bonus to evaluate creditworthiness, the institution reports the salary and the bonus to the extent relied upon. Similarly, if an institution relies on the income of a cosigner to evaluate creditworthiness, the institution includes this income to the extent relied upon. But an institution

does not include the income of a guarantor who is only secondarily liable.

7. *Income data—co-applicant.* If two persons jointly apply for a loan and both list income on the application, but the institution relies only on the income of one applicant in computing ratios and in evaluating creditworthiness, the institution reports only the income relied on.

8. *Income data—loan to employee.* An institution may report ''NA'' in the income field for loans to its employees to protect their privacy, even though the institution relied on their income in making its credit decisions.

Paragraph 4(a)(11).

1. *Type of purchaser—loan-participation interests sold to more than one entity.* An institution that originates a loan, and then sells it to more than one entity, reports the ''type of purchaser'' based on the entity purchasing the greatest interest, if any. If an institution retains a majority interest, it does not report the sale.

2. *Type of purchaser—swapped loans.* Loans ''swapped'' for mortgage-backed securities are to be treated as sales; the purchaser is the type of entity receiving the loans that are swapped.

Paragraph 4(a)(12)(ii).

1. *Average prime offer rate.* Average prime offer rates are annual percentage rates derived from average interest rates, points, and other loan pricing terms offered to borrowers by a representative sample of lenders for mortgage loans that have low-risk pricing characteristics. Other pricing terms include commonly used indices, margins, and initial fixed-rate periods for variable-rate transactions. Relevant pricing characteristics include a consumer's credit history and transaction characteristics such as the loan-to-value ratio, owner-occupant status, and purpose of the transaction. To obtain average prime offer rates, the Bureau uses a survey of lenders that both meets the criteria of §1003.4(a)(12)(ii) and provides pricing terms for at least two types of variable-rate transactions and at least two types of non-variable-rate transactions. An example of such a survey is the Freddie Mac Primary Mortgage Market Survey®.

2. *Comparable transaction.* The rate spread reporting requirement applies to a reportable loan with an annual percentage rate that exceeds by the specified margin (or more) the average prime offer rate for a comparable transaction as of the date the interest rate is set. The tables of average prime offer rates published by the Bureau (*see* comment 4(a)(12)(ii)–3) indicate how to identify the comparable transaction.

3. *Bureau tables.* The Bureau publishes on the FFIEC's Web site (*http://www.ffiec.gov/hmda*), in table form, average prime offer rates for a wide variety of transaction types. The Bureau calculates an annual percentage rate, consistent with Regulation Z (*see* 12 CFR 1026.22 and part 1026, appendix J), for each transaction type for which pricing terms are available from the survey described in comment 4(a)(12)(ii)–1. The Bureau estimates annual percentage rates for other types of transactions for which direct survey data are not available based on the loan pricing terms available in the survey and other information. The Bureau publishes on the FFIEC's Web site the methodology it uses to arrive at these estimates.

Paragraph 4(a)(14).

1. *Determining lien status for applications and loans originated.* i. Lenders are required to report lien status for loans they originate and applications that do not result in originations. Lien status is determined by reference to the best information readily available to the lender at the time final action is taken and to the lender's own procedures. Thus, lenders may rely on the title search they routinely perform as part of their underwriting procedures—for example, for home purchase loans. Regulation C does not require lenders to perform title searches solely to comply with HMDA reporting requirements. Lenders may rely on other information that is readily available to them at the time final action is taken and that they reasonably believe is accurate, such as the applicant's statement on the application or the applicant's credit report. For example, where the applicant indicates on the application that there is a mortgage on the property or where the applicant's credit report shows that the applicant has a mortgage—and that mortgage is not going to be paid off as part of the transaction—the lender may assume that the loan it originates is secured by a subordinate lien. If the same application did not result in an origination—for example, because the application is denied or withdrawn—the lender would report the application as an application for a subordinate-lien loan.

ii. Lenders may also consider their established procedures when determining lien status for applications that do not result in originations. For example, a consumer applies to a lender to refinance a $100,000 first mortgage; the consumer also has a home equity line of credit for $20,000. If the lender's practice in such a case is to ensure that it will have first-lien position—through a subordination agreement with the holder of the mortgage on the home equity line—then the lender should report the application as an application for a first-lien loan.

Paragraph 4(c)(3).

1. An institution that opts to report home-equity lines reports the disposition of all applications, not just originations.

4(d) Excluded data.

1. *Mergers, purchases in bulk, and branch acquisitions.* If a covered institution acquires loans in bulk from another institution (for

example, from the receiver for a failed institution) but no merger or acquisition of the institution, or acquisition of a branch, is involved, the institution reports the loans as purchased loans.

Section 1003.5(a)—Disclosure and Reporting

5(a) Reporting to agency.

1. *Submission of data.* Institutions submit data to the appropriate Federal agencies in an automated, machine-readable form. The format must conform to that of the HMDA/LAR. An institution should contact the appropriate Federal agency for information regarding procedures and technical specifications for automated data submission; in some cases, agencies also make software available for automated data submission. The data are edited before submission, using the edits included in the agency-supplied software or equivalent edits in software available from vendors or developed in-house.

2. *Submission in paper form.* Institutions that report twenty-five or fewer entries on their HMDA/LAR may collect and report the data in paper form. An institution that submits its register in non-automated form sends two copies that are typed or computer printed and must use the format of the HMDA/LAR (but need not use the form itself). Each page must be numbered along with the total number of pages (for example, ''Page 1 of 3'').

3. *Procedures for entering data.* The required data are entered in the register for each loan origination, each application acted on, and each loan purchased during the calendar year. The institution should decide on the procedure it wants to follow—for example, whether to begin entering the required data, when an application is received, or to wait until final action is taken (such as when a loan goes to closing or an application is denied).

4. *Options for collection.* An institution may collect data on separate registers at different branches, or on separate registers for different loan types (such as for home purchase or home improvement loans, or for loans on multifamily dwellings). Entries need not be grouped on the register by MSA or Metropolitan Division, or chronologically, or by census tract numbers, or in any other particular order.

5. *Change in appropriate Federal agency.* If the appropriate Federal agency for a covered institution changes (as a consequence of a merger or a change in the institution's charter, for example), the institution must report data to the new appropriate Federal agency beginning with the year of the change.

6. *Subsidiaries.* An institution is a subsidiary of a bank or savings association (for purposes of reporting HMDA data to the same agency as the parent) if the bank or savings association holds or controls an ownership interest that is greater than 50 percent of the institution.

7. *Transmittal sheet—additional data submissions.* If an additional data submission becomes necessary (for example, because the institution discovers that data were omitted from the initial submission, or because revisions are called for), that submission must be accompanied by a transmittal sheet.

8. *Transmittal sheet—revisions or deletions.* If a data submission involves revisions or deletions of previously submitted data, it must state the total of all line entries contained in that submission, including both those representing revisions or deletions of previously submitted entries, and those that are being resubmitted unchanged or are being submitted for the first time. Depository institutions must provide a list of the MSAs or Metropolitan Divisions in which they have home or branch offices.

5(b) Public disclosure of statement.

1. *Business day.* For purposes of §1003.5, a business day is any calendar day other than a Saturday, Sunday, or legal public holiday.

2. *Format.* An institution may make the disclosure statement available in paper form or, if the person requesting the data agrees, in electronic form.

5(c) Public disclosure of modified loan/application register.

1. *Format.* An institution may make the modified register available in paper or electronic form. Although institutions are not required to make the modified register available in census tract order, they are strongly encouraged to do so in order to enhance its utility to users.

5(e) Notice of availability.

1. *Poster—suggested text.* An institution may use any text that meets the requirements of the regulation. Some of the Federal agencies that receive HMDA data provide HMDA posters that an institution can use to inform the public of the availability of its HMDA data, or the institution may create its own posters. If an institution prints its own, the following language is suggested but is not required:

HOME MORTGAGE DISCLOSURE ACT NOTICE

The HMDA data about our residential mortgage lending are available for review. The data show geographic distribution of loans and applications; ethnicity, race, sex, and income of applicants and borrowers; and information about loan approvals and denials. Inquire at this office regarding the locations where HMDA data may be inspected.

2. *Additional language for institutions making the disclosure statement available on request.* An institution that posts a notice informing the public of the address to which a request should be sent could include the following sentence, for example, in its general notice: ''To receive a copy of these data send a written request to [address].''

Section 1003.6—Enforcement

6(b) Bona fide errors.

1. *Bona fide error—information from third parties.* An institution that obtains the property-location information for applications and loans from third parties (such as appraisers or vendors of ''geocoding'' services) is responsible for ensuring that the information reported on its HMDA/LAR is correct.

[76 FR 78468, Dec. 19, 2011, as amended at 78 FR 79286, Dec. 30, 2013; 79 FR 77855, Dec. 29, 2014; 80 FR 79674, Dec. 23, 2015]

EFFECTIVE DATE NOTE 1: At 80 FR 66317, Oct. 28, 2015, supplement I to part 1003 was revised, effective Jan. 1, 2018. For the convenience of the user, the revised text is set forth as follows:

SUPPLEMENT I TO PART 1003—OFFICIAL INTERPRETATIONS

Introduction

1. *Status.* The commentary in this supplement is the vehicle by which the Bureau of Consumer Financial Protection issues formal interpretations of Regulation C (12 CFR part 1003).

Section 1003.2—Definitions

2(b) Application

1. *Consistency with Regulation B.* Bureau interpretations that appear in the official commentary to Regulation B (Equal Credit Opportunity Act, 12 CFR part 1002, Supplement I) are generally applicable to the definition of application under Regulation C. However, under Regulation C the definition of an application does not include prequalification requests.

2. *Prequalification.* A prequalification request is a request by a prospective loan applicant (other than a request for preapproval) for a preliminary determination on whether the prospective loan applicant would likely qualify for credit under an institution's standards, or for a determination on the amount of credit for which the prospective applicant would likely qualify. Some institutions evaluate prequalification requests through a procedure that is separate from the institution's normal loan application process; others use the same process. In either case, Regulation C does not require an institution to report prequalification requests on the loan/application register, even though these requests may constitute applications under Regulation B for purposes of adverse action notices.

3. *Requests for preapproval.* To be a preapproval program as defined in §1003.2(b)(2), the written commitment issued under the program must result from a comprehensive review of the creditworthiness of the applicant, including such verification of income, resources, and other matters as is typically done by the institution as part of its normal credit evaluation program. In addition to conditions involving the identification of a suitable property and verification that no material change has occurred in the applicant's financial condition or creditworthiness, the written commitment may be subject only to other conditions (unrelated to the financial condition or creditworthiness of the applicant) that the lender ordinarily attaches to a traditional home mortgage application approval. These conditions are limited to conditions such as requiring an acceptable title insurance binder or a certificate indicating clear termite inspection, and, in the case where the applicant plans to use the proceeds from the sale of the applicant's present home to purchase a new home, a settlement statement showing adequate proceeds from the sale of the present home. Regardless of its name, a program that satisfies the definition of a preapproval program in §1003.2(b)(2) is a preapproval program for purposes of Regulation C. Conversely, a program that a financial institution describes as a ''preapproval program'' that does not satisfy the requirements of §1003.2(b)(2) is not a preapproval program for purposes of Regulation C. If a financial institution does not regularly use the procedures specified in §1003.2(b)(2), but instead considers requests for preapprovals on an ad hoc basis, the financial institution need not treat ad hoc requests as part of a preapproval program for purposes of Regulation C. A financial institution should, however, be generally consistent in following uniform procedures for considering such ad hoc requests.

2(c) Branch Office

Paragraph 2(c)(1)

1. *Credit unions.* For purposes of Regulation C, a ''branch'' of a credit union is any office where member accounts are established or loans are made, whether or not the office has been approved as a branch by a Federal or State agency. (See 12 U.S.C. 1752.)

2. *Bank, savings association, or credit unions.* A branch office of a bank, savings association, or credit union does not include a loan-production office if the loan-production office is not considered a branch by the Federal or State supervisory authority applicable to that institution. A branch office also does not include the office of an affiliate or of a third party, such as a third-party broker.

Paragraph 2(c)(2)

1. General. A branch office of a for-profit mortgage lending institution, other than a bank savings association or credit union, does not include the office of an affiliate or

of a third party, such as a third-party broker.

2(d) Closed-end Mortgage Loan

1. *Dwelling-secured.* Section 1003.2(d) defines a closed-end mortgage loan as an extension of credit that is secured by a lien on a dwelling and that is not an open-end line of credit under §1003.2(o). Thus, for example, a loan to purchase a dwelling and secured only by a personal guarantee is not a closed-end mortgage loan because it is not dwelling-secured.

2. *Extension of credit.* Under §1003.2(d), a dwelling-secured loan is not a closed-end mortgage loan unless it involves an extension of credit. Thus, some transactions completed pursuant to installment sales contracts, such as some land contracts, are not closed-end mortgage loans because no credit is extended. For example, if a land contract provides that, upon default, the contract terminates, all previous payments will be treated as rent, and the borrower is under no obligation to make further payments, the transaction is not a closed-end mortgage loan. In general, extension of credit under §1003.2(d) refers to the granting of credit only pursuant to a new debt obligation. Thus, except as described in comments 2(d)–2.i and .ii, if a transaction modifies, renews, extends, or amends the terms of an existing debt obligation, but the existing debt obligation is not satisfied and replaced, the transaction is not a closed-end mortgage loan under §1003.2(d) because there has been no new extension of credit. The phrase extension of credit thus is defined differently under Regulation C than under Regulation B, 12 CFR part 1002.

i. *Assumptions.* For purposes of Regulation C, an assumption is a transaction in which an institution enters into a written agreement accepting a new borrower in place of an existing borrower as the obligor on an existing debt obligation. For purposes of Regulation C, assumptions include successor-in-interest transactions, in which an individual succeeds the prior owner as the property owner and then assumes the existing debt secured by the property. Under §1003.2(d), assumptions are extensions of credit even if the new borrower merely assumes the existing debt obligation and no new debt obligation is created. *See also* comment 2(j)–5.

ii. *New York State consolidation, extension, and modification agreements.* A transaction completed pursuant to a New York State consolidation, extension, and modification agreement and classified as a supplemental mortgage under New York Tax Law section 255, such that the borrower owes reduced or no mortgage recording taxes, is an extension of credit under §1003.2(d). Comments 2(i)–1, 2(j)–5, and 2(p)–2 clarify whether such transactions are home improvement loans, home purchase loans, or refinancings, respectively.

2(f) Dwelling

1. *General.* The definition of a dwelling is not limited to the principal or other residence of the applicant or borrower, and thus includes vacation or second homes and investment properties.

2. *Multifamily residential structures and communities.* A dwelling also includes a multifamily residential structure or community such as an apartment, condominium, cooperative building or complex, or a manufactured home community. A loan related to a manufactured home community is secured by a dwelling for purposes of §1003.2(f) even if it is not secured by any individual manufactured homes, but only by the land that constitutes the manufactured home community including sites for manufactured homes. However, a loan related to a multifamily residential structure or community that is not a manufactured home community is not secured by a dwelling for purposes of §1003.2(f) if it is not secured by any individual dwelling units and is, for example, instead secured only by property that only includes common areas, or is secured only by an assignment of rents or dues.

3. *Exclusions.* Recreational vehicles, including boats, campers, travel trailers, and park model recreational vehicles, are not considered dwellings for purposes of §1003.2(f), regardless of whether they are used as residences. Houseboats, floating homes, and mobile homes constructed before June 15, 1976, are also excluded, regardless of whether they are used as residences. Also excluded are transitory residences such as hotels, hospitals, college dormitories, and recreational vehicle parks, and structures originally designed as dwellings but used exclusively for commercial purposes, such as homes converted to daycare facilities or professional offices.

4. *Mixed-use properties.* A property used for both residential and commercial purposes, such as a building containing apartment units and retail space, is a dwelling if the property's primary use is residential. An institution may use any reasonable standard to determine the primary use of the property, such as by square footage or by the income generated. An institution may select the standard to apply on a case-by-case basis.

5. *Properties with service and medical components.* For purposes of §1003.2(f), a property used for both long-term housing and to provide related services, such as assisted living for senior citizens or supportive housing for persons with disabilities, is a dwelling and does not have a non-residential purpose merely because the property is used for both housing and to provide services. However, transitory residences that are used to provide such services are not dwellings. *See* comment 2(f)–3. Properties that are used to

provide medical care, such as skilled nursing, rehabilitation, or long-term medical care, also are not dwellings. *See* comment 2(f)–3. If a property that is used for both long-term housing and to provide related services also is used to provide medical care, the property is a dwelling if its primary use is residential. An institution may use any reasonable standard to determine the property's primary use, such as by square footage, income generated, or number of beds or units allocated for each use. An institution may select the standard to apply on a case-by-case basis.

2(g) Financial Institution

1. *Preceding calendar year and preceding December 31.* The definition of financial institution refers both to the preceding calendar year and the preceding December 31. These terms refer to the calendar year and the December 31 preceding the current calendar year. For example, in 2019, the preceding calendar year is 2018 and the preceding December 31 is December 31, 2018. Accordingly, in 2019, Financial Institution A satisfies the asset-size threshold described in §1003.2(g)(1)(i) if its assets exceeded the threshold specified in comment 2(g)–2 on December 31, 2018. Likewise, in 2020, Financial Institution A does not meet the loan-volume test described in §1003.2(g)(1)(v)(A) if it originated fewer than 25 closed-end mortgage loans during either 2018 or 2019.

2. [Reserved]

3. *Merger or acquisition—coverage of surviving or newly formed institution.* After a merger or acquisition, the surviving or newly formed institution is a financial institution under §1003.2(g) if it, considering the combined assets, location, and lending activity of the surviving or newly formed institution and the merged or acquired institutions or acquired branches, satisfies the criteria included in §1003.2(g). For example, A and B merge. The surviving or newly formed institution meets the loan threshold described in §1003.2(g)(1)(v)(B) if the surviving or newly formed institution, A, and B originated a combined total of at least 100 open-end lines of credit in each of the two preceding calendar years. Likewise, the surviving or newly formed institution meets the asset-size threshold in §1003.2(g)(1)(i) if its assets and the combined assets of A and B on December 31 of the preceding calendar year exceeded the threshold described in §1003.2(g)(1)(i). Comment 2(g)–4 discusses a financial institution's responsibilities during the calendar year of a merger.

4. *Merger or acquisition—coverage for calendar year of merger or acquisition.* The scenarios described below illustrate a financial institution's responsibilities for the calendar year of a merger or acquisition. For purposes of these illustrations, a ''covered institution'' means a financial institution, as defined in §1003.2(g), that is not exempt from reporting under §1003.3(a), and ''an institution that is not covered'' means either an institution that is not a financial institution, as defined in §1003.2(g), or an institution that is exempt from reporting under §1003.3(a).

i. Two institutions that are not covered merge. The surviving or newly formed institution meets all of the requirements necessary to be a covered institution. No data collection is required for the calendar year of the merger (even though the merger creates an institution that meets all of the requirements necessary to be a covered institution). When a branch office of an institution that is not covered is acquired by another institution that is not covered, and the acquisition results in a covered institution, no data collection is required for the calendar year of the acquisition.

ii. A covered institution and an institution that is not covered merge. The covered institution is the surviving institution, or a new covered institution is formed. For the calendar year of the merger, data collection is required for covered loans and applications handled in the offices of the merged institution that was previously covered and is optional for covered loans and applications handled in offices of the merged institution that was previously not covered. When a covered institution acquires a branch office of an institution that is not covered, data collection is optional for covered loans and applications handled by the acquired branch office for the calendar year of the acquisition.

iii. A covered institution and an institution that is not covered merge. The institution that is not covered is the surviving institution, or a new institution that is not covered is formed. For the calendar year of the merger, data collection is required for covered loans and applications handled in offices of the previously covered institution that took place prior to the merger. After the merger date, data collection is optional for covered loans and applications handled in the offices of the institution that was previously covered. When an institution remains not covered after acquiring a branch office of a covered institution, data collection is required for transactions of the acquired branch office that take place prior to the acquisition. Data collection by the acquired branch office is optional for transactions taking place in the remainder of the calendar year after the acquisition.

iv. Two covered institutions merge. The surviving or newly formed institution is a covered institution. Data collection is required for the entire calendar year of the merger. The surviving or newly formed institution files either a consolidated submission or separate submissions for that calendar year. When a covered institution acquires a branch office of a covered institution, data collection is required for the entire calendar

year of the merger. Data for the acquired branch office may be submitted by either institution.

5. *Originations.* Whether an institution is a financial institution depends in part on whether the institution originated at least 25 closed-end mortgage loans in each of the two preceding calendar years or at least 100 open-end lines of credit in each of the two preceding calendar years. Comments 4(a)–2 through –4 discuss whether activities with respect to a particular closed-end mortgage loan or open-end line of credit constitute an origination for purposes of §1003.2(g).

6. *Branches of foreign banks—treated as banks.* A Federal branch or a State-licensed or insured branch of a foreign bank that meets the definition of a ''bank'' under section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)) is a bank for the purposes of §1003.2(g).

7. *Branches and offices of foreign banks and other entities—treated as nondepository financial institutions.* A Federal agency, State-licensed agency, State-licensed uninsured branch of a foreign bank, commercial lending company owned or controlled by a foreign bank, or entity operating under section 25 or 25A of the Federal Reserve Act, 12 U.S.C. 601 and 611 (Edge Act and agreement corporations) may not meet the definition of ''bank'' under the Federal Deposit Insurance Act and may thereby fail to satisfy the definition of a depository financial institution under §1003.2(g)(1). An entity is nonetheless a financial institution if it meets the definition of nondepository financial institution under §1003.2(g)(2).

2(i) Home Improvement Loan

1. *General.* Section 1003.2(i) defines a home improvement loan as a closed-end mortgage loan or an open-end line of credit that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which the dwelling is located. For example, a closed-end mortgage loan obtained to repair a dwelling by replacing a roof is a home improvement loan under §1003.2(i). A loan or line of credit is a home improvement loan even if only a part of the purpose is for repairing, rehabilitating, remodeling, or improving a dwelling. For example, an open-end line of credit obtained in part to remodel a kitchen and in part to pay college tuition is a home improvement loan under §1003.2(i). Similarly, for example, a loan that is completed pursuant to a New York State consolidation, extension, and modification agreement and that is classified as a supplemental mortgage under New York Tax Law section 255, such that the borrower owes reduced or no mortgage recording taxes, is a home improvement loan if any of the loan's funds are for home improvement purposes. *See also* comment 2(d)–2.ii.

2. *Improvements to real property.* Home improvements include improvements both to a dwelling and to the real property on which the dwelling is located (for example, installation of a swimming pool, construction of a garage, or landscaping).

3. *Commercial and other loans.* A home improvement loan may include a closed-end mortgage loan or an open-end line of credit originated outside an institution's residential mortgage lending division, such as a loan or line of credit to improve an apartment building originated in the commercial loan department.

4. *Mixed-use property.* A closed-end mortgage loan or an open-end line of credit to improve a dwelling used for residential and commercial purposes (for example, a building containing apartment units and retail space), or the real property on which such a dwelling is located, is a home improvement loan if the loan's proceeds are used either to improve the entire property (for example, to replace the heating system), or if the proceeds are used primarily to improve the residential portion of the property. An institution may use any reasonable standard to determine the primary use of the loan proceeds. An institution may select the standard to apply on a case-by-case basis.

5. *Multiple-purpose loans.* A closed-end mortgage loan or an open-end line of credit may be used for multiple purposes. For example, a closed-end mortgage loan that is a home improvement loan under §1003.2(i) may also be a refinancing under §1003.2(p) if the transaction is a cash-out refinancing and the funds will be used to improve a home. Such a transaction is a multiple-purpose loan. Comment 4(a)(3)–3 provides details about how to report multiple-purpose covered loans.

6. *Statement of borrower.* In determining whether a closed-end mortgage loan or an open-end line of credit, or an application for a closed-end mortgage loan or an open-end line of credit, is for home improvement purposes, an institution may rely on the applicant's or borrower's stated purpose(s) for the loan or line of credit at the time the application is received or the credit decision is made. An institution need not confirm that the borrower actually uses any of the funds for the stated purpose(s).

2(j) Home Purchase Loan

1. *Multiple properties.* A home purchase loan includes a closed-end mortgage loan or an open-end line of credit secured by one dwelling and used to purchase another dwelling. For example, if a person obtains a home-equity loan or a reverse mortgage secured by dwelling A to purchase dwelling B, the home-equity loan or the reverse mortgage is a home purchase loan under §1003.2(j).

2. *Commercial and other loans.* A home purchase loan may include a closed-end mortgage loan or an open-end line of credit originated outside an institution's residential mortgage lending division, such as a loan or line of credit to purchase an apartment building originated in the commercial loan department.

3. *Construction and permanent financing.* A home purchase loan includes both a combined construction/permanent loan and the permanent financing that replaces a construction-only loan. A home purchase loan does not include a construction-only loan that is designed to be replaced by permanent financing at a later time, which is excluded from Regulation C as temporary financing under §1003.3(c)(3). Comment 3(c)(3)–1 provides additional details about transactions that are excluded as temporary financing.

4. *Second mortgages that finance the downpayments on first mortgages.* If an institution making a first mortgage loan to a home purchaser also makes a second mortgage loan or line of credit to the same purchaser to finance part or all of the home purchaser's downpayment, both the first mortgage loan and the second mortgage loan or line of credit are home purchase loans.

5. *Assumptions.* Under §1003.2(j), an assumption is a home purchase loan when an institution enters into a written agreement accepting a new borrower as the obligor on an existing obligation to finance the new borrower's purchase of the dwelling securing the existing obligation, if the resulting obligation is a closed-end mortgage loan or an open-end line of credit. A transaction in which borrower B finances the purchase of borrower A's dwelling by assuming borrower A's existing debt obligation and that is completed pursuant to a New York State consolidation, extension, and modification agreement and is classified as a supplemental mortgage under New York Tax Law section 255, such that the borrower owes reduced or no mortgage recording taxes, is an assumption and a home purchase loan. *See* comment 2(d)–2.ii. On the other hand, a transaction in which borrower B, a successor-in-interest, assumes borrower A's existing debt obligation only after acquiring title to borrower A's dwelling is not a home purchase loan because borrower B did not assume the debt obligation for the purpose of purchasing a dwelling. *See* §1003.4(a)(3) and comment 4(a)(3)–4 for guidance about how to report covered loans that are not home improvement loans, home purchase loans, or refinancings.

6. *Multiple-purpose loans.* A closed-end mortgage loan or an open-end line of credit may be used for multiple purposes. For example, a closed-end mortgage loan that is a home purchase loan under §1003.2(j) may also be a home improvement loan under §1003.2(i) and a refinancing under §1003.2(p) if the transaction is a cash-out refinancing and the funds will be used to purchase and improve a dwelling. Such a transaction is a multiple-purpose loan. Comment 4(a)(3)–3 provides details about how to report multiple-purpose covered loans.

2(l) Manufactured Home

1. *Definition of a manufactured home.* The definition in §1003.2(l) refers to the Federal building code for manufactured housing established by the U.S. Department of Housing and Urban Development (HUD) (24 CFR part 3280.2). Modular or other factory-built homes that do not meet the HUD code standards are not manufactured homes for purposes of §1003.2(l). Recreational vehicles are excluded from the HUD code standards pursuant to 24 CFR 3282.8(g) and are also excluded from the definition of dwelling for purposes of §1003.2(f). *See* comment 2(f)–3.

2. *Identification.* A manufactured home will generally bear a data plate affixed in a permanent manner near the main electrical panel or other readily accessible and visible location noting its compliance with the Federal Manufactured Home Construction and Safety Standards in force at the time of manufacture and providing other information about its manufacture pursuant to 24 CFR 3280.5. A manufactured home will generally also bear a HUD Certification Label pursuant to 24 CFR 3280.11.

2(m) Metropolitan Statistical Area (MD) or Metropolitan Division (MD).

1. *Use of terms ''Metropolitan Statistical Area (MSA)'' and ''Metropolitan Division (MD).''* The U.S. Office of Management and Budget (OMB) defines Metropolitan Statistical Areas (MSAs) and Metropolitan Divisions (MDs) to provide nationally consistent definitions for collecting, tabulating, and publishing Federal statistics for a set of geographic areas. For all purposes under Regulation C, if an MSA is divided by OMB into MDs, the appropriate geographic unit to be used is the MD; if an MSA is not so divided by OMB into MDs, the appropriate geographic unit to be used is the MSA.

2(n) Multifamily Dwelling

1. *Multifamily residential structures.* The definition of dwelling in §1003.2(f) includes multifamily residential structures and the corresponding commentary provides guidance on when such residential structures are included in that definition. *See* comments 2(f)–2 through –5.

2. *Special reporting requirements for multifamily dwellings.* The definition of multifamily dwelling in §1003.2(n) includes a dwelling, regardless of construction method,

that contains five or more individual dwelling units. Covered loans secured by a multifamily dwelling are subject to additional reporting requirements under §1003.4(a)(32), but are not subject to reporting requirements under §1003.4(a)(4), (10)(iii), (23), (29), or (30).

2(o) Open-End Line of Credit

1. *General.* Section 1003.2(o) defines an open-end line of credit as an extension of credit that is secured by a lien on a dwelling and that is an open-end credit plan as defined in Regulation Z, 12 CFR 1026.2(a)(20), but without regard to whether the credit is consumer credit, as defined in §1026.2(a)(12), is extended by a creditor, as defined in §1026.2(a)(17), or is extended to a consumer, as defined in §1026.2(a)(11). Aside from these distinctions, institutions may rely on 12 CFR 1026.2(a)(20) and its related commentary in determining whether a transaction is an open-end line of credit under §1003.2(o). For example, assume a business-purpose transaction that is exempt from Regulation Z pursuant to §1026.3(a)(1) but that otherwise is open-end credit under Regulation Z §1026.2(a)(20). The business-purpose transaction is an open-end line of credit under Regulation C, provided the other requirements of §1003.2(o) are met. Similarly, assume a transaction in which the person extending open-end credit is a financial institution under §1003.2(g) but is not a creditor under Regulation Z, §1026.2(a)(17). In this example, the transaction is an open-end line of credit under Regulation C, provided the other requirements of §1003.2(o) are met.

2. *Extension of credit.* Extension of credit has the same meaning under §1003.2(o) as under §1003.2(d) and comment 2(d)–2. Thus, for example, a renewal of an open-end line of credit is not an extension of credit under §1003.2(o) and is not covered by Regulation C unless the existing debt obligation is satisfied and replaced. Likewise, under §1003.2(o), each draw on an open-end line of credit is not an extension of credit.

2(p) Refinancing

1. *General.* Section 1003.2(p) defines a refinancing as a closed-end mortgage loan or an open-end line of credit in which a new, dwelling-secured debt obligation satisfies and replaces an existing, dwelling-secured debt obligation by the same borrower. Except as described in comment 2(p)–2, whether a refinancing has occurred is determined by reference to whether, based on the parties' contract and applicable law, the original debt obligation has been satisfied or replaced by a new debt obligation. Whether the original lien is satisfied is irrelevant. For example:

i. A new closed-end mortgage loan that satisfies and replaces one or more existing closed-end mortgage loans is a refinancing under §1003.2(p).

ii. A new open-end line of credit that satisfies and replaces an existing closed-end mortgage loan is a refinancing under §1003.2(p).

iii. Except as described in comment 2(p)–2, a new debt obligation that renews or modifies the terms of, but that does not satisfy and replace, an existing debt obligation, is not a refinancing under §1003.2(p).

2. *New York State consolidation, extension, and modification agreements.* Where a transaction is completed pursuant to a New York State consolidation, extension, and modification agreement and is classified as a supplemental mortgage under New York Tax Law section§255, such that the borrower owes reduced or no mortgage recording taxes, and where, but for the agreement, the transaction would have met the definition of a refinancing under §1003.2(p), the transaction is considered a refinancing under §1003.2(p). *See also* comment 2(d)–2.ii.

3. *Existing debt obligation.* A closed-end mortgage loan or an open-end line of credit that satisfies and replaces one or more existing debt obligations is not a refinancing under §1003.2(p) unless the existing debt obligation (or obligations) also was secured by a dwelling. For example, assume that a borrower has an existing $30,000 closed-end mortgage loan and obtains a new $50,000 closed-end mortgage loan that satisfies and replaces the existing $30,000 loan. The new $50,000 loan is a refinancing under §1003.2(p). However, if the borrower obtains a new $50,000 closed-end mortgage loan that satisfies and replaces an existing $30,000 loan secured only by a personal guarantee, the new $50,000 loan is not a refinancing under §1003.2(p). *See* §1003.4(a)(3) and related commentary for guidance about how to report the loan purpose of such transactions, if they are not otherwise excluded under §1003.3(c).

4. *Same borrower.* Section 1003.2(p) provides that, even if all of the other requirements of §1003.2(p) are met, a closed-end mortgage loan or an open-end line of credit is not a refinancing unless the same borrower undertakes both the existing and the new obligation(s). Under §1003.2(p), the ''same borrower'' undertakes both the existing and the new obligation(s) even if only one borrower is the same on both obligations. For example, assume that an existing closed-end mortgage loan (obligation X) is satisfied and replaced by a new closed-end mortgage loan (obligation Y). If borrowers A and B both are obligated on obligation X, and only borrower B is obligated on obligation Y, then obligation Y is a refinancing under §1003.2(p), assuming the other requirements of §1003.2(p) are met, because borrower B is obligated on both transactions. On the other hand, if only borrower A is obligated on obligation X, and only borrower B is obligated on obligation Y,

then obligation Y is not a refinancing under §1003.2(p). For example, assume that two spouses are divorcing. If both spouses are obligated on obligation X, but only one spouse is obligated on obligation Y, then obligation Y is a refinancing under §1003.2(p), assuming the other requirements of §1003.2(p) are met. On the other hand, if only spouse A is obligated on obligation X, and only spouse B is obligated on obligation Y, then obligation Y is not a refinancing under §1003.2(p). *See* §1003.4(a)(3) and related commentary for guidance about how to report the loan purpose of such transactions, if they are not otherwise excluded under §1003.3(c).

5. *Two or more debt obligations.* Section 1003.2(p) provides that, to be a refinancing, a new debt obligation must satisfy and replace an existing debt obligation. Where two or more new obligations replace an existing obligation, each new obligation is a refinancing if, taken together, the new obligations satisfy the existing obligation. Similarly, where one new obligation replaces two or more existing obligations, the new obligation is a refinancing if it satisfies each of the existing obligations.

6. *Multiple-purpose loans.* A closed-end mortgage loan or an open-end line of credit may be used for multiple purposes. For example, a closed-end mortgage loan that is a refinancing under §1003.2(p) may also be a home improvement loan under §1003.2(i) and be used for other purposes if the refinancing is a cash-out refinancing and the funds will be used both for home improvement and to pay college tuition. Such a transaction is a multiple-purpose loan. Comment 4(a)(3)–3 provides details about how to report multiple-purpose covered loans.

Section 1003.3—Exempt Institutions and Excluded Transactions

3(c) Excluded Transactions

Paragraph 3(c)(1)

1. *Financial institution acting in a fiduciary capacity.* Section 1003.3(c)(1) provides that a closed-end mortgage loan or an open-end line of credit originated or purchased by a financial institution acting in a fiduciary capacity is an excluded transaction. A financial institution acts in a fiduciary capacity if, for example, the financial institution acts as a trustee.

Paragraph 3(c)(2)

1. *Loan or line of credit secured by a lien on unimproved land.* Section 1003.3(c)(2) provides that a closed-end mortgage loan or an open-end line of credit secured by a lien on unimproved land is an excluded transaction. A loan or line of credit is secured by a lien on unimproved land if the loan or line of credit is secured by vacant or unimproved property, unless the institution knows, based on information that it receives from the applicant or borrower at the time the application is received or the credit decision is made, that the proceeds of that loan or credit line will be used within two years after closing or account opening to construct a dwelling on, or to purchase a dwelling to be placed on, the land. A loan or line of credit that is not excludable under §1003.3(c)(2) nevertheless may be excluded, for example, as temporary financing under §1003.3(c)(3).

Paragraph 3(c)(3)

1. *Temporary financing.* Section 1003.3(c)(3) provides that closed-end mortgage loans or open-end lines of credit obtained for temporary financing are excluded transactions. A loan or line of credit is considered temporary financing and excluded under §1003.3(c)(3) if the loan or line of credit is designed to be replaced by permanent financing at a later time. For example:

i. Lender A extends credit in the form of a bridge or swing loan to finance a borrower's down payment on a home purchase. The borrower pays off the bridge or swing loan with funds from the sale of his or her existing home and obtains permanent financing for his or her new home from Lender A. The bridge or swing loan is excluded as temporary financing under §1003.3(c)(3).

ii. Lender A extends credit to finance construction of a dwelling. A new extension of credit for permanent financing for the dwelling will be obtained, either from Lender A or from another lender, and either through a refinancing of the initial construction loan or a separate loan. The initial construction loan is excluded as temporary financing under §1003.3(c)(3).

iii. Assume the same scenario as in comment 3(c)(3)–1.ii, except that the initial construction loan is, or may be, renewed one or more times before the permanent financing is made. The initial construction loan, including any renewal thereof, is excluded as temporary financing under §1003.3(c)(3).

iv. Lender A extends credit to finance construction of a dwelling. The loan automatically will convert to permanent financing with Lender A once the construction phase is complete. Under §1003.3(c)(3), the loan is not designed to be replaced by permanent financing and therefore the temporary financing exclusion does not apply. *See also* comment 2(j)–3.

v. Lender A originates a loan with a nine-month term to enable an investor to purchase a home, renovate it, and re-sell it before the term expires. Under §1003.3(c)(3), the loan is not designed to be replaced by permanent financing and therefore the temporary financing exclusion does not apply. Such a transaction is not temporary financing under §1003.3(c)(3) merely because its term is short.

Paragraph 3(c)(4)

1. *Purchase of an interest in a pool of loans.* Section 1003.3(c)(4) provides that the purchase of an interest in a pool of closed-end mortgage loans or open-end lines of credit is an excluded transaction. The purchase of an interest in a pool of loans or lines of credit includes, for example, mortgage-participation certificates, mortgage-backed securities, or real estate mortgage investment conduits.

Paragraph 3(c)(6)

1. *Mergers and acquisitions.* Section 1003.3(c)(6) provides that the purchase of closed-end mortgage loans or open-end lines of credit as part of a merger or acquisition, or as part of the acquisition of all of the assets and liabilities of a branch office, are excluded transactions. If a financial institution acquires loans or lines of credit in bulk from another institution (for example, from the receiver for a failed institution), but no merger or acquisition of an institution, or acquisition of a branch office, is involved and no other exclusion applies, the acquired loans or lines of credit are covered loans and are reported as described in comment 4(a)–1.iii.

Paragraph 3(c)(8)

1. *Partial interest.* Section 1003.3(c)(8) provides that the purchase of a partial interest in a closed-end mortgage loan or an open-end line of credit is an excluded transaction. If an institution acquires only a partial interest in a loan or line of credit, the institution does not report the transaction even if the institution participated in the underwriting and origination of the loan or line of credit. If an institution acquires a 100 percent interest in a loan or line of credit, the transaction is not excluded under §1003.3(c)(8).

Paragraph 3(c)(9)

1. *Loan or line of credit used primarily for agricultural purposes.* Section 1003.3(c)(9) provides that an institution does not report a closed-end mortgage loan or an open-end line of credit used primarily for agricultural purposes. A loan or line of credit is used primarily for agricultural purposes if its funds will be used primarily for agricultural purposes, or if the loan or line of credit is secured by a dwelling that is located on real property that is used primarily for agricultural purposes (*e.g.*, a farm). An institution may refer to comment 3(a)–8 in the official interpretations of Regulation Z, 12 CFR part 1026, supplement I, for guidance on what is an agricultural purpose. An institution may use any reasonable standard to determine the primary use of the property. An institution may select the standard to apply on a case-by-case basis.

Paragraph 3(c)(10)

1. *General.* Section 1003.3(c)(10) provides a special rule for reporting a closed-end mortgage loan or an open-end line of credit that is or will be made primarily for a business or commercial purpose. If an institution determines that a closed-end mortgage loan or an open-end line of credit primarily is for a business or commercial purpose, then the loan or line of credit is a covered loan only if it is a home improvement loan under §1003.2(i), a home purchase loan under §1003.2(j), or a refinancing under §1003.2(p) and no other exclusion applies. Section 1003.3(c)(10) does not categorically exclude all business- or commercial-purpose loans and lines of credit from coverage.

2. *Primary purpose.* An institution must determine in each case if a closed-end mortgage loan or an open-end line of credit primarily is for a business or commercial purpose. If a closed-end mortgage loan or an open-end line of credit is deemed to be primarily for a business, commercial, or organizational purpose under Regulation Z, 12 CFR 1026.3(a) and its related commentary, then the loan or line of credit also is deemed to be primarily for a business or commercial purpose under §1003.3(c)(10).

3. *Examples—covered business- or commercial-purpose transactions.* The following are examples of closed-end mortgage loans and open-end lines of credit that are not excluded from reporting under §1003.3(c)(10), because they primarily are for a business or commercial purpose, but they also meet the definition of a home improvement loan under §1003.2(i), a home purchase loan under §1003.2(j), or a refinancing under §1003.2(p):

i. A closed-end mortgage loan or an open-end line of credit to purchase or to improve a multifamily dwelling or a single-family investment property, or a refinancing of a closed-end mortgage loan or an open-end line of credit secured by a multifamily dwelling or a single-family investment property;

ii. A closed-end mortgage loan or an open-end line of credit to improve an office, for example a doctor's office, that is located in a dwelling; and

iii. A closed-end mortgage loan or an open-end line of credit to a corporation, if the funds from the loan or line of credit will be used to purchase or to improve a dwelling, or if the transaction is a refinancing.

4. *Examples—excluded business- or commercial-purpose transactions.* The following are examples of closed-end mortgage loans and open-end lines of credit that are not covered loans because they primarily are for a business or commercial purpose, but they do not meet the definition of a home improvement loan under §1003.2(i), a home purchase loan under §1003.2(j), or a refinancing under §1003.2(p):

i. A closed-end mortgage loan or an open-end line of credit whose funds will be used primarily to improve or expand a business, for example to renovate a family restaurant that is not located in a dwelling, or to purchase a warehouse, business equipment, or inventory;

ii. A closed-end mortgage loan or an open-end line of credit to a corporation whose funds will be used primarily for business purposes, such as to purchase inventory; and

iii. A closed-end mortgage loan or an open-end line of credit whose funds will be used primarily for business or commercial purposes other than home purchase, home improvement, or refinancing, even if the loan or line of credit is cross-collateralized by a covered loan.

Paragraph 3(c)(11)

1. *General.* Section 1003.3(c)(11) provides that a closed-end mortgage loan is an excluded transaction if a financial institution originated fewer than 25 closed-end mortgage loans in each of the two preceding calendar years. For example, assume that a bank is a financial institution in 2022 under §1003.2(g) because it originated 200 open-end lines of credit in 2020, 250 open-end lines of credit in 2021, and met all of the other requirements under §1003.2(g)(1). Also assume that the bank originated 10 and 20 closed-end mortgage loans in 2020 and 2021, respectively. The open-end lines of credit that the bank originated, or for which it received applications, during 2022 are covered loans and must be reported, unless they otherwise are excluded transactions under §1003.3(c). However, the closed-end mortgage loans that the bank originated, or for which it received applications, during 2022 are excluded transactions under §1003.3(c)(11) and need not be reported. *See* comments 4(a)–2 through –4 for guidance about the activities that constitute an origination.

Paragraph 3(c)(12)

1. *General.* Section 1003.3(c)(12) provides that an open-end line of credit is an excluded transaction if a financial institution originated fewer than 100 open-end lines of credit in each of the two preceding calendar years. For example, assume that a bank is a financial institution in 2022 under §1003.2(g) because it originated 50 closed-end mortgage loans in 2020, 75 closed-end mortgage loans in 2021, and met all of the other requirements under §1003.2(g)(1). Also assume that the bank originated 75 and 85 open-end lines of credit in 2020 and 2021, respectively. The closed-end mortgage loans that the bank originated, or for which it received applications, during 2022 are covered loans and must be reported, unless they otherwise are excluded transactions under §1003.3(c). However, the open-end lines of credit that the bank originated, or for which it received applications, during 2022 are excluded transactions under §1003.3(c)(12) and need not be reported. *See* comments 4(a)–2 through –4 for guidance about the activities that constitute an origination.

Section 1003.4—Compilation of Reportable Data

4(a) Data Format and Itemization

1. *General.* Section 1003.4(a) describes a financial institution's obligation to collect data on applications it received, on covered loans that it originated, and on covered loans that it purchased during the calendar year covered by the loan/application register.

i. A financial institution reports these data even if the covered loans were subsequently sold by the institution.

ii. A financial institution reports data for applications that did not result in an origination but on which actions were taken–for example, an application that the institution denied, that it approved but that was not accepted, that it closed for incompleteness, or that the applicant withdrew during the calendar year covered by the loan/application register. A financial institution is required to report data regarding requests under a preapproval program (as defined in §1003.2(b)(2)) only if the preapproval request is denied, results in the origination of a home purchase loan, or was approved but not accepted.

iii. If a financial institution acquires covered loans in bulk from another institution (for example, from the receiver for a failed institution), but no merger or acquisition of an institution, or acquisition of a branch office, is involved, the acquiring financial institution reports the covered loans as purchased loans.

iv. A financial institution reports the data for an application on the loan/application register for the calendar year during which the application was acted upon even if the institution received the application in a previous calendar year.

2. *Originations and applications involving more than one institution.* Section 1003.4(a) requires a financial institution to collect certain information regarding applications for covered loans that it receives and regarding covered loans that it originates. The following provides guidance on how to report originations and applications involving more than one institution. The discussion below assumes that all of the parties are financial institutions as defined by §1003.2(g). The same principles apply if any of the parties is not a financial institution. Comment 4(a)–3 provides examples of transactions involving more than one institution, and comment 4(a)–4 discusses how to report actions taken by agents.

i. Only one financial institution reports each originated covered loan as an origination. If more than one institution was involved in the origination of a covered loan, the financial institution that made the credit decision approving the application before closing or account opening reports the loan as an origination. It is not relevant whether the loan closed or, in the case of an application, would have closed in the institution's name. If more than one institution approved an application prior to closing or account opening and one of those institutions purchased the loan after closing, the institution that purchased the loan after closing reports the loan as an origination. If a financial institution reports a transaction as an origination, it reports all of the information required for originations, even if the covered loan was not initially payable to the financial institution that is reporting the covered loan as an origination.

ii. In the case of an application for a covered loan that did not result in an origination, a financial institution reports the action it took on that application if it made a credit decision on the application or was reviewing the application when the application was withdrawn or closed for incompleteness. It is not relevant whether the financial institution received the application from the applicant or from another institution, such as a broker, or whether another financial institution also reviewed and reported an action taken on the same application.

3. *Examples—originations and applications involving more than one institution.* The following scenarios illustrate how an institution reports a particular application or covered loan. The illustrations assume that all of the parties are financial institutions as defined by §1003.2(g). However, the same principles apply if any of the parties is not a financial institution.

i. Financial Institution A received an application for a covered loan from an applicant and forwarded that application to Financial Institution B. Financial Institution B reviewed the application and approved the loan prior to closing. The loan closed in Financial Institution A's name. Financial Institution B purchased the loan from Financial Institution A after closing. Financial Institution B was not acting as Financial Institution A's agent. Since Financial Institution B made the credit decision prior to closing, Financial Institution B reports the transaction as an origination, not as a purchase. Financial Institution A does not report the transaction.

ii. Financial Institution A received an application for a covered loan from an applicant and forwarded that application to Financial Institution B. Financial Institution B reviewed the application before the loan would have closed, but the application did not result in an origination because Financial Institution B denied the application. Financial Institution B was not acting as Financial Institution A's agent. Since Financial Institution B made the credit decision, Financial Institution B reports the application as a denial. Financial Institution A does not report the application. If, under the same facts, the application was withdrawn before Financial Institution B made a credit decision, Financial Institution B would report the application as withdrawn and Financial Institution A would not report the application.

iii. Financial Institution A received an application for a covered loan from an applicant and approved the application before closing the loan in its name. Financial Institution A was not acting as Financial Institution B's agent. Financial Institution B purchased the covered loan from Financial Institution A. Financial Institution B did not review the application before closing. Financial Institution A reports the loan as an origination. Financial Institution B reports the loan as a purchase.

iv. Financial Institution A received an application for a covered loan from an applicant. If approved, the loan would have closed in Financial Institution B's name. Financial Institution A denied the application without sending it to Financial Institution B for approval. Financial Institution A was not acting as Financial Institution B's agent. Since Financial Institution A made the credit decision before the loan would have closed, Financial Institution A reports the application. Financial Institution B does not report the application.

v. Financial Institution A reviewed an application and made the credit decision to approve a covered loan using the underwriting criteria provided by a third party (*e.g.*, another financial institution, Fannie Mae, or Freddie Mac). The third party did not review the application and did not make a credit decision prior to closing. Financial Institution A was not acting as the third party's agent. Financial Institution A reports the application or origination. If the third party purchased the loan and is subject to Regulation C, the third party reports the loan as a purchase whether or not the third party reviewed the loan after closing. Assume the same facts, except that Financial Institution A approved the application, and the applicant chose not to accept the loan from Financial Institution A. Financial Institution A reports the application as approved but not accepted and the third party, assuming the third party is subject to Regulation C, does not report the application.

vi. Financial Institution A reviewed and made the credit decision on an application based on the criteria of a third-party insurer or guarantor (for example, a government or

private insurer or guarantor). Financial Institution A reports the action taken on the application.

vii. Financial Institution A received an application for a covered loan and forwarded it to Financial Institutions B and C. Financial Institution A made a credit decision, acting as Financial Institution D's agent, and approved the application. The applicant did not accept the loan from Financial Institution D. Financial Institution D reports the application as approved but not accepted. Financial Institution A does not report the application. Financial Institution B made a credit decision, approving the application, the applicant accepted the offer of credit from Financial Institution B, and credit was extended. Financial Institution B reports the origination. Financial Institution C made a credit decision and denied the application. Financial Institution C reports the application as denied.

4. *Agents.* If a financial institution made the credit decision on a covered loan or application through the actions of an agent, the institution reports the application or origination. State law determines whether one party is the agent of another. For example, acting as Financial Institution A's agent, Financial Institution B approved an application prior to closing and a covered loan was originated. Financial Institution A reports the loan as an origination.

5. *Purchased loans.* i. A financial institution is required to collect data regarding covered loans it purchases. For purposes of §1003.4(a), a purchase includes a repurchase of a covered loan, regardless of whether the institution chose to repurchase the covered loan or was required to repurchase the covered loan because of a contractual obligation and regardless of whether the repurchase occurs within the same calendar year that the covered loan was originated or in a different calendar year. For example, assume that Financial Institution A originates or purchases a covered loan and then sells it to Financial Institution B, who later requires Financial Institution A to repurchase the covered loan pursuant to the relevant contractual obligations. Financial Institution B reports the purchase from Financial Institution A, assuming it is a financial institution as defined under §1003.2(g). Financial Institution A reports the repurchase from Financial Institution B as a purchase.

ii. In contrast, for purposes of §1003.4(a), a purchase does not include a temporary transfer of a covered loan to an interim funder or warehouse creditor as part of an interim funding agreement under which the originating financial institution is obligated to repurchase the covered loan for sale to a subsequent investor. Such agreements, often referred to as ''repurchase agreements,'' are sometimes employed as functional equivalents of warehouse lines of credit. Under these agreements, the interim funder or warehouse creditor acquires legal title to the covered loan, subject to an obligation of the originating institution to repurchase at a future date, rather than taking a security interest in the covered loan as under the terms of a more conventional warehouse line of credit. To illustrate, assume Financial Institution A has an interim funding agreement with Financial Institution B to enable Financial Institution B to originate loans. Assume further that Financial Institution B originates a covered loan and that, pursuant to this agreement, Financial Institution A takes a temporary transfer of the covered loan until Financial Institution B arranges for the sale of the covered loan to a subsequent investor and that Financial Institution B repurchases the covered loan to enable it to complete the sale to the subsequent investor (alternatively, Financial Institution A may transfer the covered loan directly to the subsequent investor at Financial Institution B's direction, pursuant to the interim funding agreement). The subsequent investor could be, for example, a financial institution or other entity that intends to hold the loan in portfolio, a GSE or other securitizer, or a financial institution or other entity that intends to package and sell multiple loans to a GSE or other securitizer. In this example, the temporary transfer of the covered loan from Financial Institution B to Financial Institution A is not a purchase, and any subsequent transfer back to Financial Institution B for delivery to the subsequent investor is not a purchase, for purposes of §1003.4(a). Financial Institution B reports the origination of the covered loan as well as its sale to the subsequent investor. If the subsequent investor is a financial institution under §1003.2(g), it reports a purchase of the covered loan pursuant to §1003.4(a), regardless of whether it acquired the covered loan from Financial Institution B or directly from Financial Institution A.

Paragraph 4(a)(1)(i)

1. *ULI—uniqueness.* Section 1003.4(a)(1)(i)(B)(*2*) requires a financial institution that assigns a universal loan identifier (ULI) to each covered loan or application (except as provided in §1003.4(a)(1)(i)(D) and (E)) to ensure that the character sequence it assigns is unique within the institution and used only for the covered loan or application. A financial institution should assign only one ULI to any particular covered loan or application, and each ULI should correspond to a single application and ensuing loan in the case that the application is approved and a loan is originated. A financial institution may use a ULI that was reported previously to refer only to the same loan or application for which the ULI was used previously or a loan that ensues from an application for

which the ULI was used previously. A financial institution may not report an application for a covered loan in 2030 using the same ULI that was reported for a covered loan that was originated in 2020. Similarly, refinancings or applications for refinancing should be assigned a different ULI than the loan that is being refinanced. A financial institution with multiple branches must ensure that its branches do not use the same ULI to refer to multiple covered loans or applications.

2. *ULI—privacy.* Section 1003.4(a)(1)(i)(B)(*3*) prohibits a financial institution from including information that could be used to directly identify the applicant or borrower in the identifier that it assigns for the application or covered loan of the applicant or borrower. Information that could be used to directly identify the applicant or borrower includes, but is not limited to, the applicant's or borrower's name, date of birth, Social Security number, official government-issued driver's license or identification number, alien registration number, government passport number, or employer or taxpayer identification number.

3. *ULI—purchased covered loan.* If a financial institution has previously reported a covered loan with a ULI under this part, a financial institution that purchases that covered loan must use the ULI that was previously reported under this part. For example, if a loan origination was previously reported under this part with a ULI, the financial institution that purchases the covered loan would report the purchase of the covered loan using the same ULI. A financial institution that purchases a covered loan must use the ULI that was assigned by the financial institution that originated the covered loan. For example, if a financial institution that submits an annual loan/application register pursuant to §1003.5(a)(1)(i) originates a covered loan that is purchased by a financial institution that submits a quarterly loan/application register pursuant to §1003.5(a)(1)(ii), the financial institution that purchased the covered loan must use the ULI that was assigned by the financial institution that originated the covered loan. A financial institution that purchases a covered loan assigns a ULI and records and submits it in its loan/application register pursuant to §1003.5(a)(1)(i) or (ii), whichever is applicable, if the covered loan was not assigned a ULI by the financial institution that originated the loan because, for example, the loan was originated prior to January 1, 2018.

4. *ULI—reinstated or reconsidered application.* A financial institution may, at its option, use a ULI previously reported under this part if, during the same calendar year, an applicant asks the institution to reinstate a counteroffer that the applicant previously did not accept or asks the financial institution to reconsider an application that was previously denied, withdrawn, or closed for incompleteness. For example, if a financial institution reports a denied application in its second-quarter 2020 data submission, pursuant to §1003.5(a)(1)(ii), but then reconsiders the application, which results in an origination in the third quarter of 2020, the financial institution may report the origination in its third-quarter 2020 data submission using the same ULI that was reported for the denied application in its second-quarter 2020 data submission, so long as the financial institution treats the transaction as a continuation of the application. However, a financial institution may not use a ULI previously reported if it reinstates or reconsiders an application that occurred and was reported in a prior calendar year. For example, if a financial institution reports a denied application in its fourth-quarter 2020 data submission, pursuant to §1003.5(a)(1)(ii), but then reconsiders the application resulting in an origination in the first quarter of 2021, the financial institution reports a denied application under the original ULI in its fourth-quarter 2020 data submission and an approved application with a different ULI in its first-quarter 2021 data submission, pursuant to §1003.5(a)(1)(ii).

5. *ULI—check digit.* Section 1003.(4)(a)(1)(i)(C) requires that the two right-most characters in the ULI represent the check digit. Appendix C prescribes the requirements for generating a check digit and validating a ULI.

Paragraph 4(a)(1)(ii)

1. *Application date—consistency.* Section 1003.4(a)(1)(ii) requires that, in reporting the date of application, a financial institution report the date it received the application, as defined under §1003.2(b), or the date shown on the application form. Although a financial institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans). If the financial institution chooses to report the date shown on the application form and the institution retains multiple versions of the application form, the institution reports the date shown on the first application form satisfying the application definition provided under §1003.2(b).

2. *Application date—indirect application.* For an application that was not submitted directly to the financial institution, the institution may report the date the application was received by the party that initially received the application, the date the application was received by the institution, or the date shown on the application form. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such

as by routinely using one approach within a particular division of the institution or for a category of loans).

3. *Application date—reinstated application.* If, within the same calendar year, an applicant asks a financial institution to reinstate a counteroffer that the applicant previously did not accept (or asks the institution to reconsider an application that was denied, withdrawn, or closed for incompleteness), the institution may treat that request as the continuation of the earlier transaction using the same ULI or as a new transaction with a new ULI. If the institution treats the request for reinstatement or reconsideration as a new transaction, it reports the date of the request as the application date. If the institution does not treat the request for reinstatement or reconsideration as a new transaction, it reports the original application date.

Paragraph 4(a)(2)

1. *Loan type—general.* If a covered loan is not, or in the case of an application would not have been, insured by the Federal Housing Administration, guaranteed by the Veterans Administration, or guaranteed by the Rural Housing Service or the Farm Service Agency, an institution complies with §1003.4(a)(2) by reporting the covered loan as not insured or guaranteed by the Federal Housing Administration, Veterans Administration, Rural Housing Service, or Farm Service Agency.

Paragraph 4(a)(3)

1. *Purpose—statement of applicant.* A financial institution may rely on the oral or written statement of an applicant regarding the proposed use of covered loan proceeds. For example, a lender could use a check-box or a purpose line on a loan application to determine whether the applicant intends to use covered loan proceeds for home improvement purposes. If an applicant provides no statement as to the proposed use of covered loan proceeds and the covered loan is not a home purchase loan, cash-out refinancing, or refinancing, a financial institution reports the covered loan as for a purpose other than home purchase, home improvement, refinancing, or cash-out refinancing for purposes of §1003.4(a)(3).

2. *Purpose—refinancing and cash-out refinancing.* Section 1003.4(a)(3) requires a financial institution to report whether a covered loan is, or an application is for, a refinancing or a cash-out refinancing. A financial institution reports a covered loan or an application as a cash-out refinancing if it is a refinancing as defined by §1003.2(p) and the institution considered it to be a cash-out refinancing in processing the application or setting the terms (such as the interest rate or origination charges) under its guidelines or an investor's guidelines. For example:

i. Assume a financial institution considers an application for a loan product to be a cash-out refinancing under an investor's guidelines because of the amount of cash received by the borrower at closing or account opening. Assume also that under the investor's guidelines, the applicant qualifies for the loan product and the financial institution approves the application, originates the covered loan, and sets the terms of the covered loan consistent with the loan product. In this example, the financial institution would report the covered loan as a cash-out refinancing for purposes of §1003.4(a)(3).

ii. Assume a financial institution does not consider an application for a covered loan to be a cash-out refinancing under its own guidelines because the amount of cash received by the borrower does not exceed a certain threshold. Assume also that the institution approves the application, originates the covered loan, and sets the terms of the covered loan consistent with its own guidelines applicable to refinancings other than cash-out refinancings. In this example, the financial institution would report the covered loan as a refinancing for purposes of §1003.4(a)(3).

iii. Assume a financial institution does not distinguish between a cash-out refinancing and a refinancing under its own guidelines, and sets the terms of all refinancings without regard to the amount of cash received by the borrower at closing or account opening, and does not offer loan products under investor guidelines. In this example, the financial institution reports all covered loans and applications for covered loans that are defined by §1003.2(p) as refinancings for purposes of §1003.4(a)(3).

3. *Purpose—multiple-purpose loan.* Section 1003.4(a)(3) requires a financial institution to report the purpose of a covered loan or application. If a covered loan is a home purchase loan as well as a home improvement loan, a refinancing, or a cash-out refinancing, an institution complies with §1003.4(a)(3) by reporting the loan as a home purchase loan. If a covered loan is a home improvement loan as well as a refinancing or cash-out refinancing, but the covered loan is not a home purchase loan, an institution complies with §1003.4(a)(3) by reporting the covered loan as a refinancing or a cash-out refinancing, as appropriate. If a covered loan is a refinancing or cash-out refinancing as well as for another purpose, such as for the purpose of paying educational expenses, but the covered loan is not a home purchase loan, an institution complies with §1003.4(a)(3) by reporting the covered loan as a refinancing or a cash-out refinancing, as appropriate. *See* comment 4(a)(3)–2. If a covered loan is a home improvement loan as well as for another purpose, but the covered loan is not a

home purchase loan, a refinancing, or cash-out refinancing, an institution complies with §1003.4(a)(3) by reporting the covered loan as a home improvement loan. *See* comment 2(i)–1.

4. *Purpose—other.* If a covered loan is not, or an application is not for, a home purchase loan, a home improvement loan, a refinancing, or a cash-out refinancing, a financial institution complies with §1003.4(a)(3) by reporting the covered loan or application as for a purpose other than home purchase, home improvement, refinancing, or cash-out refinancing. For example, if a covered loan is for the purpose of paying educational expenses, the financial institution complies with §1003.4(a)(3) by reporting the covered loan as for a purpose other than home purchase, home improvement, refinancing, or cash-out refinancing. Section 1003.4(a)(3) also requires an institution to report a covered loan or application as for a purpose other than home purchase, home improvement, refinancing, or cash-out refinancing if it is a refinancing but, under the terms of the agreement, the financial institution was unconditionally obligated to refinance the obligation subject to conditions within the borrower's control.

5. *Purpose—business or commercial purpose loans.* If a covered loan primarily is for a business or commercial purpose as described in §1003.3(c)(10) and comment 3(c)(10)–2 and is a home purchase loan, home improvement loan, or a refinancing, §1003.4(a)(3) requires the financial institution to report the applicable loan purpose. If a loan primarily is for a business or commercial purpose but is not a home purchase loan, home improvement loan, or a refinancing, the loan is an excluded transaction under §1003.3(c)(10).

Paragraph 4(a)(4)

1. *Request under a preapproval program.* Section 1003.4(a)(4) requires a financial institution to report whether an application or covered loan involved a request for a preapproval of a home purchase loan under a preapproval program as defined by §1003.2(b)(2). If an application or covered loan did not involve a request for a preapproval of a home purchase loan under a preapproval program as defined by §1003.2(b)(2), a financial institution complies with §1003.4(a)(4) by reporting that the application or covered loan did not involve such a request, regardless of whether the institution has such a program and the applicant did not apply through that program or the institution does not have a preapproval program as defined by §1003.2(b)(2).

2. *Scope of requirement.* A financial institution reports that the application or covered loan did not involve a preapproval request for a purchased covered loan; an application or covered loan for any purpose other than a home purchase loan; an application for a home purchase loan or a covered loan that is a home purchase loan secured by a multifamily dwelling; an application or covered loan that is an open-end line of credit or a reverse mortgage; or an application that is denied, withdrawn by the applicant, or closed for incompleteness.

Paragraph 4(a)(5)

1. *Modular homes and prefabricated components.* Covered loans or applications related to modular homes should be reported with a construction method of site-built, regardless of whether they are on-frame or off-frame modular homes. Modular homes comply with local or other recognized buildings codes rather than standards established by the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. 5401 *et seq.* Modular homes are not required to have HUD Certification Labels under 24 CFR 3280.11 or data plates under 24 CFR 3280.5. Modular homes may have a certification from a State licensing agency that documents compliance with State or other applicable building codes. On-frame modular homes are constructed on permanent metal chassis similar to those used in manufactured homes. The chassis are not removed on site and are secured to the foundation. Off-frame modular homes typically have floor construction similar to the construction of other site-built homes, and the construction typically includes wooden floor joists and does not include permanent metal chassis. Dwellings built using prefabricated components assembled at the dwelling's permanent site should also be reported with a construction method of site-built.

2. *Multifamily dwelling.* For a covered loan or an application for a covered loan related to a multifamily dwelling, the financial institution should report the construction method as site-built unless the multifamily dwelling is a manufactured home community, in which case the financial institution should report the construction method as manufactured home.

3. *Multiple properties.* See comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

Paragraph 4(a)(6)

1. *Multiple properties.* See comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

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.

3. *Second residences.* Section 1003.4(a)(6) requires a financial institution to identify whether the property to which the loan or application relates is or will be used as a second residence. For purposes of §1003.4(a)(6), a property is a second residence of an applicant or borrower 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 for purposes of §1003.4(a)(6). Similarly, if a couple occupies a property near their place of employment on weekdays, but the couple returns to their principal residence on weekends, the property near the couple's place of employment is a second residence for purposes of §1003.4(a)(6).

4. *Investment properties.* 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 an investment property. For purposes of §1003.4(a)(6), a property is an investment property if the borrower does not, or the applicant will 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 for purposes of §1003.4(a)(6). 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 for purposes of §1003.4(a)(6). Section 1003.4(a)(6) requires a financial institution to identify a property as an investment property if the borrower or applicant does not or will not occupy the property, even if the borrower or applicant does not consider the property as owned for investment purposes. For example, if a corporation purchases a property that is a dwelling under §1003.2(f), that it does not occupy, but that is for the long-term residential use of its employees, the property is an investment property for purposes of §1003.4(a)(6), 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 at some point in time. If the property is for transitory use by employees, the property would not be considered a dwelling under §1003.2(f). *See* comment 2(f)–3.

5. *Purchased covered loans.* For purchased covered loans, a financial institution may report principal residence unless the loan documents or application indicate that the property will not be occupied as a principal residence.

Paragraph 4(a)(7)

1. *Covered loan amount—counteroffer.* If an applicant accepts a counteroffer for an amount different from the amount for which the applicant applied, the financial institution reports the covered loan amount granted. If an applicant does not accept a counteroffer or fails to respond, the institution reports the amount initially requested.

2. *Covered loan amount—application approved but not accepted or preapproval request approved but not accepted.* A financial institution reports the covered loan amount that was approved.

3. *Covered loan amount—preapproval request denied, application denied, closed for incompleteness or withdrawn.* For a preapproval request that was denied, and for an application that was denied, closed for incompleteness, or withdrawn, a financial institution reports the amount for which the applicant applied.

4. *Covered loan amount—multiple-purpose loan.* A financial institution reports the entire amount of the covered loan, even if only a part of the proceeds is intended for home purchase, home improvement, or refinancing.

5. *Covered loan amount—closed-end mortgage loan.* For a closed-end mortgage loan, other than a purchased loan, an assumption, or a reverse mortgage, a financial institution reports the amount to be repaid as disclosed on the legal obligation. For a purchased closed-end mortgage loan or an assumption of a closed-end mortgage loan, a financial institution reports the unpaid principal balance at the time of purchase or assumption.

6. *Covered loan amount—open-end line of credit.* For an open-end line of credit, a financial institution reports the entire amount of credit available to the borrower under the terms of the open-end plan, including a purchased open-end line of credit and an assumption of an open-end line of credit, but not for a reverse mortgage open-end line of credit.

7. *Covered loan amount—refinancing.* For a refinancing, a financial institution reports the amount of credit extended under the terms of the new debt obligation.

8. *Covered loan amount—home improvement loan.* A financial institution reports the entire amount of a home improvement loan, even if only a part of the proceeds is intended for home improvement.

9. *Covered loan amount—non-federally insured reverse mortgage.* A financial institution reports the initial principal limit of a non-federally insured reverse mortgage as set forth in §1003.4(a)(7)(iii).

Paragraph 4(a)(8)(i)

1. *Action taken—covered loan originated.* A financial institution reports that the covered loan was originated if the financial institution made a credit decision approving the application before closing or account opening and that credit decision results in an extension of credit. The same is true for an application that began as a request for a preapproval that subsequently results in a covered loan being originated. *See* comments 4(a)–2 through –4 for guidance on transactions in which more than one institution is involved.

2. *Action taken—covered loan purchased.* A financial institution reports that the covered loan was purchased if the covered loan was purchased by the financial institution after closing or account opening and the financial institution did not make a credit decision on the application prior to closing or account opening, or if the financial institution did make a credit decision on the application prior to closing or account opening, but is repurchasing the loan from another entity that the loan was sold to. *See* comment 4(a)–5. *See* comments 4(a)–2 through –4 for guidance on transactions in which more than one financial institution is involved.

3. *Action taken—application approved but not accepted.* A financial institution reports application approved but not accepted if the financial institution made a credit decision approving the application before closing or account opening, subject solely to outstanding conditions that are customary commitment or closing conditions, but the applicant or the party that initially received the application fails to respond to the financial institution's approval within the specified time, or the closed-end mortgage loan was not otherwise consummated or the account was not otherwise opened. *See* comment 4(a)(8)(i)–13.

4. *Action taken—application denied.* A financial institution reports that the application was denied if it made a credit decision denying the application before an applicant withdraws the application or the file is closed for incompleteness. *See* comments 4(a)–2 through –4 for guidance on transactions in which more than one institution is involved.

5. *Action taken—application withdrawn.* A financial institution reports that the application was withdrawn when the application is expressly withdrawn by the applicant before the financial institution makes a credit decision denying the application, before the financial institution makes a credit decision approving the application, or before the file is closed for incompleteness. A financial institution also reports application withdrawn if the financial institution provides a conditional approval specifying underwriting or creditworthiness conditions, pursuant to comment 4(a)(8)(i)–13, and the application is expressly withdrawn by the applicant before the applicant satisfies all specified underwriting or creditworthiness conditions. A preapproval request that is withdrawn is not reportable under HMDA. *See* §1003.4(a).

6. *Action taken—file closed for incompleteness.* A financial institution reports that the file was closed for incompleteness if the financial institution sent a written notice of incompleteness under Regulation B, 12 CFR 1002.9(c)(2), and the applicant did not respond to the request for additional information within the period of time specified in the notice before the applicant satisfies all underwriting or creditworthiness conditions. *See* comment 4(a)(8)(i)–13. If a financial institution then provides a notification of adverse action on the basis of incompleteness under Regulation B, 12 CFR 1002.9(c)(i), the financial institution may report the action taken as either file closed for incompleteness or application denied. A preapproval request that is closed for incompleteness is not reportable under HMDA. *See* §1003.4(a).

7. *Action taken—preapproval request denied.* A financial institution reports that the preapproval request was denied if the application was a request for a preapproval under a preapproval program as defined in §1003.2(b)(2) and the institution made a credit decision denying the preapproval request.

8. *Action taken—preapproval request approved but not accepted.* A financial institution reports that the preapproval request was approved but not accepted if the application was a request for a preapproval under a preapproval program as defined in §1003.2(b)(2) and the institution made a credit decision approving the preapproval request but the application did not result in a covered loan originated by the financial institution.

9. *Action taken—counteroffers.* If a financial institution makes a counteroffer to lend on terms different from the applicant's initial request (for example, for a shorter loan maturity, with a different interest rate, or in a different amount) and the applicant does not accept the counteroffer or fails to respond, the institution reports the action taken as a denial on the original terms requested by the applicant. If the applicant accepts, the financial institution reports the action taken as covered loan originated.

10. *Action taken—rescinded transactions.* If a borrower rescinds a transaction after closing and before a financial institution is required to submit its loan/application register containing the information for the transaction under §1003.5(a), the institution reports the transaction as an application that was approved but not accepted.

11. *Action taken—purchased covered loans.* An institution reports the covered loans that it purchased during the calendar year. An institution does not report the covered loans that it declined to purchase, unless, as discussed in comments 4(a)–2 through –4, the institution reviewed the application prior to closing, in which case it reports the application or covered loan according to comments 4(a)–2 through –4.

12. *Action taken—repurchased covered loans.* See comment 4(a)–5 regarding reporting requirements when a covered loan is repurchased by the originating financial institution.

13. *Action taken—conditional approvals.* If an institution issues an approval other than a commitment pursuant to a preapproval program as defined under §1003.2(b)(2), and that approval is subject to the applicant meeting certain conditions, the institution reports the action taken as provided below dependent on whether the conditions are solely customary commitment or closing conditions or if the conditions include any underwriting or creditworthiness conditions.

i. *Action taken examples.* If the approval is conditioned on satisfying underwriting or creditworthiness conditions and they are not met, the institution reports the action taken as a denial. If, however, the conditions involve submitting additional information about underwriting or creditworthiness that the institution needs to make the credit decision, and the institution has sent a written notice of incompleteness under Regulation B, 12 CFR 1002.9(c)(2), and the applicant did not respond within the period of time specified in the notice, the institution reports the action taken as file closed for incompleteness. *See* comment 4(a)(8)(i)–6. If the conditions are solely customary commitment or closing conditions and the conditions are not met, the institution reports the action taken as approved but not accepted. If all the conditions (underwriting, creditworthiness, or customary commitment or closing conditions) are satisfied and the institution agrees to extend credit but the covered loan is not originated, the institution reports the action taken as application approved but not accepted. If the applicant expressly withdraws before satisfying all underwriting or creditworthiness conditions and before the institution denies the application or closes the file for incompleteness, the institution reports the action taken as application withdrawn. If all underwriting and creditworthiness conditions have been met, and the outstanding conditions are solely customary commitment or closing conditions and the applicant expressly withdraws before the covered loan is originated, the institution reports the action taken as application approved but not accepted.

ii. *Customary commitment or closing conditions.* Customary commitment or closing conditions include, for example: a clear-title requirement, an acceptable property survey, acceptable title insurance binder, clear termite inspection, a subordination agreement from another lienholder, and, where the applicant plans to use the proceeds from the sale of one home to purchase another, a settlement statement showing adequate proceeds from the sale.

iii. *Underwriting or creditworthiness conditions.* Underwriting or creditworthiness conditions include, for example: conditions that constitute a counter-offer, such as a demand for a higher down-payment; satisfactory debt-to-income or loan-to-value ratios, a determination of need for private mortgage insurance, or a satisfactory appraisal requirement; or verification or confirmation, in whatever form the institution requires, that the applicant meets underwriting conditions concerning applicant creditworthiness, including documentation or verification of income or assets.

14. *Action taken—pending applications.* An institution does not report any covered loan application still pending at the end of the calendar year; it reports that application on its loan/application register for the year in which final action is taken.

Paragraph 4(a)(8)(ii)

1. *Action taken date—general.* A financial institution reports the date of the action taken.

2. *Action taken date—applications denied and files closed for incompleteness.* For applications, including requests for a preapproval, that are denied or for files closed for incompleteness, the financial institution reports either the date the action was taken or the date the notice was sent to the applicant.

3. *Action taken date—application withdrawn.* For applications withdrawn, the financial institution may report the date the express withdrawal was received or the date shown on the notification form in the case of a written withdrawal.

4. *Action taken date—approved but not accepted.* For a covered loan approved by an institution but not accepted by the applicant, the institution reports any reasonable date, such as the approval date, the deadline for accepting the offer, or the date the file was closed. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of covered loans).

5. *Action taken date—originations.* For covered loan originations, including a preapproval request that leads to an origination by the financial institution, an institution generally reports the closing or account opening date. For covered loan originations that an institution acquires from a party

that initially received the application, the institution reports either the closing or account opening date, or the date the institution acquired the covered loan from the party that initially received the application. If the disbursement of funds takes place on a date later than the closing or account opening date, the institution may use the date of initial disbursement. For a construction/permanent covered loan, the institution reports either the closing or account opening date, or the date the covered loan converts to the permanent financing. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of covered loans). Notwithstanding this flexibility regarding the use of the closing or account opening date in connection with reporting the date action was taken, the institution must report the origination as occurring in the year in which the origination goes to closing or the account is opened.

6. *Action taken date—loan purchased.* For covered loans purchased, a financial institution reports the date of purchase.

Paragraph 4(a)(9)

1. *Multiple properties with one property taken as security.* If a covered loan is related to more than one property, but only one property is taken as security (or, in the case of an application, proposed to be taken as security), a financial institution reports the information required by §1003.4(a)(9) for the property taken as or proposed to be taken as security. A financial institution does not report the information required by §1003.4(a)(9) for the property or properties related to the loan that are not taken as or proposed to be taken as security. For example, if a covered loan is secured by property A, and the proceeds are used to purchase or rehabilitate (or to refinance home purchase or home improvement loans related to) property B, the institution reports the information required by §1003.4(a)(9) for property A and does not report the information required by §1003.4(a)(9) for property B.

2. *Multiple properties with more than one property taken as security.* If more than one property is taken or, in the case of an application, proposed to be taken as security for a single covered loan, a financial institution reports the covered loan or application in a single entry on its loan/application register and provides the information required by §1003.4(a)(9) for one of the properties taken as security that contains a dwelling. A financial institution does not report information about the other properties taken as security. If an institution is required to report specific information about the property identified in §1003.4(a)(9), the institution reports the information that relates to the property identified in §1003.4(a)(9). For example, Financial Institution A originated a covered loan that is secured by both property A and property B, each of which contains a dwelling. Financial Institution A reports the loan as one entry on its loan/application register, reporting the information required by §1003.4(a)(9) for either property A or property B. If Financial Institution A elects to report the information required by §1003.4(a)(9) about property A, Financial Institution A also reports the information required by §1003.4(a)(5), (6), (14), (29), and (30) related to property A. For aspects of the entries that do not refer to the property identified in §1003.4(a)(9) (*i.e.*, §1003.4(a)(1) through (4), (7), (8), (10) through (13), (15) through (28), (31) through (38)), Financial Institution A reports the information applicable to the covered loan or application and not information that relates only to the property identified in §1003.4(a)(9).

3. *Multifamily dwellings.* A single multifamily dwelling may have more than one postal address. For example, three apartment buildings, each with a different street address, comprise a single multifamily dwelling that secures a covered loan. For the purposes of §1003.4(a)(9), a financial institution reports the information required by §1003.4(a)(9) in the same manner described in comment 4(a)(9)–2.

4. *Loans purchased from another institution.* The requirement to report the property location information required by §1003.4(a)(9) applies not only to applications and originations but also to purchased covered loans.

5. *Manufactured home.* If the site of a manufactured home has not been identified, a financial institution complies by reporting that the information required by §1003.4(a)(9) is not applicable.

Paragraph 4(a)(9)(i)

1. *General.* Section 1003.4(a)(9)(i) requires a financial institution to report the property address of the location of the property securing a covered loan or, in the case of an application, proposed to secure a covered loan. The address should correspond to the property identified on the legal obligation related to the covered loan. For applications that did not result in an origination, the address should correspond to the location of the property proposed to secure the loan as identified by the applicant. For example, assume a loan is secured by a property located at 123 Main Street, and the applicant's or borrower's mailing address is a post office box. The financial institution should not report the post office box, and should report 123 Main Street.

2. *Property address—format.* A financial institution complies with the requirements in §1003.4(a)(9)(i) by reporting the following information about the physical location of the property securing the loan.

i. *Street address.* When reporting the street address of the property, a financial institution complies by including, as applicable, the primary address number, the predirectional, the street name, street prefixes and/or suffixes, the postdirectional, the secondary address identifier, and the secondary address, as applicable. For example, 100 N Main ST Apt 1.

ii. *City name.* A financial institution complies by reporting the name of the city in which the property is located.

iii. *State name.* A financial institution complies by reporting the two letter State code for the State in which the property is located, using the U.S. Postal Service official State abbreviations.

iv. *Zip Code.* A financial institution complies by reporting the five or nine digit Zip Code in which the property is located.

3. *Property address—not applicable.* A financial institution complies with §1003.4(a)(9)(i) by indicating that the requirement is not applicable if the property address of the property securing the covered loan is not known. For example, if the property did not have a property address at closing or if the applicant did not provide the property address of the property to the financial institution before the application was denied, withdrawn, or closed for incompleteness, the financial institution complies with §1003.4(a)(9)(i) by indicating that the requirement is not applicable.

Paragraph 4(a)(9)(ii)(B)

1. *General.* A financial institution complies by reporting the five-digit Federal Information Processing Standards (FIPS) numerical county code.

Paragraph 4(a)(9)(ii)(C)

1. *General.* Census tract numbers are defined by the U.S. Census Bureau. A financial institution complies with §1003.4(a)(9)(ii)(C) if it uses the boundaries and codes in effect on January 1 of the calendar year covered by the loan/application register that it is reporting.

Paragraph 4(a)(10)(i)

1. *Applicant data—general.* Refer to appendix B to this part for instructions on collection of an applicant's ethnicity, race, and sex.

2. *Transition rule for applicant data collected prior to January 1, 2018.* If a financial institution receives an application prior to January 1, 2018, but final action is taken on or after January 1, 2018, the financial institution complies with §1003.4(a)(10)(i) and (b) if it collects the information in accordance with the requirements in effect at the time the information was collected. For example, if a financial institution receives an application on November 15, 2017, collects the applicant's ethnicity, race, and sex in accordance with the instructions in effect on that date, and takes final action on the application on January 5, 2018, the financial institution has complied with the requirements of §1003.4(a)(10)(i) and (b), even though those instructions changed after the information was collected but before the date of final action. However, if, in this example, the financial institution collected the applicant's ethnicity, race, and sex on or after January 1, 2018, §1003.4(a)(10)(i) and (b) requires the financial institution to collect the information in accordance with the amended instructions.

Paragraph 4(a)(10)(ii)

1. *Applicant data—completion by financial institution.* A financial institution complies with §1003.4(a)(10)(ii) by reporting the applicant's age, as of the application date under §1003.4(a)(1)(ii), as the number of whole years derived from the date of birth as shown on the application form. For example, if an applicant provides a date of birth of 01/15/1970 on the application form that the financial institution receives on 01/14/2015, the institution reports 44 as the applicant's age.

2. *Applicant data—co-applicant.* If there are no co-applicants, the financial institution reports that there is no co-applicant. If there is more than one co-applicant, the financial institution reports the age only for the first co-applicant listed on the application form. A co-applicant may provide an absent co-applicant's age on behalf of the absent co-applicant.

3. *Applicant data—purchased loan.* A financial institution complies with §1003.4(a)(10)(ii) by reporting that the requirement is not applicable when reporting a purchased loan for which the institution chooses not to report the income.

4. *Applicant data—non-natural person.* A financial institution complies with §1003.4(a)(10)(ii) by reporting that the requirement is not applicable if the applicant or co-applicant is not a natural person (for example, a corporation, partnership, or trust). For example, for a transaction involving a trust, a financial institution reports that the requirement to report the applicant's age is not applicable if the trust is the applicant. On the other hand, if the applicant is a natural person, and is the beneficiary of a trust, a financial institution reports the applicant's age.

5. *Applicant data—guarantor.* For purposes of §1003.4(a)(10)(ii), if a covered loan or application includes a guarantor, a financial institution does not report the guarantor's age.

Paragraph 4(a)(10)(iii)

1. *Income data—income relied on.* When a financial institution evaluates income as part

of a credit decision, it reports the gross annual income relied on in making the credit decision. For example, if an institution relies on an applicant's salary to compute a debt-to-income ratio but also relies on the applicant's annual bonus to evaluate creditworthiness, the institution reports the salary and the bonus to the extent relied upon. If an institution relies on only a portion of an applicant's income in its determination, it does not report that portion of income not relied on. For example, if an institution, pursuant to lender and investor guidelines, does not rely on an applicant's commission income because it has been earned for less than 12 months, the institution does not include the applicant's commission income in the income reported. Likewise, if an institution relies on the verified gross income of the applicant in making the credit decision, then the institution reports the verified gross income. Similarly, if an institution relies on the income of a cosigner to evaluate creditworthiness, the institution includes the cosigner's income to the extent relied upon. An institution, however, does not include the income of a guarantor who is only secondarily liable.

2. *Income data—co-applicant.* If two persons jointly apply for a covered loan and both list income on the application, but the financial institution relies on the income of only one applicant in evaluating creditworthiness, the institution reports only the income relied on.

3. *Income data—loan to employee.* A financial institution complies with §1003.4(a)(10)(iii) by reporting that the requirement is not applicable for a covered loan to, or an application from, its employee to protect the employee's privacy, even though the institution relied on the employee's income in making the credit decision.

4. *Income data—assets.* A financial institution does not include as income amounts considered in making a credit decision based on factors that an institution relies on in addition to income, such as amounts derived from annuitization or depletion of an applicant's remaining assets.

5. *Income data—credit decision not made.* Section 1003.4(a)(10)(iii) requires a financial institution to report the gross annual income relied on in processing the application if a credit decision was not made. For example, assume an institution received an application that included an applicant's self-reported income, but the application was withdrawn before a credit decision that would have considered income was made. The financial institution reports the income information relied on in processing the application at the time that the application was withdrawn or the file was closed for incompleteness.

6. *Income data—credit decision not requiring consideration of income.* A financial institution complies with §1003.4(a)(10)(iii) by reporting that the requirement is not applicable if the application did not or would not have required a credit decision that considered income under the financial institution's policies and procedures. For example, if the financial institution's policies and procedures do not consider income for a streamlined refinance program, the institution reports that the requirement is not applicable, even if the institution received income information from the applicant.

7. *Income data—non-natural person.* A financial institution reports that the requirement is not applicable when the applicant or co-applicant is not a natural person (*e.g.*, a corporation, partnership, or trust). For example, for a transaction involving a trust, a financial institution reports that the requirement to report income data is not applicable if the trust is the applicant. On the other hand, if the applicant is a natural person, and is the beneficiary of a trust, a financial institution is required to report the information described in §1003.4(a)(10)(iii).

8. *Income data—multifamily properties.* A financial institution complies with §1003.4(a)(10)(iii) by reporting that the requirement is not applicable when the covered loan is secured by, or application is proposed to be secured by, a multifamily dwelling.

9. *Income data—purchased loans.* A financial institution complies with §1003.4(a)(10)(iii) by reporting that the requirement is not applicable when reporting a purchased covered loan for which the institution chooses not to report the income.

10. *Income data—rounding.* A financial institution complies by reporting the dollar amount of the income in thousands, rounded to the nearest thousand ($500 rounds up to the next $1,000). For example, $35,500 is reported as 36.

Paragraph 4(a)(11)

1. *Type of purchaser—loan-participation interests sold to more than one entity.* A financial institution that originates a covered loan, and then sells it to more than one entity, reports the ''type of purchaser'' based on the entity purchasing the greatest interest, if any. For purposes of §1003.4(a)(11), if a financial institution sells some interest or interests in a covered loan but retains a majority interest in that loan, it does not report the sale.

2. *Type of purchaser—swapped covered loans.* Covered loans ''swapped'' for mortgage-backed securities are to be treated as sales; the purchaser is the entity receiving the covered loans that are swapped.

3. *Type of purchaser—affiliate institution.* For purposes of complying with §1003.4(a)(11), the term ''affiliate'' means any company that controls, is controlled by, or is

under common control with, another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

4. *Type of purchaser—private securitizations.* A financial institution that knows or reasonably believes that the covered loan it is selling will be securitized by the entity purchasing the covered loan, other than by one of the government-sponsored enterprises, reports the purchasing entity type as a private securitizer regardless of the type or affiliation of the purchasing entity. Knowledge or reasonable belief could, for example, be based on the purchase agreement or other related documents, the financial institution's previous transactions with the purchaser, or the purchaser's role as a securitizer (such as an investment bank). If a financial institution selling a covered loan does not know or reasonably believe that the purchaser will securitize the loan, and the seller knows that the purchaser frequently holds or disposes of loans by means other than securitization, then the financial institution should report the covered loan as purchased by, as appropriate, a commercial bank, savings bank, savings association, life insurance company, credit union, mortgage company, finance company, affiliate institution, or other type of purchaser.

5. *Type of purchaser—mortgage company.* For purposes of complying with §1003.4(a)(11), a mortgage company means a nondepository institution that purchases covered loans and typically originates such loans. A mortgage company might be an affiliate or a subsidiary of a bank holding company or thrift holding company, or it might be an independent mortgage company. Regardless, a financial institution reports the purchasing entity type as a mortgage company, unless the mortgage company is an affiliate of the seller institution, in which case the seller institution should report the loan as purchased by an affiliate institution.

6. *Purchases by subsidiaries.* A financial institution that sells a covered loan to its subsidiary that is a commercial bank, savings bank, or savings association, should report the covered loan as purchased by a commercial bank, savings bank, or savings association. A financial institution that sells a covered loan to its subsidiary that is a life insurance company, should report the covered loan as purchased by a life insurance company. A financial institution that sells a covered loan to its subsidiary that is a credit union, mortgage company, or finance company, should report the covered loan as purchased by a credit union, mortgage company, or finance company. If the subsidiary that purchases the covered loan is not a commercial bank, savings bank, savings association, life insurance company, credit union, mortgage company, or finance company, the seller institution should report the loan as purchased by other type of purchaser. The financial institution should report the covered loan as purchased by an affiliate institution when the subsidiary is an affiliate of the seller institution.

7. *Type of purchaser—bank holding company or thrift holding company.* When a financial institution sells a covered loan to a bank holding company or thrift holding company (rather than to one of its subsidiaries), it should report the loan as purchased by other type of purchaser, unless the bank holding company or thrift holding company is an affiliate of the seller institution, in which case the seller institution should report the loan as purchased by an affiliate institution.

8. *Repurchased covered loans.* See comment 4(a)–5 regarding reporting requirements when a covered loan is repurchased by the originating financial institution.

9. *Type of purchaser—quarterly recording.* For purposes of recording the type of purchaser within 30 calendar days after the end of the calendar quarter pursuant to §1003.4(f), a financial institution records that the requirement is not applicable if the institution originated or purchased a covered loan and did not sell it during the calendar quarter for which the institution is recording the data. If the financial institution sells the covered loan in a subsequent quarter of the same calendar year, the financial institution records the type of purchaser on its loan/application register for the quarter in which the covered loan was sold. If a financial institution sells the covered loan in a succeeding year, the financial institution should not record the sale.

10. *Type of purchaser—not applicable.* A financial institution reports that the requirement is not applicable for applications that were denied, withdrawn, closed for incompleteness or approved but not accepted by the applicant; and for preapproval requests that were denied or approved but not accepted by the applicant. A financial institution also reports that the requirement is not applicable if the institution originated or purchased a covered loan and did not sell it during that same calendar year.

Paragraph 4(a)(12)

1. *Average prime offer rate.* Average prime offer rates are annual percentage rates derived from average interest rates, points, and other loan pricing terms offered to borrowers by a representative sample of lenders for mortgage loans that have low-risk pricing characteristics. Other pricing terms include commonly used indices, margins, and initial fixed-rate periods for variable-rate transactions. Relevant pricing characteristics include a consumer's credit history and transaction characteristics such as the loan-to-value ratio, owner-occupant status, and purpose of the transaction. To obtain average prime offer rates, the Bureau uses a survey of lenders that both meets the criteria of

§1003.4(a)(12)(ii) and provides pricing terms for at least two types of variable-rate transactions and at least two types of non-variable-rate transactions. An example of such a survey is the Freddie Mac Primary Mortgage Market Survey®.

2. *Bureau tables.* The Bureau publishes on the FFIEC's Web site (*http://www.ffiec.gov/hmda*), in tables entitled ''Average Prime Offer Rates-Fixed'' and ''Average Prime Offer Rates-Adjustable,'' current and historic average prime offer rates for a wide variety of closed-end transaction types. The Bureau calculates an annual percentage rate, consistent with Regulation Z (see 12 CFR 1026.22 and part 1026, appendix J), for each transaction type for which pricing terms are available from the survey described in comment 4(a)(12)–1. The Bureau uses loan pricing terms available in the survey and other information to estimate annual percentage rates for other types of transactions for which direct survey data are not available. The Bureau publishes on the FFIEC's Web site the methodology it uses to arrive at these estimates. A financial institution may either use the average prime offer rates published by the Bureau or may determine average prime offer rates itself by employing the methodology published on the FFIEC Web site. A financial institution that determines average prime offer rates itself, however, is responsible for correctly determining the rates in accordance with the published methodology.

3. *Rate spread calculation—annual percentage rate.* The requirements of §1003.4(a)(12)(i) refer to the covered loan's annual percentage rate. A financial institution complies with §1003.4(a)(12)(i) by relying on the annual percentage rate for the covered loan, as calculated and disclosed pursuant to Regulation Z, 12 CFR 1026.18 or 1026.38 (for closed-end mortgage loans) or 1026.40 (for open-end credit lines of credit), as applicable.

4. *Rate spread calculation—comparable transaction.* The rate spread calculation in §1003.4(a)(12)(i) is defined by reference to a comparable transaction, which is determined according to the covered loan's amortization type (*i.e.*, fixed- or variable-rate) and loan term. For covered loans that are open-end lines of credit, §1003.4(a)(12)(i) requires a financial institution to identify the most closely comparable closed-end transaction. The tables of average prime offer rates published by the Bureau (see comment 4(a)(12)–2) provide additional detail about how to identify the comparable transaction.

i. *Fixed-rate transactions.* For fixed-rate covered loans, the term for identifying the comparable transaction is the transaction's maturity (*i.e.*, the period until the last payment will be due under the closed-end mortgage loan contract or open-end line of credit agreement). If an open-end credit plan has a fixed rate but no definite plan length, a financial institution complies with §1003.4(a)(12)(i) by using a 30-year fixed-rate loan as the most closely comparable closed-end transaction. Financial institutions may refer to the table on the FFIEC Web site entitled ''Average Prime Offer Rates-Fixed'' when identifying a comparable fixed-rate transaction.

ii. *Variable-rate transactions.* For variable-rate covered loans, the term for identifying the comparable transaction is the initial, fixed-rate period (*i.e.*, the period until the first scheduled rate adjustment). For example, five years is the relevant term for a variable-rate transaction with a five-year, fixed-rate introductory period that is amortized over thirty years. Financial institutions may refer to the table on the FFIEC Web site entitled ''Average Prime Offer Rates-Variable'' when identifying a comparable variable-rate transaction. If an open-end line of credit has a variable rate and an optional, fixed-rate feature, a financial institution uses the rate table for variable-rate transactions.

iii. *Term not in whole years.* When a covered loan's term to maturity (or, for a variable-rate transaction, the initial fixed-rate period) is not in whole years, the financial institution uses the number of whole years closest to the actual loan term or, if the actual loan term is exactly halfway between two whole years, by using the shorter loan term. For example, for a loan term of ten years and three months, the relevant term is ten years; for a loan term of ten years and nine months, the relevant term is 11 years; for a loan term of ten years and six months, the relevant term is ten years. If a loan term includes an odd number of days, in addition to an odd number of months, the financial institution rounds to the nearest whole month, or rounds down if the number of odd days is exactly halfway between two months. The financial institution rounds to one year any covered loan with a term shorter than six months, including variable-rate covered loans with no initial, fixed-rate periods. For example, if an open-end covered loan has a rate that varies according to an index plus a margin, with no introductory, fixed-rate period, the transaction term is one year.

iv. *Amortization period longer than loan term.* If the amortization period of a covered loan is longer than the term of the transaction to maturity, §1003.4(a)(12)(i) requires a financial institution to use the loan term to determine the applicable average prime offer rate. For example, assume a financial institution originates a closed-end, fixed-rate loan that has a term to maturity of five years and a thirty-year amortization period that results in a balloon payment. The financial institution complies with §1003.4(a)(12)(i) by using the five-year loan term.

5. *Rate-set date.* The relevant date to use to determine the average prime offer rate for a

comparable transaction is the date on which the covered loan's interest rate was set by the financial institution for the final time before closing or account opening.

i. *Rate-lock agreement.* If an interest rate is set pursuant to a ''lock-in'' agreement between the financial institution and the borrower, then the date on which the agreement fixes the interest rate is the date the rate was set. Except as provided in comment 4(a)(12)–5.ii, if a rate is reset after a lock-in agreement is executed (for example, because the borrower exercises a float-down option or the agreement expires), then the relevant date is the date the financial institution exercises discretion in setting the rate for the final time before closing or account opening. The same rule applies when a rate-lock agreement is extended and the rate is reset at the same rate, regardless of whether market rates have increased, decreased, or remained the same since the initial rate was set. If no lock-in agreement is executed, then the relevant date is the date on which the institution sets the rate for the final time before closing or account opening.

ii. *Change in loan program.* If a financial institution issues a rate-lock commitment under one loan program, the borrower subsequently changes to another program that is subject to different pricing terms, and the financial institution changes the rate promised to the borrower under the rate-lock commitment accordingly, the rate-set date is the date of the program change. However, if the financial institution changes the promised rate to the rate that would have been available to the borrower under the new program on the date of the original rate-lock commitment, then that is the date the rate is set, provided the financial institution consistently follows that practice in all such cases or the original rate-lock agreement so provided. For example, assume that a borrower locks a rate of 2.5 percent on June 1 for a 30-year, variable-rate loan with a 5-year, fixed-rate introductory period. On June 15, the borrower decides to switch to a 30-year, fixed-rate loan, and the rate available to the borrower for that product on June 15 is 4.0 percent. On June 1, the 30-year, fixed-rate loan would have been available to the borrower at a rate of 3.5 percent. If the financial institution offers the borrower the 3.5 percent rate (*i.e.,* the rate that would have been available to the borrower for the fixed-rate product on June 1, the date of the original rate-lock) because the original agreement so provided or because the financial institution consistently follows that practice for borrowers who change loan programs, then the financial institution should use June 1 as the rate-set date. In all other cases, the financial institution should use June 15 as the rate-set date.

iii. *Brokered loans.* When a financial institution has reporting responsibility for an application for a covered loan that it received from a broker, as discussed in comment 4(a)–4 (*e.g.,* because the financial institution makes a credit decision prior to closing or account opening), the rate-set date is the last date the financial institution set the rate with the broker, not the date the broker set the borrower's rate.

6. *Compare the annual percentage rate to the average prime offer rate.* Section 1003.4(a)(12)(i) requires a financial institution to compare the covered loan's annual percentage rate to the most recently available average prime offer rate that was in effect for the comparable transaction as of the rate-set date. For purposes of §1003.4(a)(12)(i), the most recently available rate means the average prime offer rate set forth in the applicable table with the most recent effective date as of the date the interest rate was set. However, §1003.4(a)(12)(i) does not permit a financial institution to use an average prime offer rate before its effective date.

7. *Rate spread—not applicable.* If the covered loan is an assumption, reverse mortgage, a purchased loan, or is not subject to Regulation Z, 12 CFR part 1026, a financial institution complies with §1003.4(a)(12) by reporting that the requirement is not applicable. If the application did not result in an origination for a reason other than the application was approved but not accepted by the applicant, a financial institution complies with §1003.4(a)(12) by reporting that the requirement is not applicable.

8. *Application approved but not accepted or preapproval request approved but not accepted.* In the case of an application approved but not accepted or a preapproval request that was approved but not accepted, §1003.4(a)(12) requires a financial institution to report the applicable rate spread.

Paragraph 4(a)(13)

1. *HOEPA status—not applicable.* If the covered loan is not subject to the Home Ownership and Equity Protection Act of 1994, as implemented in Regulation Z, 12 CFR 1026.32, a financial institution complies with §1003.4(a)(13) by reporting that the requirement is not applicable. If an application did not result in an origination, a financial institution complies with §1003.4(a)(13) by reporting that the requirement is not applicable.

Paragraph 4(a)(14)

1. *Determining lien status for applications and covered loans originated and purchased.* i. Financial institutions are required to report lien status for covered loans they originate and purchase and applications that do not result in originations (preapproval requests that are approved but not accepted,

preapproval requests that are denied, applications that are approved but not accepted, denied, withdrawn, or closed for incompleteness). For covered loans purchased by a financial institution, lien status is determined by reference to the best information readily available to the financial institution at the time of purchase. For covered loans that a financial institution originates and applications that do not result in originations, lien status is determined by reference to the best information readily available to the financial institution at the time final action is taken and to the financial institution's own procedures. Thus, financial institutions may rely on the title search they routinely perform as part of their underwriting procedures—for example, for home purchase loans. Regulation C does not require financial institutions to perform title searches solely to comply with HMDA reporting requirements. Financial institutions may rely on other information that is readily available to them at the time final action is taken and that they reasonably believe is accurate, such as the applicant's statement on the application or the applicant's credit report. For example, where the applicant indicates on the application that there is a mortgage on the property or where the applicant's credit report shows that the applicant has a mortgage—and that mortgage will not be paid off as part of the transaction—the financial institution may assume that the loan it originates is secured by a subordinate lien. If the same application did not result in an origination—for example, because the application was denied or withdrawn—the financial institution would report the application as an application for a subordinate-lien loan.

ii. Financial institutions may also consider their established procedures when determining lien status for applications that do not result in originations. For example, assume an applicant applies to a financial institution to refinance a $100,000 first mortgage; the applicant also has an open-end line of credit for $20,000. If the financial institution's practice in such a case is to ensure that it will have first-lien position—through a subordination agreement with the holder of the lien securing the open-end line of credit—then the financial institution should report the application as an application for a first-lien covered loan.

2. *Multiple properties.* See comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

Paragraph 4(a)(15)

1. *Credit score—relied on.* Except for purchased covered loans, §1003.4(a)(15) requires a financial institution to report the credit score or scores relied on in making the credit decision and information about the scoring model used to generate each score. A financial institution relies on a credit score in making the credit decision if the credit score was a factor in the credit decision even if it was not a dispositive factor. For example, if a credit score is one of multiple factors in a financial institution's credit decision, the financial institution has relied on the credit score even if the financial institution denies the application because one or more underwriting requirements other than the credit score are not satisfied.

2. *Credit score—multiple credit scores.* When a financial institution obtains or creates two or more credit scores for a single applicant or borrower but relies on only one score in making the credit decision (for example, by relying on the lowest, highest, most recent, or average of all of the scores), the financial institution complies with §1003.4(a)(15) by reporting that credit score and information about the scoring model used. When a financial institution obtains or creates two or more credit scores for an applicant or borrower and relies on multiple scores for the applicant or borrower in making the credit decision (for example, by relying on a scoring grid that considers each of the scores obtained or created for the applicant or borrower without combining the scores into a composite score), §1003.4(a)(15) requires the financial institution to report one of the credit scores for the applicant or borrower that was relied on in making the credit decision. In choosing which credit score to report in this circumstance, a financial institution need not use the same approach for its entire HMDA submission, but it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of covered loans). In instances such as these, the financial institution should report the name and version of the credit scoring model for the score reported.

3. *Credit score—multiple applicants or borrowers.* In a transaction involving two or more applicants or borrowers for which the financial institution obtains or creates a single credit score, and relies on that credit score in making the credit decision for the transaction, the institution complies with §1003.4(a)(15) by reporting that credit score for either the applicant or first co-applicant. Otherwise, a financial institution complies with §1003.4(a)(15) by reporting a credit score for the applicant that it relied on in making the credit decision, if any, and a credit score for the first co-applicant that it relied on in making the credit decision, if any. To illustrate, assume a transaction involves one applicant and one co-applicant and that the financial institution obtains or creates two credit scores for the applicant and two credit scores for the co-applicant. Assume further that the financial institution relies on the lowest, highest, most recent, or average of

all of the credit scores obtained or created to make the credit decision for the transaction. The financial institution complies with §1003.4(a)(15) by reporting that credit score and information about the scoring model used. Alternatively, assume a transaction involves one applicant and one co-applicant and that the financial institution obtains or creates three credit scores for the applicant and three credit scores for the co-applicant. Assume further that the financial institution relies on the middle credit score for the applicant and the middle credit score for the co-applicant to make the credit decision for the transaction. The financial institution complies with §1003.4(a)(15) by reporting both the middle score for the applicant and the middle score for the co-applicant.

4. *Transactions for which no credit decision was made.* If a file was closed for incompleteness or the application was withdrawn before a credit decision was made, the financial institution complies with §1003.4(a)(15) by reporting that the requirement is not applicable, even if the financial institution had obtained or created a credit score for the applicant or co-applicant. For example, if a file is closed for incompleteness and is so reported in accordance with §1003.4(a)(8), the financial institution complies with §1003.4(a)(15) by reporting that the requirement is not applicable, even if the financial institution had obtained or created a credit score for the applicant or co-applicant. Similarly, if an application was withdrawn by the applicant before a credit decision was made and is so reported in accordance with §1003.4(a)(8), the financial institution complies with §1003.4(a)(15) by reporting that the requirement is not applicable, even if the financial institution had obtained or created a credit score for the applicant or co-applicant.

5. *Transactions for which no credit score was relied on.* If a financial institution makes a credit decision without relying on a credit score for the applicant or borrower, the financial institution complies with §1003.4(a)(15) by reporting that the requirement is not applicable.

6. *Purchased covered loan.* A financial institution complies with §1003.4(a)(15) by reporting that the requirement is not applicable when the covered loan is a purchased covered loan.

7. *Non-natural person.* When the applicant and co-applicant, if applicable, are not natural persons, a financial institution complies with §1003.4(a)(15) by reporting that the requirement is not applicable.

Paragraph 4(a)(16)

1. *Reason for denial—general.* A financial institution complies with §1003.4(a)(16) by reporting the principal reason or reasons it denied the application, indicating up to four reasons. The financial institution should report only the principal reason or reasons it denied the application, even if there are fewer than four reasons. For example, if a financial institution denies the application because of the applicant's credit history and debt-to-income ratio, the financial institution need only report these two principal reasons. The reasons reported must be specific and accurately describe the principal reason or reasons the financial institution denied the application.

2. *Reason for denial—preapproval request denied.* Section 1003.4(a)(16) requires a financial institution to report the principal reason or reasons it denied the application. A request for a preapproval under a preapproval program as defined by §1003.2(b)(2) is an application. If a financial institution denies a preapproval request, the financial institution complies with §1003.4(a)(16) by reporting the reason or reasons it denied the preapproval request.

3. *Reason for denial—adverse action model form or similar form.* If a financial institution chooses to provide the applicant the reason or reasons it denied the application using the model form contained in appendix C to Regulation B (Form C–1, Sample Notice of Action Taken and Statement of Reasons) or a similar form, §1003.4(a)(16) requires the financial institution to report the reason or reasons that were specified on the form by the financial institution, which includes reporting the ''Other'' reason or reasons that were specified on the form by the financial institution, if applicable. If a financial institution chooses to provide a disclosure of the applicant's right to a statement of specific reasons using the model form contained in appendix C to Regulation B (Form C–5, Sample Disclosure of Right to Request Specific Reasons for Credit Denial) or a similar form, or chooses to provide the denial reason or reasons orally under Regulation B, 12 CFR 1002.9(a)(2)(ii), the financial institution complies with §1003.4(a)(16) by entering the principal reason or reasons it denied the application.

4. *Reason for denial—not applicable.* A financial institution complies with §1003.4(a)(16) by reporting that the requirement is not applicable if the action taken on the application, pursuant to §1003.4(a)(8), is not a denial. For example, a financial institution complies with §1003.4(a)(16) by reporting that the requirement is not applicable if the loan is originated or purchased by the financial institution, or the application or preapproval request was approved but not accepted, or the application was withdrawn before a credit decision was made, or the file was closed for incompleteness.

Paragraph 4(a)(17)(i)

1. *Total loan costs—not applicable.* Section 1003.4(a)(17)(i) does not require financial institutions to report the total loan costs for applications, or for transactions not subject to Regulation Z, 12 CFR 1026.43(c), and 12

CFR 1026.19(f), such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes. In these cases, a financial institution complies with §1003.4(a)(17)(i) by reporting that the requirement is not applicable to the transaction.

2. *Purchased loans—applications received prior to the integrated disclosure effective date.* For purchased covered loans subject to this reporting requirement for which applications were received by the selling entity prior to the effective date of Regulation Z, 12 CFR 1026.19(f), a financial institution complies with §1003.4(a)(17)(i) by reporting that the requirement is not applicable to the transaction.

3. *Revised disclosures.* If the amount of total loan costs changes because a financial institution provides a revised version of the disclosures required under Regulation Z, 12 CFR 1026.19(f), pursuant to Regulation Z, 12 CFR 1026.19(f)(2), the financial institution complies with §1003.4(a)(17)(i) by reporting the revised amount, provided that the revised disclosure was provided to the borrower during the same reporting period in which closing occurred. For example, in the case of a financial institution's quarterly submission made pursuant to §1003.5(a)(1)(ii), if the financial institution provides a corrected disclosure to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of total loan costs only if the corrected disclosure was provided prior to the end of the quarter in which closing occurred. The financial institution does not report the corrected amount of total loan costs in its quarterly submission if the corrected disclosure was provided after the end of the quarter, even if the corrected disclosure was provided prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the corrected amount of total loan costs on its annual loan/application register.

Paragraph 4(a)(17)(ii)

1. *Total points and fees—not applicable.* Section 1003.4(a)(17)(ii) does not require financial institutions to report the total points and fees for transactions not subject to Regulation Z, 12 CFR 1026.43(c), such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes, or for applications or purchased covered loans. In these cases, a financial institution complies with §1003.4(a)(17)(ii) by reporting that the requirement is not applicable to the transaction.

2. *Total points and fees cure mechanism.* For covered loans subject to this reporting requirement, if a financial institution determines that the transaction's total points and fees exceeded the applicable limit and cures the overage pursuant to Regulation Z, 12 CFR 1026.43(e)(3)(iii) and (iv), a financial institution complies with §1003.4(a)(17)(ii) by reporting the correct amount of total points and fees, provided that the cure was effected during the same reporting period in which closing occurred. For example, in the case of a financial institution's quarterly submission, the financial institution reports the revised amount of total points and fees only if it cured the overage prior to the end of the quarter in which closing occurred. The financial institution does not report the revised amount of total points and fees in its quarterly submission if it cured the overage after the end of the quarter, even if the cure was effected prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the revised amount of total points and fees on its annual loan/application register.

Paragraph 4(a)(18)

1. *Origination charges—not applicable.* Section 1003.4(a)(18) does not require financial institutions to report the total borrower-paid origination charges for applications, or for transactions not subject to Regulation Z, 12 CFR 1026.19(f), such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes. In these cases, a financial institution complies with §1003.4(a)(18) by reporting that the requirement is not applicable to the transaction.

2. *Purchased loans—applications received prior to the integrated disclosure effective date.* For purchased covered loans subject to this reporting requirement for which applications were received by the selling entity prior to the effective date of Regulation Z, 12 CFR 1026.19(f), a financial institution complies with §1003.4(a)(18) by reporting that the requirement is not applicable to the transaction.

3. *Revised disclosures.* If the total amount of borrower-paid origination charges changes because a financial institution provides a revised version of the disclosures required under Regulation Z, 12 CFR 1026.19(f), pursuant to Regulation Z, 12 CFR 1026.19(f)(2), the financial institution complies with §1003.4(a)(18) by reporting the revised amount, provided that the revised disclosure was provided to the borrower during the same reporting period in which closing occurred. For example, in the case of a financial institution's quarterly submission made pursuant to §1003.5(a)(1)(ii), if the financial institution provides a corrected disclosure to reflect a refund made pursuant to Regulation

Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of origination charges only if the corrected disclosure was provided prior to the end of the quarter in which closing occurred. The financial institution does not report the corrected amount of origination charges in its quarterly submission if the corrected disclosure was provided after the end of the quarter, even if the corrected disclosure was provided prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the corrected amount of origination charges on its annual loan/application register.

Paragraph 4(a)(19)

1. *Discount points—not applicable.* Section 1003.4(a)(19) does not require financial institutions to report the discount points for applications, or for transactions not subject to Regulation Z, 12 CFR 1026.19(f), such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes. In these cases, a financial institution complies with §1003.4(a)(19) by reporting that the requirement is not applicable to the transaction.

2. *Purchased loans—applications received prior to the integrated disclosure effective date.* For purchased covered loans subject to this reporting requirement for which applications were received by the selling entity prior to the effective date of Regulation Z, 12 CFR 1026.19(f), a financial institution complies with §1003.4(a)(19) by reporting that the requirement is not applicable to the transaction.

3. *Revised disclosures.* If the amount of discount points changes because a financial institution provides a revised version of the disclosures required under Regulation Z, 12 CFR 1026.19(f), pursuant to Regulation Z, 12 CFR 1026.19(f)(2), the financial institution complies with §1003.4(a)(19) by reporting the revised amount, provided that the revised disclosure was provided to the borrower during the same reporting period in which closing occurred. For example, in the case of a financial institution's quarterly submission made pursuant to §1003.5(a)(ii), if the financial institution provides a corrected disclosure to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of discount points only if the corrected disclosure was provided prior to the end of the quarter in which closing occurred. The financial institution does not report the corrected amount of discount points in its quarterly submission if the corrected disclosure was provided after the end of the quarter, even if the corrected disclosure was provided prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the corrected amount of discount points on its annual loan/application register.

Paragraph 4(a)(20)

1. *Lender credits—not applicable.* Section 1003.4(a)(20) does not require financial institutions to report lender credits for applications, or for transactions not subject to Regulation Z, 12 CFR 1026.19(f), such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes. In these cases, a financial institution complies with §1003.4(a)(20) by reporting that the requirement is not applicable to the transaction.

2. *Purchased loans—applications received prior to the integrated disclosure effective date.* For purchased covered loans subject to this reporting requirement for which applications were received by the selling entity prior to the effective date of Regulation Z, 12 CFR 1026.19(f), a financial institution complies with §1003.4(a)(20) by reporting that the requirement is not applicable to the transaction.

3. *Revised disclosures.* If the amount of lender credits changes because a financial institution provides a revised version of the disclosures required under Regulation Z, 12 CFR 1026.19(f), pursuant to Regulation Z, 12 CFR 1026.19(f)(2), the financial institution complies with §1003.4(a)(20) by reporting the revised amount, provided that the revised disclosure was provided to the borrower during the same reporting period in which closing occurred. For example, in the case of a financial institution's quarterly submission made pursuant to §1003.5(a)(1)(ii), if the financial institution provides a corrected disclosure to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of lender credits only if the corrected disclosure was provided prior to the end of the quarter in which closing occurred. The financial institution does not report the corrected amount of lender credits in its quarterly submission if the corrected disclosure was provided after the end of the quarter, even if the corrected disclosure was provided prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the corrected amount of lender credits on its annual loan/application register.

Paragraph 4(a)(21)

1. *Interest rate—disclosures.* Section 1003.4(a)(21) requires a financial institution to identify the interest rate applicable to the approved application, or to the covered loan at closing or account opening. For covered loans or applications subject to the disclosure requirements of Regulation Z, 12 CFR

1026.19(e) or (f), a financial institution complies with §1003.4(a)(21) by reporting the interest rate disclosed on the applicable disclosure. For covered loans for which disclosures were provided pursuant to both 12 CFR 1026.19(e) and 12 CFR 1026.19(f), a financial institution reports the interest rate disclosed pursuant to 12 CFR 1026.19(f). A financial institution may rely on the definitions and commentary to the sections of Regulation Z relevant to the disclosure of the interest rate pursuant to 12 CFR 1026.19(e) or 12 CFR 1026.19(f).

2. *Applications.* In the case of an application, §1003.4(a)(21) requires a financial institution to report the applicable interest rate only if the application has been approved by the financial institution but not accepted by the borrower. In such cases, a financial institution reports the interest rate applicable at the time that the application was approved by the financial institution. A financial institution may report the interest rate appearing on the disclosure provided pursuant to 12 CFR 1026.19(e) or (f) if such disclosure accurately reflects the interest rate at the time the application was approved. For applications that have been denied or withdrawn, or files closed for incompleteness, a financial institution reports that no interest rate was applicable to the application.

3. *Adjustable rate—interest rate unknown.* Except as provided in comment 4(a)(21)–1, for adjustable-rate covered loans or applications, if the interest rate is unknown at the time that the application was approved, or at closing or account opening, a financial institution reports the fully-indexed rate based on the index applicable to the covered loan or application. For purposes of §1003.4(a)(21), the fully-indexed rate is the index value and margin at the time that the application was approved, or, for covered loans, at closing or account opening.

Paragraph 4(a)(22)

1. *Prepayment penalty term—not applicable.* Section 1003.4(a)(22) does not require financial institutions to report the term of any prepayment penalty for transactions not subject to Regulation Z, 12 CFR part 1026, such as loans or lines of credit made primarily for business or commercial purposes, or for reverse mortgages or purchased covered loans. In these cases, a financial institution complies with §1003.4(a)(22) by reporting that the requirement is not applicable to the transaction.

2. *Transactions for which no prepayment penalty exists.* For covered loans or applications that have no prepayment penalty, a financial institution complies with §1003.4(a)(22) by reporting that the requirement is not applicable to the transaction. A financial institution may rely on the definitions and commentary to Regulation Z, 12 CFR 1026.32(b)(6)(i) or (ii) in determining whether the terms of a transaction contain a prepayment penalty.

Paragraph 4(a)(23)

1. *General.* For covered loans that are not purchased covered loans, §1003.4(a)(23) requires a financial institution to report the ratio of the applicant's or borrower's total monthly debt to total monthly income (debt-to-income ratio) relied on in making the credit decision. For example, if a financial institution calculated the applicant's or borrower's debt-to-income ratio twice—once according to the financial institution's own requirements and once according to the requirements of a secondary market investor—and the financial institution relied on the debt-to-income ratio calculated according to the secondary market investor's requirements in making the credit decision, §1003.4(a)(23) requires the financial institution to report the debt-to-income ratio calculated according to the requirements of the secondary market investor.

2. *Transactions for which a debt-to-income ratio was one of multiple factors.* A financial institution relies on the ratio of the applicant's or borrower's total monthly debt to total monthly income (debt-to-income ratio) in making the credit decision if the debt-to-income ratio was a factor in the credit decision even if it was not a dispositive factor. For example, if the debt-to-income ratio was one of multiple factors in a financial institution's credit decision, the financial institution has relied on the debt-to-income ratio and complies with §1003.4(a)(23) by reporting the debt-to-income ratio, even if the financial institution denied the application because one or more underwriting requirements other than the debt-to-income ratio were not satisfied.

3. *Transactions for which no credit decision was made.* If a file was closed for incompleteness, or if an application was withdrawn before a credit decision was made, a financial institution complies with §1003.4(a)(23) by reporting that the requirement is not applicable, even if the financial institution had calculated the ratio of the applicant's total monthly debt to total monthly income (debt-to-income ratio). For example, if a file was closed for incompleteness and was so reported in accordance with §1003.4(a)(8), the financial institution complies with §1003.4(a)(23) by reporting that the requirement is not applicable, even if the financial institution had calculated the applicant's debt-to-income ratio. Similarly, if an application was withdrawn by the applicant before a credit decision was made, the financial institution complies with §1003.4(a)(23) by reporting that the requirement is not applicable, even if the financial institution had calculated the applicant's debt-to-income ratio.

4. *Transactions for which no debt-to-income ratio was relied on.* Section 1003.4(a)(23) does

not require a financial institution to calculate the ratio of an applicant's or borrower's total monthly debt to total monthly income (debt-to-income ratio), nor does it require a financial institution to rely on an applicant's or borrower's debt-to-income ratio in making a credit decision. If a financial institution made a credit decision without relying on the applicant's or borrower's debt-to-income ratio, the financial institution complies with §1003.4(a)(23) by reporting that the requirement is not applicable since no debt-to-income ratio was relied on in connection with the credit decision.

5. *Non-natural person.* A financial institution complies with §1003.4(a)(23) by reporting that the requirement is not applicable when the applicant and co-applicant, if applicable, are not natural persons.

6. *Multifamily dwellings.* A financial institution complies with §1003.4(a)(23) by reporting that the requirement is not applicable for a covered loan secured by, or an application proposed to be secured by, a multifamily dwelling.

7. *Purchased covered loans.* A financial institution complies with §1003.4(a)(23) by reporting that the requirement is not applicable when reporting a purchased covered loan.

Paragraph 4(a)(24)

1. *General.* Section 1003.4(a)(24) requires a financial institution to report, except for purchased covered loans, the ratio of the total amount of debt secured by the property to the value of the property (combined loan-to-value ratio) relied on in making the credit decision. For example, if a financial institution calculated a combined loan-to-value ratio twice—once according to the financial institution's own requirements and once according to the requirements of a secondary market investor—and the financial institution relied on the combined loan-to-value ratio calculated according to the secondary market investor's requirements in making the credit decision, §1003.4(a)(24) requires the financial institution to report the combined loan-to-value ratio calculated according to the requirements of the secondary market investor.

2. *Transactions for which a combined loan-to-value ratio was one of multiple factors.* A financial institution relies on the total amount of debt secured by the property to the value of the property (combined loan-to-value ratio) in making the credit decision if the combined loan-to-value ratio was a factor in the credit decision even if it was not a dispositive factor. For example, if the combined loan-to-value ratio is one of multiple factors in a financial institution's credit decision, the financial institution has relied on the combined loan-to-value ratio and complies with §1003.4(a)(24) by reporting the combined loan-to-value ratio, even if the financial institution denies the application because one or more underwriting requirements other than the combined loan-to-value ratio are not satisfied.

3. *Transactions for which no credit decision was made.* If a file was closed for incompleteness, or if an application was withdrawn before a credit decision was made, a financial institution complies with §1003.4(a)(24) by reporting that the requirement is not applicable, even if the financial institution had calculated the ratio of the total amount of debt secured by the property to the value of the property (combined loan-to-value ratio). For example, if a file is closed for incompleteness and is so reported in accordance with §1003.4(a)(8), the financial institution complies with §1003.4(a)(24) by reporting that the requirement is not applicable, even if the financial institution had calculated a combined loan-to-value ratio. Similarly, if an application was withdrawn by the applicant before a credit decision was made and is so reported in accordance with §1003.4(a)(8), the financial institution complies with §1003.4(a)(24) by reporting that the requirement is not applicable, even if the financial institution had calculated a combined loan-to-value ratio.

4. *Transactions for which no combined loan-to-value ratio was relied on.* Section 1003.4(a)(24) does not require a financial institution to calculate the ratio of the total amount of debt secured by the property to the value of the property (combined loan-to-value ratio), nor does it require a financial institution to rely on a combined loan-to-value ratio in making a credit decision. If a financial institution makes a credit decision without relying on a combined loan-to-value ratio, the financial institution complies with §1003.4(a)(24) by reporting that the requirement is not applicable since no combined loan-to-value ratio was relied on in making the credit decision.

5. *Purchased covered loan.* A financial institution complies with §1003.4(a)(24) by reporting that the requirement is not applicable when the covered loan is a purchased covered loan.

Paragraph 4(a)(25)

1. *Amortization and maturity.* For a fully amortizing covered loan, the number of months after which the legal obligation matures is the number of months in the amortization schedule, ending with the final payment. Some covered loans do not fully amortize during the maturity term, such as covered loans with a balloon payment; such loans should still be reported using the maturity term rather than the amortization term, even in the case of covered loans that mature before fully amortizing but have reset options. For example, a 30-year fully amortizing covered loan would be reported

with a term of ''360,'' while a five year balloon covered loan would be reported with a loan term of ''60.''

2. *Non-monthly repayment periods.* If a covered loan or application includes a schedule with repayment periods measured in a unit of time other than months, the financial institution should report the covered loan or application term using an equivalent number of whole months without regard for any remainder.

3. *Purchased loans.* For a covered loan that was purchased, a financial institution reports the number of months after which the legal obligation matures as measured from the covered loan's origination.

4. *Open-end line of credit.* For an open-end line of credit with a definite term, a financial institution reports the number of months from origination until the account termination date, including both the draw and repayment period.

5. *Loan or application without a definite term.* For a covered loan or application without a definite term, such as a reverse mortgage, a financial institution complies with §1003.4(a)(25) by reporting that the requirement is not applicable.

Paragraph 4(a)(26)

1. *Types of introductory rates.* Section 1003.4(a)(26) requires a financial institution to report the number of months, or proposed number of months in the case of an application, from closing or account opening until the first date the interest rate may change. For example, assume an open-end line of credit contains an introductory or ''teaser'' interest rate for two months after the date of account opening, after which the interest rate may adjust. In this example, the financial institution complies with §1003.4(a)(26) by reporting the number of months as ''2.'' Section 1003.4(a)(26) requires a financial institution to report the number of months based on when the first interest rate adjustment may occur, even if an interest rate adjustment is not required to occur at that time and even if the rates that will apply, or the periods for which they will apply, are not known at closing or account opening. For example, if a closed-end mortgage loan with a 30-year term has an adjustable-rate product with an introductory interest rate for the first 60 months, after which the interest rate is permitted, but not required to vary, according to the terms of an index rate, the financial institution complies with §1003.4(a)(26) by reporting the number of months as ''60.'' Similarly, if a closed-end mortgage loan with a 30-year term is a step-rate product with an introductory interest rate for the first 24 months, after which the interest rate will increase to a different known interest rate for the next 36 months, the financial institution complies with §1003.4(a)(26) by reporting the number of months as ''24.''

2. *Preferred rates.* Section 1003.4(a)(26) does not require reporting of introductory interest rate periods based on preferred rates unless the terms of the legal obligation provide that the preferred rate will expire at a certain defined date. Preferred rates include terms of the legal obligation that provide that the initial underlying rate is fixed but that it may increase or decrease upon the occurrence of some future event, such as an employee leaving the employ of the financial institution, the borrower closing an existing deposit account with the financial institution, or the borrower revoking an election to make automated payments. In these cases, because it is not known at the time of closing or account opening whether the future event will occur, and if so, when it will occur, §1003.4(a)(26) does not require reporting of an introductory interest rate period.

3. *Loan or application with a fixed rate.* A financial institution complies with §1003.4(a)(26) by reporting that the requirement is not applicable for a covered loan with a fixed rate or an application for a covered loan with a fixed rate.

4. *Purchased loan.* A financial institution complies with §1003.4(a)(26) by reporting that requirement is not applicable when the covered loan is a purchased covered loan with a fixed rate.

Paragraph 4(a)(27)

1. *General.* Section 1003.4(a)(27) requires reporting of contractual features that would allow payments other than fully amortizing payments. Section 1003.4(a)(27) defines the contractual features by reference to Regulation Z, 12 CFR part 1026, but without regard to whether the covered loan is consumer credit, as defined in §1026.2(a)(12), is extended by a creditor, as defined in §1026.2(a)(17), or is extended to a consumer, as defined in §1026.2(a)(11), and without regard to whether the property is a dwelling as defined in §1026.2(a)(19). For example, assume that a financial institution originates a business-purpose transaction that is exempt from Regulation Z pursuant to 12 CFR 1026.3(a)(1), to finance the purchase of a multifamily dwelling, and that there is a balloon payment, as defined by Regulation Z, 12 CFR 1026.18(s)(5)(i), at the end of the loan term. The multifamily dwelling is a dwelling under §1003.2(f), but not under Regulation Z, 12 CFR 1026.2(a)(19). In this example, the financial institution should report the business-purpose transaction as having a balloon payment under §1003.4(a)(27)(i), assuming the other requirements of this part are met. Aside from these distinctions, financial institutions may rely on the definitions and related commentary provided in the appropriate sections of Regulation Z referenced in §1003.4(a)(27) of this part in determining

whether the contractual feature should be reported.

Paragraph 4(a)(28).

1. *General.* A financial institution reports the property value relied on in making the credit decision. For example, if the institution relies on an appraisal or other valuation for the property in calculating the loan-to-value ratio, it reports that value; if the institution relies on the purchase price of the property in calculating the loan-to-value ratio, it reports that value.

2. *Multiple property values.* When a financial institution obtains two or more valuations of the property securing or proposed to secure the covered loan, the financial institution complies with §1003.4(a)(28) by reporting the value relied on in making the credit decision. For example, when a financial institution obtains an appraisal, an automated valuation model report, and a broker price opinion with different values for the property, it reports the value relied on in making the credit decision. Section §1003.4(a)(28) does not require a financial institution to use a particular property valuation method, but instead requires a financial institution to report the valuation relied on in making the credit decision.

3. *Transactions for which no credit decision was made.* If a file was closed for incompleteness or the application was withdrawn before a credit decision was made, the financial institution complies with §1003.4(a)(28) by reporting that the requirement is not applicable, even if the financial institution had obtained a property value. For example, if a file is closed for incompleteness and is so reported in accordance with §1003.4(a)(8), the financial institution complies with §1003.4(a)(28) by reporting that the requirement is not applicable, even if the financial institution had obtained a property value. Similarly, if an application was withdrawn by the applicant before a credit decision was made and is so reported in accordance with §1003.4(a)(8), the financial institution complies with §1003.4(a)(28) by reporting that the requirement is not applicable, even if the financial institution had obtained a property value.

4. *Transactions for which no property value was relied on.* Section 1003.4(a)(28) does not require a financial institution to obtain a property valuation, nor does it require a financial institution to rely on a property value in making a credit decision. If a financial institution makes a credit decision without relying on a property value, the financial institution complies with §1003.4(a)(28) by reporting that the requirement is not applicable since no property value was relied on in making the credit decision.

Paragraph 4(a)(29)

1. *Classification under State law.* A financial institution should report a covered loan that is or would have been secured only by a manufactured home but not the land on which it is sited as secured by a manufactured home and not land, even if the manufactured home is considered real property under applicable State law.

2. *Manufactured home community.* A manufactured home community that is a multifamily dwelling is not considered a manufactured home for purposes of §1003.4(a)(29).

3. *Multiple properties.* See comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

4. *Scope of requirement.* A financial institution reports that the requirement is not applicable for a covered loan where the dwelling related to the property identified in §1003.4(a)(9) is not a manufactured home.

Paragraph 4(a)(30)

1. *Indirect land ownership.* Indirect land ownership can occur when the applicant or borrower is or will be a member of a resident-owned community structured as a housing cooperative in which the occupants own an entity that holds the underlying land of the manufactured home community. In such communities, the applicant or borrower may still have a lease and pay rent for the lot on which his or her manufactured home is or will be located, but the property interest type for such an arrangement should be reported as indirect ownership if the applicant is or will be a member of the cooperative that owns the underlying land of the manufactured home community. If an applicant resides or will reside in such a community but is not a member, the property interest type should be reported as a paid leasehold.

2. *Leasehold interest.* A leasehold interest could be formalized in a lease with a defined term and specified rent payments, or could arise as a tenancy at will through permission of a land owner without any written, formal arrangement. For example, assume a borrower will locate the manufactured home in a manufactured home community, has a written lease for a lot in that park, and the lease specifies rent payments. In this example, a financial institution complies with §1003.4(a)(30) by reporting a paid leasehold. However, if instead the borrower will locate the manufactured home on land owned by a family member without a written lease and with no agreement as to rent payments, a financial institution complies with §1003.4(a)(30) by reporting an unpaid leasehold.

3. *Multiple properties.* See comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

4. *Manufactured home community.* A manufactured home community that is a multifamily dwelling is not considered a manufactured home for purposes of §1003.4(a)(30).

5. *Direct ownership.* An applicant or borrower has a direct ownership interest in the land on which the dwelling is or is to be located when it has a more than possessory real property ownership interest in the land such as fee simple ownership.

6. *Scope of requirement.* A financial institution reports that the requirement is not applicable for a covered loan where the dwelling related to the property identified in §1003.4(a)(9) is not a manufactured home.

Paragraph 4(a)(31)

1. *Multiple properties.* See comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

2. *Manufactured home community.* For an application or covered loan secured by a manufactured home community, the financial institution should include in the number of individual dwelling units the total number of manufactured home sites that secure the loan and are available for occupancy, regardless of whether the sites are currently occupied or have manufactured homes currently attached. A financial institution may include in the number of individual dwelling units other units such as recreational vehicle pads, manager apartments, rental apartments, site-built homes or other rentable space that are ancillary to the operation of the secured property if it considers such units under its underwriting guidelines or the guidelines of an investor, or if it tracks the number of such units for its own internal purposes. For a loan secured by a single manufactured home that is or will be located in a manufactured home community, the financial institution should report one individual dwelling unit.

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:

i. Assume that a loan is secured by the entirety of a cooperative property. The financial institution would report the number of individual dwelling units in the cooperative property.

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.

4. *Best information available.* A financial institution may rely on the best information readily available to the financial institution at the time final action is taken and on the financial institution's own procedures in reporting the information required by §1003.4(a)(31). Information readily available could include, for example, information provided by an applicant that the financial institution reasonably believes, information contained in a property valuation or inspection, or information obtained from public records.

Paragraph 4(a)(32)

1. *Affordable housing income restrictions.* For purposes of §1003.4(a)(32), affordable housing income-restricted units are individual dwelling units that have restrictions based on the income level of occupants pursuant to restrictive covenants encumbering the property. Such income levels are frequently expressed as a percentage of area median income by household size as established by the U.S. Department of Housing and Urban Development or another agency responsible for implementing the applicable affordable housing program. Such restrictions are frequently part of compliance with programs that provide public funds, special tax treatment, or density bonuses to encourage development or preservation of affordable housing. Such restrictions are frequently evidenced by a use agreement, regulatory agreement, land use restriction agreement, housing assistance payments contract, or similar agreement. Rent control or rent stabilization laws, and the acceptance by the owner or manager of a multifamily dwelling of Housing Choice Vouchers (24 CFR part 982) or other similar forms of portable housing assistance that are tied to an occupant and not an individual dwelling unit, are not affordable housing income-restricted dwelling units for purposes of §1003.4(a)(32).

2. *Federal affordable housing sources.* Examples of Federal programs and funding sources that may result in individual dwelling units that are reportable under §1003.4(a)(32) include, but are not limited to:

i. Affordable housing programs pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f);

ii. Public housing (42 U.S.C. 1437a(b)(6));

iii. The HOME Investment Partnerships program (24 CFR part 92);

iv. The Community Development Block Grant program (24 CFR part 570);

v. Multifamily tax subsidy project funding through tax-exempt bonds or tax credits (26 U.S.C. 42; 26 U.S.C. 142(d));

vi. Project-based vouchers (24 CFR part 983);

vii. Federal Home Loan Bank affordable housing program funding (12 CFR part 1291); and

viii. Rural Housing Service multifamily housing loans and grants (7 CFR part 3560).

3. *State and local government affordable housing sources.* Examples of State and local

sources that may result in individual dwelling units that are reportable under §1003.4(a)(32) include, but are not limited to: State or local administration of Federal funds or programs; State or local funding programs for affordable housing or rental assistance, including programs operated by independent public authorities; inclusionary zoning laws; and tax abatement or tax increment financing contingent on affordable housing requirements.

4. *Multiple properties.* See comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

5. *Best information available.* A financial institution may rely on the best information readily available to the financial institution at the time final action is taken and on the financial institution's own procedures in reporting the information required by §1003.4(a)(32). Information readily available could include, for example, information provided by an applicant that the financial institution reasonably believes, information contained in a property valuation or inspection, or information obtained from public records.

6. *Scope of requirement.* A financial institution reports that the requirement is not applicable if the property securing the covered loan or, in the case of an application, proposed to secure the covered loan is not a multifamily dwelling.

Paragraph 4(a)(33)

1. *Agents.* If a financial institution is reporting actions taken by its agent consistent with comment 4(a)–4, the agent is not considered the financial institution for the purposes of §1003.4(a)(33). For example, assume that an applicant submitted an application to Financial Institution A, and Financial Institution A made the credit decision acting as Financial Institution B's agent under State law. A covered loan was originated and the obligation arising from a covered loan was initially payable to Financial Institution A. Financial Institution B purchased the loan. Financial Institution B reports the origination and not the purchase, and indicates that the application was not submitted directly to the financial institution and that the transaction was not initially payable to the financial institution.

Paragraph 4(a)(33)(i)

1. *General.* Section 4(a)(33)(i) requires a financial institution to indicate whether the applicant or borrower submitted the application directly to the financial institution that is reporting the covered loan or application. The following scenarios demonstrate whether an application was submitted directly to the financial institution that is reporting the covered loan or application.

i. The application was submitted directly to the financial institution if the mortgage loan originator identified pursuant to §1003.4(a)(34) was an employee of the reporting financial institution when the originator performed the origination activities for the covered loan or application that is being reported.

ii. The application was also submitted directly to the financial institution reporting the covered loan or application if the reporting financial institution directed the applicant to a third-party agent (*e.g.*, a credit union service organization) that performed loan origination activities on behalf of the financial institution and did not assist the applicant with applying for covered loans with other institutions.

iii. If an applicant contacted and completed an application with a broker or correspondent that forwarded the application to a financial institution for approval, an application was not submitted to the financial institution.

Paragraph 4(a)(33)(ii)

1. *General.* Section 1003.4(a)(33)(ii) requires financial institutions to report whether the obligation arising from a covered loan was or, in the case of an application, would have been initially payable to the institution. An obligation is initially payable to the institution if the obligation is initially payable either on the face of the note or contract to the financial institution that is reporting the covered loan or application. For example, if a financial institution reported an origination of a covered loan that it approved prior to closing, that closed in the name of a third-party, such as a correspondent lender, and that the financial institution purchased after closing, the covered loan was not initially payable to the financial institution.

2. *Applications.* A financial institution complies with §1003.4(a)(33)(ii) by reporting that the requirement is not applicable if the institution had not determined whether the covered loan would have been initially payable to the institution reporting the application when the application was withdrawn, denied, or closed for incompleteness.

Paragraph 4(a)(34)

1. *NMLSR ID.* Section 1003.4(a)(34) requires a financial institution to report the Nationwide Mortgage Licensing System and Registry unique identifier (NMLSR ID) for the mortgage loan originator, as defined in Regulation G, 12 CFR 1007.102, or Regulation H, 12 CFR 1008.23, as applicable. The NMLSR ID is a unique number or other identifier generally assigned to individuals registered or licensed through NMLSR to provide loan originating services. For more information, see the Secure and Fair Enforcement for

Mortgage Licensing Act of 2008, title V of the Housing and Economic Recovery Act of 2008 (S.A.F.E. Act), 12 U.S.C. 5101 *et seq.*, and its implementing regulations (12 CFR part 1007 and 12 CFR part 1008).

2. *Mortgage loan originator without NMLSR ID.* An NMLSR ID for the mortgage loan originator is not required by §1003.4(a)(34) to be reported by a financial institution if the mortgage loan originator is not required to obtain and has not been assigned an NMLSR ID. For example, certain individual mortgage loan originators may not be required to obtain an NMLSR ID for the particular transaction being reported by the financial institution, such as a commercial loan. However, some mortgage loan originators may have obtained an NMLSR ID even if they are not required to obtain one for that particular transaction. If a mortgage loan originator has been assigned an NMLSR ID, a financial institution complies with §1003.4(a)(34) by reporting the mortgage loan originator's NMLSR ID regardless of whether the mortgage loan originator is required to obtain an NMLSR ID for the particular transaction being reported by the financial institution. In the event that the mortgage loan originator is not required to obtain and has not been assigned an NMLSR ID, a financial institution complies with §1003.4(a)(34) by reporting that the requirement is not applicable.

3. *Multiple mortgage loan originators.* If more than one individual associated with a covered loan or application meets the definition of a mortgage loan originator, as defined in Regulation G, 12 CFR 1007.102, or Regulation H, 12 CFR 1008.23, a financial institution complies with §1003.4(a)(34) by reporting the NMLSR ID of the individual mortgage loan originator with primary responsibility for the transaction as of the date of action taken pursuant to §1003.4(a)(8)(ii). A financial institution that establishes and follows a reasonable, written policy for determining which individual mortgage loan originator has primary responsibility for the reported transaction as of the date of action taken complies with §1003.4(a)(34).

Paragraph 4(a)(35)

1. *Automated underwriting system data—general.* A financial institution complies with §1003.4(a)(35) by reporting, except for purchased covered loans, the name of the automated underwriting system (AUS) used by the financial institution to evaluate the application and the result generated by that AUS. The following scenarios illustrate when a financial institution reports the name of the AUS used by the financial institution to evaluate the application and the result generated by that AUS.

i. A financial institution that uses an AUS, as defined in §1003.4(a)(35)(ii), to evaluate an application, must report the name of the AUS used by the financial institution to evaluate the application and the result generated by that system, regardless of whether the AUS was used in its underwriting process. For example, if a financial institution uses an AUS to evaluate an application prior to submitting the application through its underwriting process, the financial institution complies with §1003.4(a)(35) by reporting the name of the AUS it used to evaluate the application and the result generated by that system.

ii. A financial institution that uses an AUS, as defined in §1003.4(a)(35)(ii), to evaluate an application, must report the name of the AUS it used to evaluate the application and the result generated by that system, regardless of whether the financial institution intends to hold the covered loan in its portfolio or sell the covered loan. For example, if a financial institution uses an AUS developed by a securitizer to evaluate an application and intends to sell the covered loan to that securitizer but ultimately does not sell the covered loan and instead holds the covered loan in its portfolio, the financial institution complies with §1003.4(a)(35) by reporting the name of the securitizer's AUS that the institution used to evaluate the application and the result generated by that system. Similarly, if a financial institution uses an AUS developed by a securitizer to evaluate an application to determine whether to originate the covered loan but does not intend to sell the covered loan to that securitizer and instead holds the covered loan in its portfolio, the financial institution complies with §1003.4(a)(35) by reporting the name of the securitizer's AUS that the institution used to evaluate the application and the result generated by that system.

iii. A financial institution that uses an AUS, as defined in §1003.4(a)(35)(ii), that is developed by a securitizer to evaluate an application, must report the name of the AUS it used to evaluate the application and the result generated by that system, regardless of whether the securitizer intends to hold the covered loan it purchased from the financial institution in its portfolio or securitize the covered loan. For example, if a financial institution uses an AUS developed by a securitizer to evaluate an application and the financial institution sells the covered loan to that securitizer but the securitizer holds the covered loan it purchased in its portfolio, the financial institution complies with §1003.4(a)(35) by reporting the name of the securitizer's AUS that the institution used to evaluate the application and the result generated by that system.

iv. A financial institution, which is also a securitizer, that uses its own AUS, as defined in §1003.4(a)(35)(ii), to evaluate an application, must report the name of the AUS it used to evaluate the application and the result generated by that system, regardless of

whether the financial institution intends to hold the covered loan it originates in its portfolio, purchase the covered loan, or securitize the covered loan. For example, if a financial institution, which is also a securitizer, has developed its own AUS and uses that AUS to evaluate an application that it intends to originate and hold in its portfolio and not purchase or securitize the covered loan, the financial institution complies with §1003.4(a)(35) by reporting the name of its AUS that it used to evaluate the application and the result generated by that system.

2. *Definition of automated underwriting system.* A financial institution must report the information required by §1003.4(a)(35)(i) if the financial institution uses an automated underwriting system (AUS), as defined in §1003.4(a)(35)(ii), to evaluate an application. In order for an AUS to be covered by the definition in §1003.4(a)(35)(ii), the system must be an electronic tool that has been developed by a securitizer, Federal government insurer, or a Federal government guarantor. For example, if a financial institution has developed its own proprietary system that it uses to evaluate an application and the financial institution is also a securitizer, then the financial institution complies with §1003.4(a)(35) by reporting the name of that system and the result generated by that system. On the other hand, if a financial institution has developed its own proprietary system that it uses to evaluate an application but the financial institution is not a securitizer, then the financial institution is not required by §1003.4(a)(35) to report the use of that system and the result generated by that system. In addition, in order for an AUS to be covered by the definition in §1003.4(a)(35)(ii), the system must provide a result regarding both the credit risk of the applicant and the eligibility of the covered loan to be originated, purchased, insured, or guaranteed by the securitizer, Federal government insurer, or Federal government guarantor that developed the system being used to evaluate the application. For example, if a system is an electronic tool that provides a determination of the eligibility of the covered loan to be originated, purchased, insured, or guaranteed by the securitizer, Federal government insurer, or Federal government guarantor that developed the system being used by a financial institution to evaluate the application, but the system does not also provide an assessment of the creditworthiness of the applicant—such as, an evaluation of the applicant's income, debt, and credit history—then that system does not qualify as an AUS, as defined in §1003.4(a)(35)(ii). A financial institution that uses a system that is not an AUS, as defined in §1003.4(a)(35)(ii), to evaluate an application does not report the information required by §1003.4(a)(35)(i).

3. *Reporting automated underwriting system data—multiple results.* When a financial institution uses one or more automated underwriting systems (AUS) to evaluate the application and the system or systems generate two or more results, the financial institution complies with §1003.4(a)(35) by reporting, except for purchased covered loans, the name of the AUS used by the financial institution to evaluate the application and the result generated by that AUS as determined by the following principles. To determine what AUS (or AUSs) and result (or results) to report under §1003.4(a)(35), a financial institution follows each of the principles that is applicable to the application in question, in the order in which they are set forth below.

i. If a financial institution obtains two or more AUS results and the AUS generating one of those results corresponds to the loan type reported pursuant to §1003.4(a)(2), the financial institution complies with §1003.4(a)(35) by reporting that AUS name and result. For example, if a financial institution evaluates an application using the Federal Housing Administration's (FHA) Technology Open to Approved Lenders (TOTAL) Scorecard and subsequently evaluates the application with an AUS used to determine eligibility for a non-FHA loan, but ultimately originates an FHA loan, the financial institution complies with §1003.4(a)(35) by reporting TOTAL Scorecard and the result generated by that system. If a financial institution obtains two or more AUS results and more than one of those AUS results is generated by a system that corresponds to the loan type reported pursuant to §1003.4(a)(2), the financial institution identifies which AUS result should be reported by following the principle set forth below in comment 4(a)(35)–3.ii.

ii. If a financial institution obtains two or more AUS results and the AUS generating one of those results corresponds to the purchaser, insurer, or guarantor, if any, the financial institution complies with §1003.4(a)(35) by reporting that AUS name and result. For example, if a financial institution evaluates an application with the AUS of Securitizer A and subsequently evaluates the application with the AUS of Securitizer B, but the financial institution ultimately originates a covered loan that it sells within the same calendar year to Securitizer A, the financial institution complies with §1003.4(a)(35) by reporting the name of Securitizer A's AUS and the result generated by that system. If a financial institution obtains two or more AUS results and more than one of those AUS results is generated by a system that corresponds to the purchaser, insurer, or guarantor, if any, the financial institution identifies which AUS result should be reported by following the principle set forth below in comment 4(a)(35)–3.iii.

iii. If a financial institution obtains two or more AUS results and none of the systems generating those results correspond to the purchaser, insurer, or guarantor, if any, or the financial institution is following this principle because more than one AUS result is generated by a system that corresponds to either the loan type or the purchaser, insurer, or guarantor, the financial institution complies with §1003.4(a)(35) by reporting the AUS result generated closest in time to the credit decision and the name of the AUS that generated that result. For example, if a financial institution evaluates an application with the AUS of Securitizer A, subsequently again evaluates the application with Securitizer A's AUS, the financial institution complies with §1003.4(a)(35) by reporting the name of Securitizer A's AUS and the second AUS result. Similarly, if a financial institution obtains a result from an AUS that requires the financial institution to underwrite the loan manually, but the financial institution subsequently processes the application through a different AUS that also generates a result, the financial institution complies with §1003.4(a)(35) by reporting the name of the second AUS that it used to evaluate the application and the AUS result generated by that system.

iv. If a financial institution obtains two or more AUS results at the same time and the principles in comment 4(a)(35)–3.i through .iii do not apply, the financial institution complies with §1003.4(a)(35) by reporting the name of all of the AUSs used by the financial institution to evaluate the application and the results generated by each of those systems. For example, if a financial institution simultaneously evaluates an application with the AUS of Securitizer A and the AUS of Securitizer B, the financial institution complies with §1003.4(a)(35) by reporting the name of both Securitizer A's AUS and Securitizer B's AUS and the results generated by each of those systems. In any event, however, the financial institution does not report more than five AUSs and five results. If more than five AUSs and five results meet the criteria in this principle, the financial institution complies with §1003.4(a)(35) by choosing any five among them to report.

4. *Transactions for which an automated underwriting system was not used to evaluate the application.* Section 1003.4(a)(35) does not require a financial institution to evaluate an application using an automated underwriting system (AUS), as defined in §1003.4(a)(35)(ii). For example, if a financial institution only manually underwrites an application and does not use an AUS to evaluate the application, the financial institution complies with §1003.4(a)(35) by reporting that the requirement is not applicable since an AUS was not used to evaluate the application.

5. *Purchased covered loan.* A financial institution complies with §1003.4(a)(35) by reporting that the requirement is not applicable when the covered loan is a purchased covered loan.

6. *Non-natural person.* When the applicant and co-applicant, if applicable, are not natural persons, a financial institution complies with §1003.4(a)(35) by reporting that the requirement is not applicable.

Paragraph 4(a)(37)

1. *Open-end line of credit.* Section 1003.4(a)(37) requires a financial institution to identify whether the covered loan or the application is for an open-end line of credit. See comments 2(o)–1 and –2 for a discussion of open-end line of credit and extension of credit.

Paragraph 4(a)(38)

1. *Primary purpose.* Section 1003.4(a)(38) requires a financial institution to identify whether the covered loan is, or the application is for a covered loan that will be, made primarily for a business or commercial purpose. See comment 3(c)(10)–2 for a discussion of how to determine the primary purpose of the transaction and the standard applicable to financial institution's determination of the primary purpose of the transaction. See comments 3(c)(10)–3 and –4 for examples of excluded and reportable business- or commercial-purpose transactions.

4(f) Quarterly Recording of Data

1. *General.* Section 1003.4(f) requires a financial institution to record the data collected pursuant to §1003.4 on a loan/application register within 30 calendar days after the end of the calendar quarter in which final action is taken. Section 1003.4(f) does not require a financial institution to record data on a single loan/application register on a quarterly basis. Rather, for purposes of §1003.4(f), a financial institution may record data on a single loan/application register or separately for different branches or different loan types (such as home purchase or home improvement loans, or loans on multifamily dwellings).

2. *Agency requirements.* Certain State or Federal regulations may require a financial institution to record its data more frequently than is required under Regulation C.

3. *Form of quarterly records.* A financial institution may maintain the records required by §1003.4(f) in electronic or any other format, provided the institution can make the information available to its regulatory agency in a timely manner upon request.

Section 1003.5—Disclosure and Reporting

5(a) Reporting to Agency

1. [Reserved]

2. [Reserved]
3. [Reserved]
4. [Reserved]
5. *Change in appropriate Federal agency.* If the appropriate Federal agency for a covered institution changes (as a consequence of a merger or a change in the institution's charter, for example), the institution must report data to the new appropriate Federal agency beginning with the year of the change.
6. *Subsidiaries.* An institution is a subsidiary of a bank or savings association (for purposes of reporting HMDA data to the same agency as the parent) if the bank or savings association holds or controls an ownership interest that is greater than 50 percent of the institution.
7. *Transmittal sheet—additional data submissions.* If an additional data submission becomes necessary (for example, because the institution discovers that data were omitted from the initial submission, or because revisions are called for), that submission must be accompanied by a transmittal sheet.
8. *Transmittal sheet—revisions or deletions.* If a data submission involves revisions or deletions of previously submitted data, it must state the total of all line entries contained in that submission, including both those representing revisions or deletions of previously submitted entries, and those that are being resubmitted unchanged or are being submitted for the first time. Depository institutions must provide a list of the MSAs or Metropolitan Divisions in which they have home or branch offices.

5(b) Disclosure Statement

1. *Business day.* For purposes of §1003.5(b), a business day is any calendar day other than a Saturday, Sunday, or legal public holiday.
2. *Format of notice.* A financial institution may make the written notice required under §1003.5(b)(2) available in paper or electronic form.
3. *Notice—suggested text.* A financial institution may use any text that meets the requirements of §1003.5(b)(2). The following language is suggested but is not required:

Home Mortgage Disclosure Act Notice

The HMDA data about our residential mortgage lending are available online for review. The data show geographic distribution of loans and applications; ethnicity, race, sex, age, and income of applicants and borrowers; and information about loan approvals and denials. These data are available online at the Consumer Financial Protection Bureau's Web site (www.consumerfinance.gov/hmda). HMDA data for many other financial institutions are also available at this Web site.

4. *Combined notice.* A financial institution may use the same notice to satisfy the requirements of both §1003.5(b)(2) and §1003.5(c).

5(c) Modified loan/application Register

1. *Format of notice.* A financial institution may make the written notice required under §1003.5(c)(1) available in paper or electronic form.
2. *Notice—suggested text.* A financial institution may use any text that meets the requirements of §1003.5(c)(1). The following language is suggested but is not required:

Home Mortgage Disclosure Act Notice

The HMDA data about our residential mortgage lending are available online for review. The data show geographic distribution of loans and applications; ethnicity, race, sex, age, and income of applicants and borrowers; and information about loan approvals and denials. These data are available online at the Consumer Financial Protection Bureau's Web site (www.consumerfinance.gov/hmda). HMDA data for many other financial institutions are also available at this Web site.

3. *Combined notice.* A financial institution may use the same notice to satisfy the requirements of both §1003.5(c) and §1003.5(b)(2).

5(e) Posted Notice of Availability of Data

1. *Posted notice—suggested text.* A financial institution may post any text that meets the requirements of §1003.5(e). The Bureau or other appropriate Federal agency for a financial institution may provide a notice that the institution can post to inform the public of the availability of its HMDA data, or an institution may create its own notice. The following language is suggested but is not required:

Home Mortgage Disclosure Act Notice

The HMDA data about our residential mortgage lending are available online for review. The data show geographic distribution of loans and applications; ethnicity, race, sex, age, and income of applicants and borrowers; and information about loan approvals and denials. HMDA data for many other financial institutions are also available online. For more information, visit the Consumer Financial Protection Bureau's Web site (www.consumerfinance.gov/hmda).

Section 1003.6—Enforcement

6(b) Bona Fide Errors

1. *Bona fide error—information from third parties.* An institution that obtains the property-location information for applications and loans from third parties (such as appraisers or vendors of ''geocoding'' services) is responsible for ensuring that the information reported on its HMDA/LAR is correct.

EFFECTIVE DATE NOTE 2: At 80 FR 66339, Oct. 28, 2015, supplement I to part 1003 was amended: a. under the heading ''Section

1003.5'' by adding paragraphs 1 through 4, revising paragraph 5, and removing paragraphs 6 through 8, and b. under the heading ''Section 1003.6'', under the subheading ''6(b) Bona Fide Errors'' by revising paragraph 1, effective Jan. 1, 2019. For the convenience of the user, the added and revised text is set forth as follows:

SUPPLEMENT I TO PART 1003—OFFICIAL INTERPRETATIONS

* * * * *

Section 1003.5—Disclosure and Reporting

5(a) Reporting to Agency

1. *Quarterly reporting—coverage.* i. Section 1003.5(a)(1)(ii) requires that, within 60 calendar days after the end of each calendar quarter except the fourth quarter, a financial institution that reported for the preceding calendar year at least 60,000 covered loans and applications, combined, excluding purchased covered loans, must submit its loan/application register containing all data required to be recorded for that quarter pursuant to §1003.4(f). For example, if for calendar year 2019 Financial Institution A reports 60,000 covered loans, excluding purchased covered loans, it must comply with §1003.5(a)(1)(ii) in calendar year 2020. Similarly, if for calendar year 2019 Financial Institution A reports 20,000 applications and 40,000 covered loans, combined, excluding purchased covered loans, it must comply with §1003.5(a)(1)(ii) in calendar year 2020. If for calendar year 2020 Financial Institution A reports fewer than 60,000 covered loans and applications, combined, excluding purchased covered loans, it is not required to comply with §1003.5(a)(1)(ii) in calendar year 2021.

ii. In the calendar year of a merger or acquisition, the surviving or newly formed financial institution is required to comply with §1003.5(a)(1)(ii), effective the date of the merger or acquisition, if a combined total of at least 60,000 covered loans and applications, combined, excluding purchased covered loans, is reported for the preceding calendar year by or for the surviving or newly formed financial institution and each financial institution or branch office merged or acquired. For example, Financial Institution A and Financial Institution B merge to form Financial Institution C in 2020. Financial Institution A reports 40,000 covered loans and applications, combined, excluding purchased covered loans, for 2019. Financial Institution B reports 21,000 covered loans and applications, combined, excluding purchased covered loans, for 2019. Financial Institution C is required to comply with §1003.5(a)(1)(ii) effective the date of the merger. Similarly, for example, Financial Institution A acquires a branch office of Financial Institution B in 2020. Financial Institution A reports 58,000 covered loans and applications, combined, excluding purchased covered loans, for 2019. Financial Institution B reports 3,000 covered loans and applications, combined, excluding purchased covered loans, for 2019 for the branch office acquired by Financial Institution A. Financial Institution A is required to comply with §1003.5(a)(1)(ii) in 2020 effective the date of the branch acquisition.

iii. In the calendar year following a merger or acquisition, the surviving or newly formed financial institution is required to comply with §1003.5(a)(1)(ii) if a combined total of at least 60,000 covered loans and applications, combined, excluding purchased covered loans, is reported for the preceding calendar year by or for the surviving or newly formed financial institution and each financial institution or branch office merged or acquired. For example, Financial Institution A and Financial Institution B merge to form Financial Institution C in 2019. Financial Institution C reports 21,000 covered loans and applications, combined, excluding purchased covered loans, each for Financial Institution A, B, and C for 2019, for a combined total of 63,000 covered loans and applications reported, excluding purchased covered loans. Financial Institution C is required to comply with §1003.5(a)(1)(ii) in 2020. Similarly, for example, Financial Institution A acquires a branch office of Financial Institution B in 2019. Financial Institution A reports 58,000 covered loans and applications, combined, excluding purchased covered loans, for 2019. Financial Institution A or B reports 3,000 covered loans and applications, combined, excluding purchased covered loans, for 2019 for the branch office acquired by Financial Institution A. Financial Institution A is required to comply with §1003.5(a)(1)(ii) in 2020.

2. *Change in appropriate Federal agency.* If the appropriate Federal agency for a financial institution changes (as a consequence of a merger or a change in the institution's charter, for example), the institution must identify its new appropriate Federal agency in its annual submission of data pursuant to §1003.5(a)(1)(i) for the year of the change. For example, if an institution's appropriate Federal agency changes in February 2018, it must identify its new appropriate Federal agency beginning with the annual submission of its 2018 data by March 1, 2019 pursuant to §1003.5(a)(1)(i). For an institution required to comply with §1003.5(a)(1)(ii), the institution also must identify its new appropriate Federal agency in its quarterly submission of data pursuant to §1003.5(a)(1)(ii) beginning with its submission for the quarter of the change, unless the change occurs during the fourth quarter. For example, if the appropriate Federal agency for an institution required to comply with §1003.5(a)(1)(ii) changes during February 2020,

the institution must identify its new appropriate Federal agency beginning with its quarterly submission pursuant to §1003.5(a)(1)(ii) for the first quarter of 2020. If the appropriate Federal agency for an institution required to comply with §1003.5(a)(1)(ii) changes during December 2020, the institution must identify its new appropriate Federal agency beginning with the annual submission of its 2020 data by March 1, 2021 pursuant to §1003.5(a)(1)(i).

3. *Subsidiaries.* A financial institution is a subsidiary of a bank or savings association (for purposes of reporting HMDA data to the same agency as the parent) if the bank or savings association holds or controls an ownership interest in the institution that is greater than 50 percent.

4. *Retention.* A financial institution may satisfy the requirement under §1003.5(a)(1)(i) that it retain a copy of its submitted annual loan/application register for three years by retaining a copy of the annual loan/application register in either electronic or paper form.

5. *Federal Taxpayer Identification Number.* Section 1003.5(a)(3) requires a financial institution to provide its Federal Taxpayer Identification Number with its data submission. If a financial institution obtains a new Federal Taxpayer Identification Number, it should provide the new number in its subsequent data submission. For example, if two financial institutions that previously reported HMDA data under this part merge and the surviving institution retained its Legal Entity Identifier but obtained a new Federal Taxpayer Identification Number, then the surviving institution should report the new Federal Taxpayer Identification Number with its HMDA data submission.

* * * * *

Section 1003.6—Enforcement

6(b) Bona Fide Errors

1. *Information from third parties.* Section 1003.6(b) provides that an error in compiling or recording data for a covered loan or application is not a violation of the Act or this part if the error was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such an error. A financial institution that obtains the required data, such as property-location information, from third parties is responsible for ensuring that the information reported pursuant to §1003.5 is correct.

PART 1004—ALTERNATIVE MORTGAGE TRANSACTION PARITY (REGULATION D)

Sec.

1004.1 Authority, purpose, and scope.
1004.2 Definitions.
1004.3 Preemption of State law.
1004.4 Requirements for alternative mortgage transactions.
APPENDIX A TO PART 1004—OFFICIAL COMMENTARY ON REGULATION D

AUTHORITY: 12 U.S.C. 3802, 3803; 15 U.S.C. 1604, 1639b; Pub. L. No. 111–203, 124 Stat. 1376.

SOURCE: 76 FR 44242, July 22, 2011, unless otherwise noted.

§1004.1 Authority, purpose, and scope.

(a) *Authority.* This regulation, known as Regulation D, is issued by the Bureau of Consumer Financial Protection to implement the Alternative Mortgage Transaction Parity Act, 12 U.S.C. 3801 *et seq.*, as amended by title X, Section 1083 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376). Section 1004.4 is issued pursuant to the Alternative Mortgage Transaction Parity Act (as amended) and the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

(b) *Purpose.* Consistent with the Alternative Mortgage Transaction Parity Act, the Truth in Lending Act, and the Dodd-Frank Wall Street Reform and Consumer Protection Act, the purpose of this regulation is to balance access to responsible credit and enhanced parity between State and federal housing creditors regarding the making, purchase, and enforcement of alternative mortgage transactions with consumer protection and the interests of the States in regulating mortgage transactions generally.

(c) *Scope.* This regulation applies to an alternative mortgage transaction if the creditor received an application for that transaction on or after July 22, 2011. This regulation does not apply to a transaction if the creditor received the application for that transaction before July 22, 2011.

§1004.2 Definitions.

For purposes of this part:

Alternative mortgage transaction means a loan, credit sale, or account:

(1) That is secured by an interest in a residential structure that contains one to four units, whether or not that structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence;

(2) That is made primarily for personal, family, or household purposes; and

(3) In which the interest rate or finance charge may be adjusted or renegotiated.

Creditor shall have the same meaning as in 12 CFR 226.2.

Housing creditor means:

(1) A depository institution, as defined in section 501(a)(2) of the Depository Institutions Deregulation and Monetary Control Act of 1980;

(2) A lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act;

(3) Any person who regularly makes loans, credit sales, or advances on an account secured by an interest in a residential structure that contains one to four units, whether or not the structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence; and

(4) Any transferee of a party listed in paragraph (c)(1), (2), or (3) of this section.

State means any State of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, the Northern Mariana Islands, American Samoa, Guam, and any other territory or possession of the United States.

State law means a State constitution, statute, or regulation or any provision thereof.

§ 1004.3 Preemption of State law.

Pursuant to 12 U.S.C. 3803, a State-chartered or -licensed housing creditor may make, purchase, and enforce alternative mortgage transactions in accordance with § 1004.4(a) through (c) of this part (as applicable), notwithstanding any provision of State law that restricts the ability of the housing creditor to adjust or renegotiate an interest rate or finance charge with respect to the transaction or to change the amount of interest or finance charges included in a regular periodic payment as a result of such an adjustment or renegotiation.

§ 1004.4 Requirements for alternative mortgage transactions.

(a) *Mortgages with adjustable rates or finance charges and home equity lines of credit.* A creditor that makes an alternative mortgage transaction with an adjustable rate or finance charge may only increase the interest rate or finance charge as follows:

(1) If the transaction is subject to 12 CFR 226.5b, the creditor must comply with 12 CFR 226.5b(f)(1).

(2) For all other transactions, the creditor must use either:

(i) An index to which changes in the interest rate are tied that is readily available to and verifiable by the borrower and beyond the control of the creditor; or

(ii) A formula or schedule identifying the amount that the interest rate or finance charge may increase and the times at which, or circumstances under which, a change may be made.

(b) *Renegotiable rates for renewable balloon-payment mortgages.* A creditor that makes an alternative mortgage transaction with payments based on an amortization period and a large final payment due after a shorter term may negotiate an increase or decrease in the interest rate when the transaction is renewed only if the creditor makes a written commitment to renew the transaction at specified intervals throughout the amortization period. However, the creditor is not required to renew the transaction if:

(1) Any action or inaction by the consumer materially and adversely affects the creditor's security for the transaction or any right of the creditor in such security;

(2) There is a material failure by the consumer to meet the repayment terms of the transaction;

(3) There is fraud or a willful or knowing material misrepresentation by the consumer in connection with the transaction; or

(4) Federal law dealing with credit extended by a depository institution to

its executive officers specifically requires that as a condition of the extension the credit shall become due and payable on demand, provided that the creditor includes such a provision in the initial agreement.

(c) *Requirements for high-cost and higher-priced mortgage loans.* (1) If an alternative mortgage transaction is subject to 12 CFR 226.32, the creditor must comply with 12 CFR 226.32 and 12 CFR 226.34.

(2) If an alternative mortgage transaction is subject to 12 CFR 226.35, the creditor must comply with 12 CFR 226.35.

(d) *Other applicable law.* Notwithstanding paragraphs (a) through (c) of this section, a housing creditor that is not making an alternative mortgage transaction pursuant to §1004.3 of this part may make that transaction consistent with applicable State or Federal law other than this section.

(e) *Reductions in interest rate or finance charge.* Nothing in this section prohibits a creditor from decreasing the interest rate or finance charge on an alternative mortgage transaction.

APPENDIX A TO PART 1004—OFFICIAL COMMENTARY ON REGULATION D

§1004.1 Authority, Purpose, and Scope

1(c) Scope.

1. *Application received before July 22, 2011.* This part does not apply to a transaction if the creditor received the application for that transaction before July 22, 2011, even if the transaction was consummated or completed on or after July 22, 2011. Whether 12 U.S.C. 3803(c) preempts State law with respect to such a transaction depends on whether: (1) The transaction was an alternative mortgage transaction as defined by the version of 12 U.S.C. 3802(1) in effect at the time of application; and (2) the State housing creditor complied with applicable federal regulations issued by the Office of the Comptroller of the Currency, the National Credit Union Administration, the Office of Thrift Supervision, or the Federal Home Loan Bank Board in effect at the time of application.

2. *Subsequent modifications and other actions.* If applicable regulations under 12 U.S.C. 3803(c) (including this Part) preempted State law with respect to an alternative mortgage transaction at the time the application was received, the following actions with respect to that transaction are entitled to the same degree of preemption under such regulations:

i. The subsequent consummation, completion, purchase, or enforcement of the transaction by a housing creditor.

ii. The subsequent modification, renewal, or extension of the transaction. However, if such a transaction is satisfied and replaced by another transaction, the second transaction must independently meet the requirements for preemption in effect at the time the application for the second transaction was received.

§1004.2 Definitions

2(a) Alternative Mortgage Transaction

1. *Alternative mortgage transaction.* For purposes of this Part, an alternative mortgage transaction that meets the definition in §1004.2(a) includes any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest in a dwelling or in residential real property that includes a dwelling. The dwelling need not be the primary dwelling of the consumer. Home equity lines of credit and subordinate lien mortgages are alternative mortgage transactions for purposes of this part to the extent they meet the definition in §1004.2(a).

2. *Examples of alternative mortgage transactions.* Examples of alternative mortgage transactions include:

i. Transactions in which the interest rate changes in accordance with fluctuations in an index.

ii. Transactions in which the interest rate or finance charge may be increased or decreased after a specified period of time or under specified circumstances.

iii. Balloon transactions in which payments are based on an amortization schedule and a large final payment is due after a shorter term, where the creditor makes a commitment to renew the transaction at specified intervals throughout the amortization period, but the interest rate may be renegotiated at renewal. For example, a fixed-rate mortgage loan with a 30-year amortization period but a balloon payment due five years after consummation is an alternative mortgage transaction under §1004.2(a) if the creditor commits to renew the mortgage at five-year intervals for the entire 30-year amortization period.

iv. Transactions in which the creditor and the consumer agree to share some or all of the appreciation in the value of the property (shared equity/shared appreciation).

However, this part preempts State law only to the extent provided in §1004.3 and only to the extent that the requirements of §1004.4(a) through (c) (as applicable) are met.

3. *Examples of transactions that are not alternative mortgage transactions.* The following are examples of transactions that are not alternative mortgage transactions:

i. Transactions with a fixed interest rate where one or more of the regular periodic payments may be applied solely to accrued interest and not to loan principal (an interest-only feature).

ii. Balloon transactions with a fixed interest rate where payments are based on an amortization schedule and a large final payment is due after a shorter term, where the creditor does not make a commitment to renew the transaction at specified intervals throughout the amortization period.

iii. Transactions with a fixed interest rate where one or more of the regular periodic payments may result in an increase in the principal balance (a negative amortization feature).

2(b) Creditor

1. *Creditor.* As defined in 12 CFR 226.2, ''creditor'' includes federally and State-chartered banks, thrifts, and credit unions, as well as non-depository institutions, such as State-licensed lenders. The Official Staff Commentary to 12 CFR 226.2 contains additional guidance on the definition of the term ''creditor.'' *See* 12 CFR 226.2, Supp. I.

§ 1004.3 Preemption of State Law

1. *Scope of State laws.* Regardless of whether a State law applies solely to alternative mortgage transactions or applies to both alternative mortgage transactions and other mortgage or consumer credit transactions, that law is preempted by §1004.3 only to the extent that it restricts the ability of a State-chartered or -licensed housing creditor to adjust or renegotiate an interest rate or finance charge with respect to an alternative mortgage transaction or to change the amount of interest or finance charges included in a regular periodic payment as a result of such an adjustment or renegotiation.

2. *Examples of State laws that are preempted.* The following are examples of State laws that are preempted by §1004.3:

i. Restrictions on the adjustment or renegotiation of an interest rate or finance charge, including restrictions on the circumstances under which a rate or charge may be adjusted, the method by which a rate or charge may be adjusted, and the amount of the adjustment to the rate or charge. For example, if a provision of State law prohibits creditors from increasing an adjustable rate more than two percentage points or from increasing an adjustable rate more than once during a year, that provision is preempted by §1004.3 with respect to alternative mortgage transactions that comply with §1004.4(a) through (c), as applicable. Similarly, if a provision of State law prohibits housing creditors from renewing balloon transactions that meet the definition of an alternative mortgage transaction in §1004.2(a) on different terms, that provision is preempted by §1004.3 only to the extent that it restricts a state housing creditor's ability to adjust or renegotiate the interest rate or finance charge at renewal. See also comment 1004.3–3.i.

ii. Restrictions on the ability of a housing creditor to change the amount of interest or finance charges included in regular periodic payments as a result of the adjustment or renegotiation of an interest rate or finance charge. For example, if a provision of State law prohibits housing creditors from increasing payments or limits the amount of such increases with respect to both alternative mortgage transactions and other mortgage or consumer credit transactions, that provision is preempted by §1004.3 to the extent that it restricts a housing creditor's ability to adjust payments as a result of the adjustment or renegotiation of an interest rate on an alternative mortgage transaction. Other restrictions on changes to payments are not preempted, including restrictions on transactions in which one or more of the regular periodic payments may result in an increase in the principal balance (a negative amortization feature) or may be applied solely to accrued interest and not to loan principal (an interest-only feature).

iii. Restrictions on the creditor and the consumer sharing some or all of the appreciation in the value of the property (shared equity/shared appreciation).

iv. Underwriting requirements that address the adjustment or renegotiation of interest rates or finance charges. For example, if a provision of State law requires housing creditors to underwrite based on the maximum contractual rate, that provision is preempted by §1004.3 with respect to alternative mortgage transactions, regardless of whether the provision applies solely to alternative mortgage transactions or to both alternative mortgage transactions and other mortgage or consumer credit transactions.

3. *Examples of State laws that are not preempted.* The following are examples of State laws that are not preempted by §1004.3 regardless of whether the provision applies solely to alternative mortgage transactions or to both alternative mortgage transactions and other mortgage or consumer credit transactions:

i. Restrictions on prepayment penalties or late charges (including an increase in an interest rate or finance charge as a result of a late payment).

ii. Restrictions on transactions in which one or more of the regular periodic payments may result in an increase in the principal balance (a negative amortization feature) or may be applied solely to accrued interest and not to loan principal (an interest-only feature).

iii. Requirements that disclosures be provided.

§ 1004.4 Requirements for Alternative Mortgage Transactions

4(a) Mortgages With Adjustable or Renegotiable Rates or Finance Charges and Home Equity Lines of Credit

1. *Index values.* A creditor may use any measure of index values that meets the requirements in §1004.4(a)(2)(i). For example, the index may be either single values as of a specific date or an average of values calculated over a specified period.

2. *Index beyond creditor's control.* A creditor may increase an adjustable interest rate pursuant to §1004.4(a)(2)(i) only if the increase is based on an index that is beyond the creditor's control. For purposes of §1004.4(a)(2)(i), an index is not beyond the creditor's control if the index is the creditor's own prime rate or cost of funds. A creditor is permitted, however, to use a published prime rate, such as the prime rate published in the *Wall Street Journal,* even if the creditor's own prime rate is one of several rates used to establish the published rate.

3. *Publicly available.* For purposes of §1004.4(a)(2)(i), the index must be available to the public. A publicly available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify the annual percentage rate applied to the alternative mortgage transaction.

4(c) Requirements for High-Cost and Higher-Priced Mortgage Loans

1. *Prepayment penalties.* If applicable, creditors must comply with 12 CFR 226.32, including 12 CFR 226.32(d)(6) and (d)(7) which provide limitations on prepayment penalties. Similarly, if applicable, creditors must comply with 12 CFR 226.35, including 12 CFR 226.35(b)(2), which also provides limitations on prepayment penalties. However, under §1004.3, State laws regarding prepayment penalties are not preempted. *See* comment 1004.3–3.i. Accordingly, creditors must also comply with any State laws regarding prepayment penalties unless an independent basis for preemption exists, such as because the State law is inconsistent with the requirements of Regulation Z, 12 CFR part 226. *See* 12 CFR 226.28.

4(d) Other Applicable Law

1. *Other applicable law.* Section 1004.4(d) permits state housing creditors that do not seek preemption under §1004.3 and federal housing creditors to make alternative mortgage transactions consistent with applicable State or federal law other than §1004.4(a) through (c). However, §1004.4(d) does not exempt those housing creditors from complying with the provisions of federal law that are incorporated by reference in §1004.4 and are otherwise applicable to the creditor. Specifically, nothing in §1004.4(d) exempts a housing creditor from complying with 12 CFR 226.5b, 226.32, 226.34, or 226.35.

PART 1005—ELECTRONIC FUND TRANSFERS (REGULATION E)

Subpart A—General

Sec.

1005.1 Authority and purpose.
1005.2 Definitions.
1005.3 Coverage.
1005.4 General disclosure requirements; jointly offered services.
1005.5 Issuance of access devices.
1005.6 Liability of consumer for unauthorized transfers.
1005.7 Initial disclosures.
1005.8 Change in terms notice; error resolution notice.
1005.9 Receipts at electronic terminals; periodic statements.
1005.10 Preauthorized transfers.
1005.11 Procedures for resolving errors.
1005.12 Relation to other laws.
1005.13 Administrative enforcement; record retention.
1005.14 Electronic fund transfer service provider not holding consumer's account.
1005.15 Electronic fund transfer of government benefits.
1005.16 Disclosures at automated teller machines.
1005.17 Requirements for overdraft services.
1005.18 Requirements for financial institutions offering payroll card accounts.
1005.20 Requirements for gift cards and gift certificates.

Subpart B—Requirements for Remittance Transfers

1005.30 Remittance transfer definitions.
1005.31 Disclosures.
1005.32 Estimates.
1005.33 Procedures for resolving errors.
1005.34 Procedures for cancellation and refund of remittance transfers.
1005.35 Acts of agents.
1005.36 Transfers scheduled before the date of transfer.

APPENDIX A TO PART 1005—MODEL DISCLOSURE CLAUSES AND FORMS
APPENDIX B TO PART 1005 [RESERVED]
APPENDIX C TO PART 1005—ISSUANCE OF OFFICIAL INTERPRETATIONS
SUPPLEMENT I TO PART 1005—OFFICIAL INTERPRETATIONS

AUTHORITY: 12 U.S.C. 5512, 5581; 15 U.S.C. 1693b.

Subpart B is also issued under 12 U.S.C. 5601.

SOURCE: 76 FR 81023, Dec. 27, 2011, unless otherwise noted.

Subpart A—General

§ 1005.1 Authority and purpose.

(a) *Authority*. The regulation in this part, known as Regulation E, is issued by the Bureau of Consumer Financial Protection (Bureau) pursuant to the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*). The information-collection requirements have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 3170–0014.

(b) *Purpose*. This part carries out the purposes of the Electronic Fund Transfer Act, which establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer and remittance transfer services and of financial institutions or other persons that offer these services. The primary objective of the act and this part is the protection of individual consumers engaging in electronic fund transfers and remittance transfers.

[76 FR 81023, Dec. 27, 2011, as amended at 77 FR 6285, Feb. 7, 2012]

§ 1005.2 Definitions.

Except as otherwise provided in subpart B, for purposes of this part, the following definitions apply:

(a)(1) ''Access device'' means a card, code, or other means of access to a consumer's account, or any combination thereof, that may be used by the consumer to initiate electronic fund transfers.

(2) An access device becomes an ''accepted access device'' when the consumer:

(i) Requests and receives, or signs, or uses (or authorizes another to use) the access device to transfer money between accounts or to obtain money, property, or services;

(ii) Requests validation of an access device issued on an unsolicited basis; or

(iii) Receives an access device in renewal of, or in substitution for, an accepted access device from either the financial institution that initially issued the device or a successor.

(b)(1) ''Account'' means a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.

(2) The term includes a ''payroll card account'' which is an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation (such as commissions), are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or any other person. For rules governing payroll card accounts, *see* § 1005.18.

(3) The term does not include an account held by a financial institution under a bona fide trust agreement.

(c) ''Act'' means the Electronic Fund Transfer Act (Title IX of the Consumer Credit Protection Act, 15 U.S.C. 1693 *et seq.*).

(d) ''Business day'' means any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions.

(e) ''Consumer'' means a natural person.

(f) ''Credit'' means the right granted by a financial institution to a consumer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(g) ''Electronic fund transfer'' is defined in § 1005.3.

(h) ''Electronic terminal'' means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. The term includes, but is not limited to, point-of-sale terminals, automated teller machines (ATMs), and cash dispensing machines.

(i) ''Financial institution'' means a bank, savings association, credit union, or any other person that directly or indirectly holds an account belonging to a consumer, or that issues an access device and agrees with a consumer to provide electronic fund transfer services, other than a person excluded from coverage of this part by section 1029 of

the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376.

(j) ''Person'' means a natural person or an organization, including a corporation, government agency, estate, trust, partnership, proprietorship, cooperative, or association.

(k) ''Preauthorized electronic fund transfer'' means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

(l) ''State'' means any state, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or any political subdivision of the thereof in this paragraph (l).

(m) ''Unauthorized electronic fund transfer'' means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. The term does not include an electronic fund transfer initiated:

(1) By a person who was furnished the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution that transfers by that person are no longer authorized;

(2) With fraudulent intent by the consumer or any person acting in concert with the consumer; or

(3) By the financial institution or its employee.

[76 FR 81023, Dec. 27, 2011, as amended at 77 FR 6285, Feb. 7, 2012]

§ 1005.3 Coverage.

(a) *General.* This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account. Generally, this part applies to financial institutions. For purposes of §§ 1005.3(b)(2) and (3), 1005.10(b), (d), and (e), 1005.13, and 1005.20, this part applies to any person, other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376. The requirements of subpart B apply to remittance transfer providers.

(b) *Electronic fund transfer*—(1) *Definition.* The term ''electronic fund transfer'' means any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account. The term includes, but is not limited to:

(i) Point-of-sale transfers;

(ii) Automated teller machine transfers;

(iii) Direct deposits or withdrawals of funds;

(iv) Transfers initiated by telephone; and

(v) Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.

(2) *Electronic fund transfer using information from a check.* (i) This part applies where a check, draft, or similar paper instrument is used as a source of information to initiate a one-time electronic fund transfer from a consumer's account. The consumer must authorize the transfer.

(ii) The person initiating an electronic fund transfer using the consumer's check as a source of information for the transfer must provide a notice that the transaction will or may be processed as an electronic fund transfer, and obtain a consumer's authorization for each transfer. A consumer authorizes a one-time electronic fund transfer (in providing a check to a merchant or other payee for the MICR encoding, that is, the routing number of the financial institution, the consumer's account number and the serial number) when the consumer receives notice and goes forward with the underlying transaction. For point-of-sale transfers, the notice must be posted in a prominent and conspicuous location, and a copy thereof, or a substantially similar notice, must be provided to the consumer at the time of the transaction.

(iii) A person may provide notices that are substantially similar to those set forth in appendix A–6 to comply with the requirements of this paragraph (b)(2).

(3) *Collection of returned item fees via electronic fund transfer*—(i) *General.* The person initiating an electronic fund transfer to collect a fee for the return of an electronic fund transfer or a check that is unpaid, including due to insufficient or uncollected funds in the consumer's account, must obtain the consumer's authorization for each transfer. A consumer authorizes a one-time electronic fund transfer from his or her account to pay the fee for the returned item or transfer if the person collecting the fee provides notice to the consumer stating that the person may electronically collect the fee, and the consumer goes forward with the underlying transaction. The notice must state that the fee will be collected by means of an electronic fund transfer from the consumer's account if the payment is returned unpaid and must disclose the dollar amount of the fee. If the fee may vary due to the amount of the transaction or due to other factors, then, except as otherwise provided in paragraph (b)(3)(ii) of this section, the person collecting the fee may disclose, in place of the dollar amount of the fee, an explanation of how the fee will be determined.

(ii) *Point-of-sale transactions.* If a fee for an electronic fund transfer or check returned unpaid may be collected electronically in connection with a point-of-sale transaction, the person initiating an electronic fund transfer to collect the fee must post the notice described in paragraph (b)(3)(i) of this section in a prominent and conspicuous location. The person also must either provide the consumer with a copy of the posted notice (or a substantially similar notice) at the time of the transaction, or mail the copy (or a substantially similar notice) to the consumer's address as soon as reasonably practicable after the person initiates the electronic fund transfer to collect the fee. If the amount of the fee may vary due to the amount of the transaction or due to other factors, the posted notice may explain how the fee will be determined, but the notice provided to the consumer must state the dollar amount of the fee if the amount can be calculated at the time the notice is provided or mailed to the consumer.

(c) *Exclusions from coverage.* The term ''electronic fund transfer'' does not include:

(1) *Checks.* Any transfer of funds originated by check, draft, or similar paper instrument; or any payment made by check, draft, or similar paper instrument at an electronic terminal.

(2) *Check guarantee or authorization.* Any transfer of funds that guarantees payment or authorizes acceptance of a check, draft, or similar paper instrument but that does not directly result in a debit or credit to a consumer's account.

(3) *Wire or other similar transfers.* Any transfer of funds through Fedwire or through a similar wire transfer system that is used primarily for transfers between financial institutions or between businesses.

(4) *Securities and commodities transfers.* Any transfer of funds the primary purpose of which is the purchase or sale of a security or commodity, if the security or commodity is:

(i) Regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission;

(ii) Purchased or sold through a broker-dealer regulated by the Securities and Exchange Commission or through a futures commission merchant regulated by the Commodity Futures Trading Commission; or

(iii) Held in book-entry form by a Federal Reserve Bank or Federal agency.

(5) *Automatic transfers by account-holding institution.* Any transfer of funds under an agreement between a consumer and a financial institution which provides that the institution will initiate individual transfers without a specific request from the consumer:

(i) Between a consumer's accounts within the financial institution;

(ii) From a consumer's account to an account of a member of the consumer's family held in the same financial institution; or

(iii) Between a consumer's account and an account of the financial institution, except that these transfers remain subject to §1005.10(e) regarding compulsory use and sections 916 and 917 of the Act regarding civil and criminal liability.

(6) *Telephone-initiated transfers.* Any transfer of funds that:

(i) Is initiated by a telephone communication between a consumer and a financial institution making the transfer; and

(ii) Does not take place under a telephone bill-payment or other written plan in which periodic or recurring transfers are contemplated.

(7) *Small institutions.* Any preauthorized transfer to or from an account if the assets of the account-holding financial institution were $100 million or less on the preceding December 31. If assets of the account-holding institution subsequently exceed $100 million, the institution's exemption for preauthorized transfers terminates one year from the end of the calendar year in which the assets exceed $100 million. Preauthorized transfers exempt under this paragraph (c)(7) remain subject to §1005.10(e) regarding compulsory use and sections 916 and 917 of the Act regarding civil and criminal liability.

[76 FR 81023, Dec. 27, 2011, as amended at 77 FR 6285, Feb. 7, 2012]

§1005.4 General disclosure requirements; jointly offered services.

(a)(1) *Form of disclosures.* Disclosures required under this part shall be clear and readily understandable, in writing, and in a form the consumer may keep, except as otherwise provided in this part. The disclosures required by this part may be provided to the consumer in electronic form, subject to compliance with the consumer-consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). A financial institution may use commonly accepted or readily understandable abbreviations in complying with the disclosure requirements of this part.

(2) *Foreign language disclosures.* Disclosures required under this part may be made in a language other than English, provided that the disclosures are made available in English upon the consumer's request.

(b) *Additional information; disclosures required by other laws.* A financial institution may include additional information and may combine disclosures required by other laws (such as the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) or the Truth in Savings Act (12 U.S.C. 4301 *et seq.*) with the disclosures required by this part.

(c) *Multiple accounts and account holders*—(1) *Multiple accounts.* A financial institution may combine the required disclosures into a single statement for a consumer who holds more than one account at the institution.

(2) *Multiple account holders.* For joint accounts held by two or more consumers, a financial institution need provide only one set of the required disclosures and may provide them to any of the account holders.

(d) *Services offered jointly.* Financial institutions that provide electronic fund transfer services jointly may contract among themselves to comply with the requirements that this part imposes on any or all of them. An institution need make only the disclosures required by §§1005.7 and 1005.8 that are within its knowledge and within the purview of its relationship with the consumer for whom it holds an account.

§1005.5 Issuance of access devices.

(a) *Solicited issuance.* Except as provided in paragraph (b) of this section, a financial institution may issue an access device to a consumer only:

(1) In response to an oral or written request for the device; or

(2) As a renewal of, or in substitution for, an accepted access device whether issued by the institution or a successor.

(b) *Unsolicited issuance.* A financial institution may distribute an access device to a consumer on an unsolicited basis if the access device is:

(1) Not validated, meaning that the institution has not yet performed all the procedures that would enable a consumer to initiate an electronic fund transfer using the access device;

(2) Accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired;

(3) Accompanied by the disclosures required by §1005.7, of the consumer's rights and liabilities that will apply if the access device is validated; and

(4) Validated only in response to the consumer's oral or written request for

validation, after the institution has verified the consumer's identity by a reasonable means.

§ 1005.6 Liability of consumer for unauthorized transfers.

(a) *Conditions for liability.* A consumer may be held liable, within the limitations described in paragraph (b) of this section, for an unauthorized electronic fund transfer involving the consumer's account only if the financial institution has provided the disclosures required by § 1005.7(b)(1), (2), and (3). If the unauthorized transfer involved an access device, it must be an accepted access device and the financial institution must have provided a means to identify the consumer to whom it was issued.

(b) *Limitations on amount of liability.* A consumer's liability for an unauthorized electronic fund transfer or a series of related unauthorized transfers shall be determined as follows:

(1) *Timely notice given.* If the consumer notifies the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of $50 or the amount of unauthorized transfers that occur before notice to the financial institution.

(2) *Timely notice not given.* If the consumer fails to notify the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of $500 or the sum of:

(i) $50 or the amount of unauthorized transfers that occur within the two business days, whichever is less; and

(ii) The amount of unauthorized transfers that occur after the close of two business days and before notice to the institution, provided the institution establishes that these transfers would not have occurred had the consumer notified the institution within that two-day period.

(3) *Periodic statement; timely notice not given.* A consumer must report an unauthorized electronic fund transfer that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement to avoid liability for subsequent transfers. If the consumer fails to do so, the consumer's liability shall not exceed the amount of the unauthorized transfers that occur after the close of the 60 days and before notice to the institution, and that the institution establishes would not have occurred had the consumer notified the institution within the 60-day period. When an access device is involved in the unauthorized transfer, the consumer may be liable for other amounts set forth in paragraphs (b)(1) or (b)(2) of this section, as applicable.

(4) *Extension of time limits.* If the consumer's delay in notifying the financial institution was due to extenuating circumstances, the institution shall extend the times specified above to a reasonable period.

(5) *Notice to financial institution.* (i) Notice to a financial institution is given when a consumer takes steps reasonably necessary to provide the institution with the pertinent information, whether or not a particular employee or agent of the institution actually receives the information.

(ii) The consumer may notify the institution in person, by telephone, or in writing.

(iii) Written notice is considered given at the time the consumer mails the notice or delivers it for transmission to the institution by any other usual means. Notice may be considered constructively given when the institution becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer to or from the consumer's account has been or may be made.

(6) *Liability under state law or agreement.* If state law or an agreement between the consumer and the financial institution imposes less liability than is provided by this section, the consumer's liability shall not exceed the amount imposed under the state law or agreement.

§ 1005.7 Initial disclosures.

(a) *Timing of disclosures.* A financial institution shall make the disclosures required by this section at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account.

(b) *Content of disclosures.* A financial institution shall provide the following disclosures, as applicable:

(1) *Liability of consumer.* A summary of the consumer's liability, under §1005.6 or under state or other applicable law or agreement, for unauthorized electronic fund transfers.

(2) *Telephone number and address.* The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized electronic fund transfer has been or may be made.

(3) *Business days.* The financial institution's business days.

(4) *Types of transfers; limitations.* The type of electronic fund transfers that the consumer may make and any limitations on the frequency and dollar amount of transfers. Details of the limitations need not be disclosed if confidentiality is essential to maintain the security of the electronic fund transfer system.

(5) *Fees.* Any fees imposed by the financial institution for electronic fund transfers or for the right to make transfers.

(6) *Documentation.* A summary of the consumer's right to receipts and periodic statements, as provided in §1005.9 of this part, and notices regarding preauthorized transfers as provided in §1005.10(a) and (d).

(7) *Stop payment.* A summary of the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure for placing a stop-payment order, as provided in §1005.10(c).

(8) *Liability of institution.* A summary of the financial institution's liability to the consumer under section 910 of the Act for failure to make or to stop certain transfers.

(9) *Confidentiality.* The circumstances under which, in the ordinary course of business, the financial institution may provide information concerning the consumer's account to third parties.

(10) *Error resolution.* A notice that is substantially similar to Model Form A–3 as set out in appendix A of this part concerning error resolution.

(11) *ATM fees.* A notice that a fee may be imposed by an automated teller machine operator as defined in §1005.16(a)(1), when the consumer initiates an electronic fund transfer or makes a balance inquiry, and by any network used to complete the transaction.

(c) *Addition of electronic fund transfer services.* If an electronic fund transfer service is added to a consumer's account and is subject to terms and conditions different from those described in the initial disclosures, disclosures for the new service are required.

§1005.8 Change in terms notice; error resolution notice.

(a) *Change in terms notice*—(1) *Prior notice required.* A financial institution shall mail or deliver a written notice to the consumer, at least 21 days before the effective date, of any change in a term or condition required to be disclosed under §1005.7(b) of this part if the change would result in:

(i) Increased fees for the consumer;

(ii) Increased liability for the consumer;

(iii) Fewer types of available electronic fund transfers; or

(iv) Stricter limitations on the frequency or dollar amount of transfers.

(2) *Prior notice exception.* A financial institution need not give prior notice if an immediate change in terms or conditions is necessary to maintain or restore the security of an account or an electronic fund transfer system. If the institution makes such a change permanent and disclosure would not jeopardize the security of the account or system, the institution shall notify the consumer in writing on or with the next regularly scheduled periodic statement or within 30 days of making the change permanent.

(b) *Error resolution notice.* For accounts to or from which electronic fund transfers can be made, a financial institution shall mail or deliver to the consumer, at least once each calendar year, an error resolution notice substantially similar to the model form set forth in appendix A of this part (Model Form A–3). Alternatively, an institution may include an abbreviated notice substantially similar to the model form error resolution notice set forth in appendix A of this part (Model Form A–3), on or with each periodic statement required by §1005.9(b).

§ 1005.9 Receipts at electronic terminals; periodic statements.

(a) *Receipts at electronic terminals—General.* Except as provided in paragraph (e) of this section, a financial institution shall make a receipt available to a consumer at the time the consumer initiates an electronic fund transfer at an electronic terminal. The receipt shall set forth the following information, as applicable:

(1) *Amount.* The amount of the transfer. A transaction fee may be included in this amount, provided the amount of the fee is disclosed on the receipt and displayed on or at the terminal.

(2) *Date.* The date the consumer initiates the transfer.

(3) *Type.* The type of transfer and the type of the consumer's account(s) to or from which funds are transferred. The type of account may be omitted if the access device used is able to access only one account at that terminal.

(4) *Identification.* A number or code that identifies the consumer's account or accounts, or the access device used to initiate the transfer. The number or code need not exceed four digits or letters to comply with the requirements of this paragraph (a)(4).

(5) *Terminal location.* The location of the terminal where the transfer is initiated, or an identification such as a code or terminal number. Except in limited circumstances where all terminals are located in the same city or state, if the location is disclosed, it shall include the city and state or foreign country and one of the following:

(i) The street address; or

(ii) A generally accepted name for the specific location; or

(iii) The name of the owner or operator of the terminal if other than the account-holding institution.

(6) *Third party transfer.* The name of any third party to or from whom funds are transferred.

(b) *Periodic statements.* For an account to or from which electronic fund transfers can be made, a financial institution shall send a periodic statement for each monthly cycle in which an electronic fund transfer has occurred; and shall send a periodic statement at least quarterly if no transfer has occurred. The statement shall set forth the following information, as applicable:

(1) *Transaction information.* For each electronic fund transfer occurring during the cycle:

(i) The amount of the transfer;

(ii) The date the transfer was credited or debited to the consumer's account;

(iii) The type of transfer and type of account to or from which funds were transferred;

(iv) For a transfer initiated by the consumer at an electronic terminal (except for a deposit of cash or a check, draft, or similar paper instrument), the terminal location described in paragraph (a)(5) of this section; and

(v) The name of any third party to or from whom funds were transferred.

(2) *Account number.* The number of the account.

(3) *Fees.* The amount of any fees assessed against the account during the statement period for electronic fund transfers, the right to make transfers, or account maintenance.

(4) *Account balances.* The balance in the account at the beginning and at the close of the statement period.

(5) *Address and telephone number for inquiries.* The address and telephone number to be used for inquiries or notice of errors, preceded by ''Direct inquiries to'' or similar language. The address and telephone number provided on an error resolution notice under §1005.8(b) given on or with the statement satisfies this requirement.

(6) *Telephone number for preauthorized transfers.* A telephone number the consumer may call to ascertain whether preauthorized transfers to the consumer's account have occurred, if the financial institution uses the telephone-notice option under §1005.10(a)(1)(iii).

(c) *Exceptions to the periodic statement requirement for certain accounts*—(1) *Preauthorized transfers to accounts.* For accounts that may be accessed only by preauthorized transfers to the account the following rules apply:

(i) *Passbook accounts.* For passbook accounts, the financial institution need not provide a periodic statement if the institution updates the passbook upon presentation or enters on a separate document the amount and date of each electronic fund transfer since the passbook was last presented.

(ii) *Other accounts.* For accounts other than passbook accounts, the financial institution must send a periodic statement at least quarterly.

(2) *Intra-institutional transfers.* For an electronic fund transfer initiated by the consumer between two accounts of the consumer in the same institution, documenting the transfer on a periodic statement for one of the two accounts satisfies the periodic statement requirement.

(3) *Relationship between paragraphs (c)(1) and (2) of this section.* An account that is accessed by preauthorized transfers to the account described in paragraph (c)(1) of this section and by intra-institutional transfers described in paragraph (c)(2) of this section, but by no other type of electronic fund transfers, qualifies for the exceptions provided by paragraph (c)(1) of this section.

(d) *Documentation for foreign-initiated transfers.* The failure by a financial institution to provide a terminal receipt for an electronic fund transfer or to document the transfer on a periodic statement does not violate this part if:

(1) The transfer is not initiated within a state; and

(2) The financial institution treats an inquiry for clarification or documentation as a notice of error in accordance with § 1005.11.

(e) *Exception for receipts in small-value transfers.* A financial institution is not subject to the requirement to make available a receipt under paragraph (a) of this section if the amount of the transfer is $15 or less.

§ 1005.10 Preauthorized transfers.

(a) *Preauthorized transfers to consumer's account*—(1) *Notice by financial institution.* When a person initiates preauthorized electronic fund transfers to a consumer's account at least once every 60 days, the account-holding financial institution shall provide notice to the consumer by:

(i) *Positive notice.* Providing oral or written notice of the transfer within two business days after the transfer occurs; or

(ii) *Negative notice.* Providing oral or written notice, within two business days after the date on which the transfer was scheduled to occur, that the transfer did not occur; or

(iii) *Readily-available telephone line.* Providing a readily available telephone line that the consumer may call to determine whether the transfer occurred and disclosing the telephone number on the initial disclosure of account terms and on each periodic statement.

(2) *Notice by payor.* A financial institution need not provide notice of a transfer if the payor gives the consumer positive notice that the transfer has been initiated.

(3) *Crediting.* A financial institution that receives a preauthorized transfer of the type described in paragraph (a)(1) of this section shall credit the amount of the transfer as of the date the funds for the transfer are received.

(b) *Written authorization for preauthorized transfers from consumer's account.* Preauthorized electronic fund transfers from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer.

(c) *Consumer's right to stop payment*—(1) *Notice.* A consumer may stop payment of a preauthorized electronic fund transfer from the consumer's account by notifying the financial institution orally or in writing at least three business days before the scheduled date of the transfer.

(2) *Written confirmation.* The financial institution may require the consumer to give written confirmation of a stop-payment order within 14 days of an oral notification. An institution that requires written confirmation shall inform the consumer of the requirement and provide the address where confirmation must be sent when the consumer gives the oral notification. An oral stop-payment order ceases to be binding after 14 days if the consumer fails to provide the required written confirmation.

(d) *Notice of transfers varying in amount*—(1) *Notice.* When a preauthorized electronic fund transfer from the consumer's account will vary in amount from the previous transfer under the same authorization or from

the preauthorized amount, the designated payee or the financial institution shall send the consumer written notice of the amount and date of the transfer at least 10 days before the scheduled date of transfer.

(2) *Range.* The designated payee or the institution shall inform the consumer of the right to receive notice of all varying transfers, but may give the consumer the option of receiving notice only when a transfer falls outside a specified range of amounts or only when a transfer differs from the most recent transfer by more than an agreed-upon amount.

(e) *Compulsory use*—(1) *Credit.* No financial institution or other person may condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account.

(2) *Employment or government benefit.* No financial institution or other person may require a consumer to establish an account for receipt of electronic fund transfers with a particular institution as a condition of employment or receipt of a government benefit.

§ 1005.11 Procedures for resolving errors.

(a) *Definition of error*—(1) *Types of transfers or inquiries covered.* The term ''error'' means:

(i) An unauthorized electronic fund transfer;

(ii) An incorrect electronic fund transfer to or from the consumer's account;

(iii) The omission of an electronic fund transfer from a periodic statement;

(iv) A computational or bookkeeping error made by the financial institution relating to an electronic fund transfer;

(v) The consumer's receipt of an incorrect amount of money from an electronic terminal;

(vi) An electronic fund transfer not identified in accordance with §1005.9 or §1005.10(a); or

(vii) The consumer's request for documentation required by §1005.9 or §1005.10(a) or for additional information or clarification concerning an electronic fund transfer, including a request the consumer makes to determine whether an error exists under paragraphs (a)(1)(i) through (vi) of this section.

(2) *Types of inquiries not covered.* The term ''error'' does not include:

(i) A routine inquiry about the consumer's account balance;

(ii) A request for information for tax or other recordkeeping purposes; or

(iii) A request for duplicate copies of documentation.

(b) *Notice of error from consumer*—(1) *Timing; contents.* A financial institution shall comply with the requirements of this section with respect to any oral or written notice of error from the consumer that:

(i) Is received by the institution no later than 60 days after the institution sends the periodic statement or provides the passbook documentation, required by §1005.9, on which the alleged error is first reflected;

(ii) Enables the institution to identify the consumer's name and account number; and

(iii) Indicates why the consumer believes an error exists and includes to the extent possible the type, date, and amount of the error, except for requests described in paragraph (a)(1)(vii) of this section.

(2) *Written confirmation.* A financial institution may require the consumer to give written confirmation of an error within 10 business days of an oral notice. An institution that requires written confirmation shall inform the consumer of the requirement and provide the address where confirmation must be sent when the consumer gives the oral notification.

(3) *Request for documentation or clarifications.* When a notice of error is based on documentation or clarification that the consumer requested under paragraph (a)(1)(vii) of this section, the consumer's notice of error is timely if received by the financial institution no later than 60 days after the institution sends the information requested.

(c) *Time limits and extent of investigation*—(1) *Ten-day period.* A financial institution shall investigate promptly and, except as otherwise provided in

this paragraph (c), shall determine whether an error occurred within 10 business days of receiving a notice of error. The institution shall report the results to the consumer within three business days after completing its investigation. The institution shall correct the error within one business day after determining that an error occurred.

(2) *Forty-five day period.* If the financial institution is unable to complete its investigation within 10 business days, the institution may take up to 45 days from receipt of a notice of error to investigate and determine whether an error occurred, provided the institution does the following:

(i) Provisionally credits the consumer's account in the amount of the alleged error (including interest where applicable) within 10 business days of receiving the error notice. If the financial institution has a reasonable basis for believing that an unauthorized electronic fund transfer has occurred and the institution has satisfied the requirements of §1005.6(a), the institution may withhold a maximum of $50 from the amount credited. An institution need not provisionally credit the consumer's account if:

(A) The institution requires but does not receive written confirmation within 10 business days of an oral notice of error; or

(B) The alleged error involves an account that is subject to Regulation T of the Board of Governors of the Federal Reserve System (Securities Credit by Brokers and Dealers, 12 CFR part 220);

(ii) Informs the consumer, within two business days after the provisional crediting, of the amount and date of the provisional crediting and gives the consumer full use of the funds during the investigation;

(iii) Corrects the error, if any, within one business day after determining that an error occurred; and

(iv) Reports the results to the consumer within three business days after completing its investigation (including, if applicable, notice that a provisional credit has been made final).

(3) *Extension of time periods.* The time periods in paragraphs (c)(1) and (c)(2) of this section are extended as follows:

(i) The applicable time is 20 business days in place of 10 business days under paragraphs (c)(1) and (2) of this section if the notice of error involves an electronic fund transfer to or from the account within 30 days after the first deposit to the account was made.

(ii) The applicable time is 90 days in place of 45 days under paragraph (c)(2) of this section, for completing an investigation, if a notice of error involves an electronic fund transfer that:

(A) Was not initiated within a state;

(B) Resulted from a point-of-sale debit card transaction; or

(C) Occurred within 30 days after the first deposit to the account was made.

(4) *Investigation.* With the exception of transfers covered by §1005.14 of this part, a financial institution's review of its own records regarding an alleged error satisfies the requirements of this section if:

(i) The alleged error concerns a transfer to or from a third party; and

(ii) There is no agreement between the institution and the third party for the type of electronic fund transfer involved.

(d) *Procedures if financial institution determines no error or different error occurred.* In addition to following the procedures specified in paragraph (c) of this section, the financial institution shall follow the procedures set forth in this paragraph (d) if it determines that no error occurred or that an error occurred in a manner or amount different from that described by the consumer:

(1) *Written explanation.* The institution's report of the results of its investigation shall include a written explanation of the institution's findings and shall note the consumer's right to request the documents that the institution relied on in making its determination. Upon request, the institution shall promptly provide copies of the documents.

(2) *Debiting provisional credit.* Upon debiting a provisionally credited amount, the financial institution shall:

(i) Notify the consumer of the date and amount of the debiting;

(ii) Notify the consumer that the institution will honor checks, drafts, or similar instruments payable to third parties and preauthorized transfers from the consumer's account (without

charge to the consumer as a result of an overdraft) for five business days after the notification. The institution shall honor items as specified in the notice, but need honor only items that it would have paid if the provisionally credited funds had not been debited.

(e) *Reassertion of error.* A financial institution that has fully complied with the error resolution requirements has no further responsibilities under this section should the consumer later reassert the same error, except in the case of an error asserted by the consumer following receipt of information provided under paragraph (a)(1)(vii) of this section.

§ 1005.12 Relation to other laws.

(a) *Relation to Truth in Lending.* (1) The Electronic Fund Transfer Act and this part govern:

(i) The addition to an accepted credit card, as defined in Regulation Z (12 CFR 1026.12, comment 12–2), of the capability to initiate electronic fund transfers;

(ii) The issuance of an access device that permits credit extensions (under a preexisting agreement between a consumer and a financial institution) only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in §1005.17(a) of this part;

(iii) The addition of an overdraft service, as defined in §1005.17(a), to an accepted access device; and

(iv) A consumer's liability for an unauthorized electronic fund transfer and the investigation of errors involving an extension of credit that occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in §1005.17(a).

(2) The Truth in Lending Act and Regulation Z (12 CFR part 1026), which prohibit the unsolicited issuance of credit cards, govern:

(i) The addition of a credit feature to an accepted access device; and

(ii) Except as provided in paragraph (a)(1)(ii) of this section, the issuance of a credit card that is also an access device.

(b) *Preemption of inconsistent state laws*—(1) *Inconsistent requirements.* The Bureau shall determine, upon its own motion or upon the request of a state, financial institution, or other interested party, whether the Act and this part preempt state law relating to electronic fund transfers, or dormancy, inactivity, or service fees, or expiration dates in the case of gift certificates, store gift cards, or general-use prepaid cards.

(2) *Standards for determination.* State law is inconsistent with the requirements of the Act and this part if state law:

(i) Requires or permits a practice or act prohibited by the Federal law;

(ii) Provides for consumer liability for unauthorized electronic fund transfers that exceeds the limits imposed by the Federal law;

(iii) Allows longer time periods than the Federal law for investigating and correcting alleged errors, or does not require the financial institution to credit the consumer's account during an error investigation in accordance with §1005.11(c)(2)(i) of this part; or

(iv) Requires initial disclosures, periodic statements, or receipts that are different in content from those required by the Federal law except to the extent that the disclosures relate to consumer rights granted by the state law and not by the Federal law.

(c) *State exemptions*—(1) *General rule.* Any state may apply for an exemption from the requirements of the Act or this part for any class of electronic fund transfers within the state. The Bureau shall grant an exemption if it determines that:

(i) Under state law the class of electronic fund transfers is subject to requirements substantially similar to those imposed by the Federal law; and

(ii) There is adequate provision for state enforcement.

(2) *Exception.* To assure that the Federal and state courts continue to have concurrent jurisdiction, and to aid in implementing the Act:

(i) No exemption shall extend to the civil liability provisions of section 916 of the Act; and

(ii) When the Bureau grants an exemption, the state law requirements shall constitute the requirements of the Federal law for purposes of section 916 of the Act, except for state law requirements not imposed by the Federal law.

§ 1005.13 Administrative enforcement; record retention.

(a) *Enforcement by Federal agencies.* Compliance with this part is enforced in accordance with section 918 of the Act.

(b) *Record retention.* (1) Any person subject to the Act and this part shall retain evidence of compliance with the requirements imposed by the Act and this part for a period of not less than two years from the date disclosures are required to be made or action is required to be taken.

(2) Any person subject to the Act and this part having actual notice that it is the subject of an investigation or an enforcement proceeding by its enforcement agency, or having been served with notice of an action filed under sections 910, 916, or 917(a) of the Act, shall retain the records that pertain to the investigation, action, or proceeding until final disposition of the matter unless an earlier time is allowed by court or agency order.

§ 1005.14 Electronic fund transfer service provider not holding consumer's account.

(a) *Provider of electronic fund transfer service.* A person that provides an electronic fund transfer service to a consumer but that does not hold the consumer's account is subject to all requirements of this part if the person:

(1) Issues a debit card (or other access device) that the consumer can use to access the consumer's account held by a financial institution; and

(2) Has no agreement with the account-holding institution regarding such access.

(b) *Compliance by service provider.* In addition to the requirements generally applicable under this part, the service provider shall comply with the following special rules:

(1) *Disclosures and documentation.* The service provider shall give the disclosures and documentation required by §§ 1005.7, 1005.8, and 1005.9 of this part that are within the purview of its relationship with the consumer. The service provider need not furnish the periodic statement required by § 1005.9(b) if the following conditions are met:

(i) The debit card (or other access device) issued to the consumer bears the service provider's name and an address or telephone number for making inquiries or giving notice of error;

(ii) The consumer receives a notice concerning use of the debit card that is substantially similar to the notice contained in appendix A of this part;

(iii) The consumer receives, on or with the receipts required by § 1005.9(a), the address and telephone number to be used for an inquiry, to give notice of an error, or to report the loss or theft of the debit card;

(iv) The service provider transmits to the account-holding institution the information specified in § 1005.9(b)(1), in the format prescribed by the automated clearinghouse (ACH) system used to clear the fund transfers;

(v) The service provider extends the time period for notice of loss or theft of a debit card, set forth in § 1005.6(b)(1) and (2), from two business days to four business days after the consumer learns of the loss or theft; and extends the time periods for reporting unauthorized transfers or errors, set forth in §§ 1005.6(b)(3) and 1005.11(b)(1)(i), from 60 days to 90 days following the transmittal of a periodic statement by the account-holding institution.

(2) *Error resolution.* (i) The service provider shall extend by a reasonable time the period in which notice of an error must be received, specified in § 1005.11(b)(1)(i), if a delay resulted from an initial attempt by the consumer to notify the account-holding institution.

(ii) The service provider shall disclose to the consumer the date on which it initiates a transfer to effect a provisional credit in accordance with § 1005.11(c)(2)(ii).

(iii) If the service provider determines an error occurred, it shall transfer funds to or from the consumer's account, in the appropriate amount and within the applicable time period, in accordance with § 1005.11(c)(2)(i).

(iv) If funds were provisionally credited and the service provider determines no error occurred, it may reverse the credit. The service provider shall notify the account-holding institution of the period during which the account-holding institution must honor debits to the account in accordance with §1005.11(d)(2)(ii). If an overdraft results, the service provider shall promptly reimburse the account-holding institution in the amount of the overdraft.

(c) *Compliance by account-holding institution.* The account-holding institution need not comply with the requirements of the Act and this part with respect to electronic fund transfers initiated through the service provider except as follows:

(1) *Documentation.* The account-holding institution shall provide a periodic statement that describes each electronic fund transfer initiated by the consumer with the access device issued by the service provider. The account-holding institution has no liability for the failure to comply with this requirement if the service provider did not provide the necessary information; and

(2) *Error resolution.* Upon request, the account-holding institution shall provide information or copies of documents needed by the service provider to investigate errors or to furnish copies of documents to the consumer. The account-holding institution shall also honor debits to the account in accordance with §1005.11(d)(2)(ii).

§1005.15 Electronic fund transfer of government benefits.

(a) *Government agency subject to regulation.* (1) A government agency is deemed to be a financial institution for purposes of the Act and this part if directly or indirectly it issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account, other than needs-tested benefits in a program established under state or local law or administered by a state or local agency. The agency shall comply with all applicable requirements of the Act and this part, except as provided in this section.

(2) For purposes of this section, the term ''account'' means an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals, but does not include an account for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.

(b) *Issuance of access devices.* For purposes of this section, a consumer is deemed to request an access device when the consumer applies for government benefits that the agency disburses or will disburse by means of an electronic fund transfer. The agency shall verify the identity of the consumer receiving the device by reasonable means before the device is activated.

(c) *Alternative to periodic statement.* A government agency need not furnish the periodic statement required by §1005.9(b) if the agency makes available to the consumer:

(1) The consumer's account balance, through a readily available telephone line and at a terminal (such as by providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer); and

(2) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days preceding the date of a request by the consumer.

(d) *Modified requirements.* A government agency that does not furnish periodic statements, in accordance with paragraph (c) of this section, shall comply with the following special rules:

(1) *Initial disclosures.* The agency shall modify the disclosures under §1005.7(b) by disclosing:

(i) *Account balance.* The means by which the consumer may obtain information concerning the account balance, including a telephone number. The agency provides a notice substantially similar to the notice contained in paragraph A–5 in appendix A of this part.

(ii) *Written account history.* A summary of the consumer's right to receive

a written account history upon request, in place of the periodic statement required by §1005.7(b)(6), and the telephone number to call to request an account history. This disclosure may be made by providing a notice substantially similar to the notice contained in paragraph A–5 in appendix A of this part.

(iii) *Error resolution.* A notice concerning error resolution that is substantially similar to the notice contained in paragraph A–5 in appendix A of this part, in place of the notice required by §1005.7(b)(10).

(2) *Annual error resolution notice.* The agency shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in paragraph A–5 in appendix A, in place of the notice required by §1005.8(b).

(3) *Limitations on liability.* For purposes of §1005.6(b)(3), regarding a 60-day period for reporting any unauthorized transfer that appears on a periodic statement, the 60-day period shall begin with transmittal of a written account history or other account information provided to the consumer under paragraph (c) of this section.

(4) *Error resolution.* The agency shall comply with the requirements of §1005.11 of this part in response to an oral or written notice of an error from the consumer that is received no later than 60 days after the consumer obtains the written account history or other account information, under paragraph (c) of this section, in which the error is first reflected.

§1005.16 Disclosures at automated teller machines.

(a) *Definition.* ''Automated teller machine operator'' means any person that operates an automated teller machine at which a consumer initiates an electronic fund transfer or a balance inquiry and that does not hold the account to or from which the transfer is made, or about which an inquiry is made.

(b) *General.* An automated teller machine operator that imposes a fee on a consumer for initiating an electronic fund transfer or a balance inquiry must provide a notice that a fee will be imposed for providing electronic fund transfer services or a balance inquiry that discloses the amount of the fee.

(c) *Notice requirement.* An automated teller machine operator must provide the notice required by paragraph (b) of this section either by showing it on the screen of the automated teller machine or by providing it on paper, before the consumer is committed to paying a fee.

(d) *Imposition of fee.* An automated teller machine operator may impose a fee on a consumer for initiating an electronic fund transfer or a balance inquiry only if:

(1) The consumer is provided the notice required under paragraph (c) of this section, and

(2) The consumer elects to continue the transaction or inquiry after receiving such notice.

[76 FR 81023, Dec. 27, 2011, as amended at 78 FR 18224, Mar. 26, 2013]

§1005.17 Requirements for overdraft services.

(a) *Definition.* For purposes of this section, the term ''overdraft service'' means a service under which a financial institution assesses a fee or charge on a consumer's account held by the institution for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account. The term ''overdraft service'' does not include any payment of overdrafts pursuant to:

(1) A line of credit subject to Regulation Z (12 CFR part 1026), including transfers from a credit card account, home equity line of credit, or overdraft line of credit;

(2) A service that transfers funds from another account held individually or jointly by a consumer, such as a savings account; or

(3) A line of credit or other transaction exempt from Regulation Z (12 CFR part 1026) pursuant to 12 CFR 1026.3(d).

(b) *Opt-in requirement*—(1) *General.* Except as provided under paragraph (c) of this section, a financial institution holding a consumer's account shall not assess a fee or charge on a consumer's account for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service, unless the institution:

(i) Provides the consumer with a notice in writing, or if the consumer agrees, electronically, segregated from all other information, describing the institution's overdraft service;

(ii) Provides a reasonable opportunity for the consumer to affirmatively consent, or opt in, to the service for ATM and one-time debit card transactions;

(iii) Obtains the consumer's affirmative consent, or opt-in, to the institution's payment of ATM or one-time debit card transactions; and

(iv) Provides the consumer with confirmation of the consumer's consent in writing, or if the consumer agrees, electronically, which includes a statement informing the consumer of the right to revoke such consent.

(2) *Conditioning payment of other overdrafts on consumer's affirmative consent.* A financial institution shall not:

(i) Condition the payment of any overdrafts for checks, ACH transactions, and other types of transactions on the consumer affirmatively consenting to the institution's payment of ATM and one-time debit card transactions pursuant to the institution's overdraft service; or

(ii) Decline to pay checks, ACH transactions, and other types of transactions that overdraw the consumer's account because the consumer has not affirmatively consented to the institution's overdraft service for ATM and one-time debit card transactions.

(3) *Same account terms, conditions, and features.* A financial institution shall provide to consumers who do not affirmatively consent to the institution's overdraft service for ATM and one-time debit card transactions the same account terms, conditions, and features that it provides to consumers who affirmatively consent, except for the overdraft service for ATM and one-time debit card transactions.

(c) *Timing*—(1) *Existing account holders.* For accounts opened prior to July 1, 2010, the financial institution must not assess any fees or charges on a consumer's account on or after August 15, 2010, for paying an ATM or one-time debit card transaction pursuant to the overdraft service, unless the institution has complied with §1005.17(b)(1) and obtained the consumer's affirmative consent.

(2) *New account holders.* For accounts opened on or after July 1, 2010, the financial institution must comply with §1005.17(b)(1) and obtain the consumer's affirmative consent before the institution assesses any fee or charge on the consumer's account for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service.

(d) *Content and format.* The notice required by paragraph (b)(1)(i) of this section shall be substantially similar to Model Form A–9 set forth in appendix A of this part, include all applicable items in this paragraph, and may not contain any information not specified in or otherwise permitted by this paragraph.

(1) *Overdraft service.* A brief description of the financial institution's overdraft service and the types of transactions for which a fee or charge for paying an overdraft may be imposed, including ATM and one-time debit card transactions.

(2) *Fees imposed.* The dollar amount of any fees or charges assessed by the financial institution for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service, including any daily or other overdraft fees. If the amount of the fee is determined on the basis of the number of times the consumer has overdrawn the account, the amount of the overdraft, or other factors, the institution must disclose the maximum fee that may be imposed.

(3) *Limits on fees charged.* The maximum number of overdraft fees or charges that may be assessed per day, or, if applicable, that there is no limit.

(4) *Disclosure of opt-in right.* An explanation of the consumer's right to affirmatively consent to the financial institution's payment of overdrafts for ATM and one-time debit card transactions pursuant to the institution's overdraft service, including the methods by which the consumer may consent to the service; and

(5) *Alternative plans for covering overdrafts.* If the institution offers a line of credit subject to Regulation Z (12 CFR part 1026) or a service that transfers

funds from another account of the consumer held at the institution to cover overdrafts, the institution must state that fact. An institution may, but is not required to, list additional alternatives for the payment of overdrafts.

(6) *Permitted modifications and additional content.* If applicable, the institution may modify the content required by §1005.17(d) to indicate that the consumer has the right to opt into, or opt out of, the payment of overdrafts under the institution's overdraft service for other types of transactions, such as checks, ACH transactions, or automatic bill payments; to provide a means for the consumer to exercise this choice; and to disclose the associated returned item fee and that additional merchant fees may apply. The institution may also disclose the consumer's right to revoke consent. For notices provided to consumers who have opened accounts prior to July 1, 2010, the financial institution may describe the institution's overdraft service with respect to ATM and one-time debit card transactions with a statement such as ''After August 15, 2010, we will not authorize and pay overdrafts for the following types of transactions unless you ask us to (see below).''

(e) *Joint relationships.* If two or more consumers jointly hold an account, the financial institution shall treat the affirmative consent of any of the joint consumers as affirmative consent for that account. Similarly, the financial institution shall treat a revocation of affirmative consent by any of the joint consumers as revocation of consent for that account.

(f) *Continuing right to opt in or to revoke the opt-in.* A consumer may affirmatively consent to the financial institution's overdraft service at any time in the manner described in the notice required by paragraph (b)(1)(i) of this section. A consumer may also revoke consent at any time in the manner made available to the consumer for providing consent. A financial institution must implement a consumer's revocation of consent as soon as reasonably practicable.

(g) *Duration and revocation of opt-in.* A consumer's affirmative consent to the institution's overdraft service is effective until revoked by the consumer, or unless the financial institution terminates the service.

§1005.18 Requirements for financial institutions offering payroll card accounts.

(a) *Coverage.* A financial institution shall comply with all applicable requirements of the Act and this part with respect to payroll card accounts except as provided in this section.

(b) *Alternative to periodic statements.* (1) A financial institution need not furnish periodic statements required by §1005.9(b) if the institution makes available to the consumer:

(i) The consumer's account balance, through a readily available telephone line;

(ii) An electronic history of the consumer's account transactions, such as through a Web site, that covers at least 60 days preceding the date the consumer electronically accesses the account; and

(iii) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days preceding the date the financial institution receives the consumer's request.

(2) The history of account transactions provided under paragraphs (b)(1)(ii) and (iii) of this section must include the information set forth in §1005.9(b).

(c) *Modified requirements.* A financial institution that provides information under paragraph (b) of this section, shall comply with the following:

(1) *Initial disclosures.* The financial institution shall modify the disclosures under §1005.7(b) by disclosing:

(i) *Account information.* A telephone number that the consumer may call to obtain the account balance, the means by which the consumer can obtain an electronic account history, such as the address of a Web site, and a summary of the consumer's right to receive a written account history upon request (in place of the summary of the right to receive a periodic statement required by §1005.7(b)(6)), including a telephone number to call to request a history. The disclosure required by this paragraph (c)(1)(i) may be made by providing a notice substantially similar to

the notice contained in paragraph A–7(a) in appendix A of this part.

(ii) *Error resolution.* A notice concerning error resolution that is substantially similar to the notice contained in paragraph A–7(b) in appendix A of this part, in place of the notice required by §1005.7(b)(10).

(2) *Annual error resolution notice.* The financial institution shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in paragraph A–7(b) in appendix A of this part, in place of the notice required by §1005.8(b). Alternatively, a financial institution may include on or with each electronic and written history provided in accordance with §1005.18(b)(1), a notice substantially similar to the abbreviated notice for periodic statements contained in paragraph A–3(b) in appendix A of this part, modified as necessary to reflect the error resolution provisions set forth in this section.

(3) *Limitations on liability.* (i) For purposes of §1005.6(b)(3), the 60-day period for reporting any unauthorized transfer shall begin on the earlier of:

(A) The date the consumer electronically accesses the consumer's account under paragraph (b)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the transfer; or

(B) The date the financial institution sends a written history of the consumer's account transactions requested by the consumer under paragraph (b)(1)(iii) of this section in which the unauthorized transfer is first reflected.

(ii) A financial institution may comply with paragraph (c)(3)(i) of this section by limiting the consumer's liability for an unauthorized transfer as provided under §1005.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.

(4) *Error resolution.* (i) The financial institution shall comply with the requirements of §1005.11 in response to an oral or written notice of an error from the consumer that is received by the earlier of:

(A) Sixty days after the date the consumer electronically accesses the consumer's account under paragraph (b)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the alleged error; or

(B) Sixty days after the date the financial institution sends a written history of the consumer's account transactions requested by the consumer under paragraph (b)(1)(iii) of this section in which the alleged error is first reflected.

(ii) In lieu of following the procedures in paragraph (c)(4)(i) of this section, a financial institution complies with the requirements for resolving errors in §1005.11 if it investigates any oral or written notice of an error from the consumer that is received by the institution within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.

§1005.20 Requirements for gift cards and gift certificates.

(a) *Definitions.* For purposes of this section, except as excluded under paragraph (b), the following definitions apply:

(1) ''Gift certificate'' means a card, code, or other device that is:

(i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount that may not be increased or reloaded in exchange for payment; and

(ii) Redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services.

(2) ''Store gift card'' means a card, code, or other device that is:

(i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and

(ii) Redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services.

(3) ''General-use prepaid card'' means a card, code, or other device that is:

(i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and

(ii) Redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines.

(4) ''Loyalty, award, or promotional gift card'' means a card, code, or other device that:

(i) Is issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in connection with a loyalty, award, or promotional program;

(ii) Is redeemable upon presentation at one or more merchants for goods or services, or usable at automated teller machines; and

(iii) Sets forth the following disclosures, as applicable:

(A) A statement indicating that the card, code, or other device is issued for loyalty, award, or promotional purposes, which must be included on the front of the card, code, or other device;

(B) The expiration date for the underlying funds, which must be included on the front of the card, code, or other device;

(C) The amount of any fees that may be imposed in connection with the card, code, or other device, and the conditions under which they may be imposed, which must be provided on or with the card, code, or other device; and

(D) A toll-free telephone number and, if one is maintained, a Web site, that a consumer may use to obtain fee information, which must be included on the card, code, or other device.

(5) *Dormancy or inactivity fee.* The terms ''dormancy fee'' and ''inactivity fee'' mean a fee for non-use of or inactivity on a gift certificate, store gift card, or general-use prepaid card.

(6) *Service fee.* The term ''service fee'' means a periodic fee for holding or use of a gift certificate, store gift card, or general-use prepaid card. A periodic fee includes any fee that may be imposed on a gift certificate, store gift card, or general-use prepaid card from time to time for holding or using the certificate or card.

(7) *Activity.* The term ''activity'' means any action that results in an increase or decrease of the funds underlying a certificate or card, other than the imposition of a fee, or an adjustment due to an error or a reversal of a prior transaction.

(b) *Exclusions.* The terms ''gift certificate,'' ''store gift card,'' and ''general-use prepaid card'', as defined in paragraph (a) of this section, do not include any card, code, or other device that is:

(1) Useable solely for telephone services;

(2) Reloadable and not marketed or labeled as a gift card or gift certificate. For purposes of this paragraph (b)(2), the term ''reloadable'' includes a temporary non-reloadable card issued solely in connection with a reloadable card, code, or other device;

(3) A loyalty, award, or promotional gift card;

(4) Not marketed to the general public;

(5) Issued in paper form only; or

(6) Redeemable solely for admission to events or venues at a particular location or group of affiliated locations, or to obtain goods or services in conjunction with admission to such events or venues, either at the event or venue or at specific locations affiliated with and in geographic proximity to the event or venue.

(c) *Form of disclosures*—(1) *Clear and conspicuous.* Disclosures made under this section must be clear and conspicuous. The disclosures may contain commonly accepted or readily understandable abbreviations or symbols.

(2) *Format.* Disclosures made under this section generally must be provided to the consumer in written or electronic form. Except for the disclosures in paragraphs (c)(3) and (h)(2) of this section, written and electronic disclosures made under this section must be in a retainable form. Only disclosures provided under paragraphs (c)(3) and (h)(2) may be given orally.

(3) *Disclosures prior to purchase.* Before a gift certificate, store gift card, or general-use prepaid card is purchased, a person that issues or sells such certificate or card must disclose to the consumer the information required by paragraphs (d)(2), (e)(3), and (f)(1) of this section. The fees and terms and conditions of expiration that are required to be disclosed prior to purchase may not be changed after purchase.

(4) *Disclosures on the certificate or card.* Disclosures required by paragraphs (a)(4)(iii), (d)(2), (e)(3), and (f)(2) of this section must be made on the certificate or card, or in the case of a loyalty, award, or promotional gift card, on the card, code, or other device. A disclosure made in an accompanying terms and conditions document, on packaging surrounding a certificate or card, or on a sticker or other label affixed to the certificate or card does not constitute a disclosure on the certificate or card. For an electronic certificate or card, disclosures must be provided electronically on the certificate or card provided to the consumer. An issuer that provides a code or confirmation to a consumer orally must provide to the consumer a written or electronic copy of the code or confirmation promptly, and the applicable disclosures must be provided on the written copy of the code or confirmation.

(d) *Prohibition on imposition of fees or charges.* No person may impose a dormancy, inactivity, or service fee with respect to a gift certificate, store gift card, or general-use prepaid card, unless:

(1) There has been no activity with respect to the certificate or card, in the one-year period ending on the date on which the fee is imposed;

(2) The following are stated, as applicable, clearly and conspicuously on the gift certificate, store gift card, or general-use prepaid card:

(i) The amount of any dormancy, inactivity, or service fee that may be charged;

(ii) How often such fee may be assessed; and

(iii) That such fee may be assessed for inactivity; and

(3) Not more than one dormancy, inactivity, or service fee is imposed in any given calendar month.

(e) *Prohibition on sale of gift certificates or cards with expiration dates.* No person may sell or issue a gift certificate, store gift card, or general-use prepaid card with an expiration date, unless:

(1) The person has established policies and procedures to provide consumers with a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date;

(2) The expiration date for the underlying funds is at least the later of:

(i) Five years after the date the gift certificate was initially issued, or the date on which funds were last loaded to a store gift card or general-use prepaid card; or

(ii) The certificate or card expiration date, if any;

(3) The following disclosures are provided on the certificate or card, as applicable:

(i) The expiration date for the underlying funds or, if the underlying funds do not expire, that fact;

(ii) A toll-free telephone number and, if one is maintained, a Web site that a consumer may use to obtain a replacement certificate or card after the certificate or card expires if the underlying funds may be available; and

(iii) Except where a non-reloadable certificate or card bears an expiration date that is at least seven years from the date of manufacture, a statement, disclosed with equal prominence and in close proximity to the certificate or card expiration date, that:

(A) The certificate or card expires, but the underlying funds either do not expire or expire later than the certificate or card, and;

(B) The consumer may contact the issuer for a replacement card; and

(4) No fee or charge is imposed on the cardholder for replacing the gift certificate, store gift card, or general-use prepaid card or for providing the certificate or card holder with the remaining balance in some other manner prior to the funds expiration date, unless such certificate or card has been lost or stolen.

(f) *Additional disclosure requirements for gift certificates or cards.* The following disclosures must be provided in connection with a gift certificate, store gift card, or general-use prepaid card, as applicable:

(1) *Fee disclosures.* For each type of fee that may be imposed in connection with the certificate or card (other than a dormancy, inactivity, or service fee subject to the disclosure requirements under paragraph (d)(2) of this section), the following information must be provided on or with the certificate or card:

(i) The type of fee;

(ii) The amount of the fee (or an explanation of how the fee will be determined); and

(iii) The conditions under which the fee may be imposed.

(2) *Telephone number for fee information.* A toll-free telephone number and, if one is maintained, a Web site, that a consumer may use to obtain information about fees described in paragraphs (d)(2) and (f)(1) of this section must be disclosed on the certificate or card.

(g) *Compliance dates*—(1) *Effective date for gift certificates, store gift cards, and general-use prepaid cards.* Except as provided in paragraph (h) of this section, the requirements of this section apply to any gift certificate, store gift card, or general-use prepaid card sold to a consumer on or after August 22, 2010, or provided to a consumer as a replacement for such certificate or card.

(2) *Effective date for loyalty, award, or promotional gift cards.* The requirements in paragraph (a)(4)(iii) of this section apply to any card, code, or other device provided to a consumer in connection with a loyalty, award, or promotional program if the period of eligibility for such program began on or after August 22, 2010.

(h) *Temporary exemption*—(1) *Delayed mandatory compliance date.* For any gift certificate, store gift card, or general-use prepaid card produced prior to April 1, 2010, the mandatory compliance date of the requirements of paragraphs (c)(3), (d)(2), (e)(1), (e)(3), and (f) of this section is January 31, 2011, provided that an issuer of such certificate or card:

(i) Complies with all other provisions of this section;

(ii) Does not impose an expiration date with respect to the funds underlying such certificate or card;

(iii) At the consumer's request, replaces such certificate or card if it has funds remaining at no cost to the consumer; and

(iv) Satisfies the requirements of paragraph (h)(2) of this section.

(2) *Additional disclosures.* Issuers relying on the delayed effective date in §1005.20(h)(1) must disclose through in-store signage, messages during customer service calls, Web sites, and general advertising, that:

(i) The underlying funds of such certificate or card do not expire;

(ii) Consumers holding such certificate or card have a right to a free replacement certificate or card, which must be accompanied by the packaging and materials typically associated with such certificate or card; and

(iii) Any dormancy, inactivity, or service fee for such certificate or card that might otherwise be charged will not be charged if such fees do not comply with section 916 of the Act.

(3) *Expiration of additional disclosure requirements.* The disclosures in paragraph (h)(2) of this section:

(i) Are not required to be provided on or after January 31, 2011, with respect to in-store signage and general advertising.

(ii) Are not required to be provided on or after January 31, 2013, with respect to messages during customer service calls and Web sites.

Subpart B—Requirements for Remittance Transfers

SOURCE: 77 FR 6285, Feb. 7, 2012, unless otherwise noted.

§1005.30 Remittance transfer definitions.

Except as otherwise provided, for purposes of this subpart, the following definitions apply:

(a) ''Agent'' means an agent, authorized delegate, or person affiliated with a remittance transfer provider, as defined under State or other applicable law, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider.

(b) ''Business day'' means any day on which the offices of a remittance transfer provider are open to the public for carrying on substantially all business functions.

(c) ''Designated recipient'' means any person specified by the sender as the authorized recipient of a remittance transfer to be received at a location in a foreign country.

(d) ''Preauthorized remittance transfer'' means a remittance transfer authorized in advance to recur at substantially regular intervals.

(e) *Remittance transfer*—(1) *General definition.* A ''remittance transfer''

means the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. The term applies regardless of whether the sender holds an account with the remittance transfer provider, and regardless of whether the transaction is also an electronic fund transfer, as defined in §1005.3(b).

(2) *Exclusions from coverage.* The term ''remittance transfer'' does not include:

(i) *Small value transactions.* Transfer amounts, as described in §1005.31(b)(1)(i), of $15 or less.

(ii) *Securities and commodities transfers.* Any transfer that is excluded from the definition of electronic fund transfer under §1005.3(c)(4).

(f) *Remittance transfer provider*—(1) *General definition.* ''Remittance transfer provider'' or ''provider'' means any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person.

(2) *Normal course of business*—(i) *Safe harbor.* For purposes of paragraph (f)(1) of this section, a person is deemed not to be providing remittance transfers for a consumer in the normal course of its business if the person:

(A) Provided 100 or fewer remittance transfers in the previous calendar year; and

(B) Provides 100 or fewer remittance transfers in the current calendar year.

(ii) *Transition period.* If a person that provided 100 or fewer remittance transfers in the previous calendar year provides more than 100 remittance transfers in the current calendar year, and if that person is then providing remittance transfers for a consumer in the normal course of its business pursuant to paragraph (f)(1) of this section, the person has a reasonable period of time, not to exceed six months, to begin complying with this subpart. Compliance with this subpart will not be required for any remittance transfers for which payment is made during that reasonable period of time.

(g) ''Sender'' means a consumer in a State who primarily for personal, family, or household purposes requests a remittance transfer provider to send a remittance transfer to a designated recipient.

(h) *Third-party fees.* (1) ''Covered third-party fees.'' The term ''covered third-party fees'' means any fees imposed on the remittance transfer by a person other than the remittance transfer provider except for fees described in paragraph (h)(2) of this section.

(2) ''Non-covered third-party fees.'' The term ''non-covered third-party fees'' means any fees imposed by the designated recipient's institution for receiving a remittance transfer into an account except if the institution acts as an agent of the remittance transfer provider.

[77 FR 6285, Feb. 7, 2012, as amended at 77 FR 50282, Aug. 20, 2012; 78 FR 30703, May 22, 2013]

§1005.31 Disclosures.

(a) *General form of disclosures*—(1) *Clear and conspicuous.* Disclosures required by this subpart or permitted by paragraph (b)(1)(viii) of this section or §1005.33(h)(3) must be clear and conspicuous. Disclosures required by this subpart or permitted by paragraph (b)(1)(viii) of this section or §1005.33(h)(3) may contain commonly accepted or readily understandable abbreviations or symbols.

(2) *Written and electronic disclosures.* Disclosures required by this subpart generally must be provided to the sender in writing. Disclosures required by paragraph (b)(1) of this section may be provided electronically, if the sender electronically requests the remittance transfer provider to send the remittance transfer. Written and electronic disclosures required by this subpart generally must be made in a retainable form. Disclosures provided via mobile application or text message, to the extent permitted by paragraph (a)(5) of this section, need not be retainable.

(3) *Disclosures for oral telephone transactions.* The information required by paragraph (b)(1) of this section may be disclosed orally if:

(i) The transaction is conducted orally and entirely by telephone;

(ii) The remittance transfer provider complies with the requirements of paragraph (g)(2) of this section;

(iii) The provider discloses orally a statement about the rights of the sender regarding cancellation required by paragraph (b)(2)(iv) of this section pursuant to the timing requirements in paragraph (e)(1) of this section; and

(iv) The provider discloses orally, as each is applicable, the information required by paragraph (b)(2)(vii) of this section and the information required by §1005.36(d)(1)(i)(A), with respect to transfers subject to §1005.36(d)(2)(ii), pursuant to the timing requirements in paragraph (e)(1) of this section.

(4) *Oral disclosures for certain error resolution notices.* The information required by §1005.33(c)(1) may be disclosed orally if:

(i) The remittance transfer provider determines that an error occurred as described by the sender; and

(ii) The remittance transfer provider complies with the requirements of paragraph (g)(2) of this section.

(5) *Disclosures for mobile application or text message transactions.* The information required by paragraph (b)(1) of this section may be disclosed orally or via mobile application or text message if:

(i) The transaction is conducted entirely by telephone via mobile application or text message;

(ii) The remittance transfer provider complies with the requirements of paragraph (g)(2) of this section;

(iii) The provider discloses orally or via mobile application or text message a statement about the rights of the sender regarding cancellation required by paragraph (b)(2)(iv) of this section pursuant to the timing requirements in paragraph (e)(1) of this section; and

(iv) The provider discloses orally or via mobile application or text message, as each is applicable, the information required by paragraph (b)(2)(vii) of this section and the information required by §1005.36(d)(1)(i)(A), with respect to transfers subject to §1005.36(d)(2)(ii), pursuant to the timing requirements in paragraph (e)(1) of this section.

(b) *Disclosure requirements*—(1) *Prepayment disclosure.* A remittance transfer provider must disclose to a sender, as applicable:

(i) The amount that will be transferred to the designated recipient, in the currency in which the remittance transfer is funded, using the term ''Transfer Amount'' or a substantially similar term;

(ii) Any fees imposed and any taxes collected on the remittance transfer by the provider, in the currency in which the remittance transfer is funded, using the terms ''Transfer Fees'' for fees and ''Transfer Taxes'' for taxes, or substantially similar terms;

(iii) The total amount of the transaction, which is the sum of paragraphs (b)(1)(i) and (ii) of this section, in the currency in which the remittance transfer is funded, using the term ''Total'' or a substantially similar term;

(iv) The exchange rate used by the provider for the remittance transfer, rounded consistently for each currency to no fewer than two decimal places and no more than four decimal places, using the term ''Exchange Rate'' or a substantially similar term;

(v) The amount in paragraph (b)(1)(i) of this section, in the currency in which the funds will be received by the designated recipient, but only if covered third-party fees are imposed under paragraph (b)(1)(vi) of this section, using the term ''Transfer Amount'' or a substantially similar term. The exchange rate used to calculate this amount is the exchange rate in paragraph (b)(1)(iv) of this section, including an estimated exchange rate to the extent permitted by §1005.32, prior to any rounding of the exchange rate;

(vi) Any covered third-party fees, in the currency in which the funds will be received by the designated recipient, using the term ''Other Fees,'' or a substantially similar term. The exchange rate used to calculate any covered third-party fees is the exchange rate in paragraph (b)(1)(iv) of this section, including an estimated exchange rate to the extent permitted by §1005.32, prior to any rounding of the exchange rate;

(vii) The amount that will be received by the designated recipient, in the currency in which the funds will be received, using the term ''Total to Recipient'' or a substantially similar term except that this amount shall not include non-covered third party fees or taxes collected on the remittance transfer by a person other than the provider regardless of whether such fees or taxes are disclosed pursuant to

paragraph (b)(1)(viii) of this section. The exchange rate used to calculate this amount is the exchange rate in paragraph (b)(1)(iv) of this section, including an estimated exchange rate to the extent permitted by §1005.32, prior to any rounding of the exchange rate.

(viii) A statement indicating that non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider may apply to the remittance transfer and result in the designated recipient receiving less than the amount disclosed pursuant to paragraph (b)(1)(vii) of this section. A provider may only include this statement to the extent that such fees or taxes do or may apply to the transfer, using the language set forth in Model Forms A–30(a) through (c) of Appendix A to this part, as appropriate, or substantially similar language. In this statement, a provider also may, but is not required, to disclose any applicable non-covered third-party fees or taxes collected by a person other than the provider. Any such figure must be disclosed in the currency in which the funds will be received, using the language set forth in Model Forms A–30(b) through (d) of Appendix A to this part, as appropriate, or substantially similar language. The exchange rate used to calculate any disclosed non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider is the exchange rate in paragraph (b)(1)(iv) of this section, including an estimated exchange rate to the extent permitted by §1005.32, prior to any rounding of the exchange rate;

(2) *Receipt*. A remittance transfer provider must disclose to a sender, as applicable:

(i) The disclosures described in paragraphs (b)(1)(i) through (viii) of this section;

(ii) The date in the foreign country on which funds will be available to the designated recipient, using the term ''Date Available'' or a substantially similar term. A provider may provide a statement that funds may be available to the designated recipient earlier than the date disclosed, using the term ''may be available sooner'' or a substantially similar term;

(iii) The name and, if provided by the sender, the telephone number and/or address of the designated recipient, using the term ''Recipient'' or a substantially similar term;

(iv) A statement about the rights of the sender regarding the resolution of errors and cancellation, using language set forth in Model Form A–37 of Appendix A to this part or substantially similar language. For any remittance transfer scheduled by the sender at least three business days before the date of the transfer, the statement about the rights of the sender regarding cancellation must instead reflect the requirements of §1005.36(c);

(v) The name, telephone number(s), and Web site of the remittance transfer provider;

(vi) A statement that the sender can contact the State agency that licenses or charters the remittance transfer provider with respect to the remittance transfer and the Consumer Financial Protection Bureau for questions or complaints about the remittance transfer provider, using language set forth in Model Form A–37 of Appendix A to this part or substantially similar language. The disclosure must provide the name, telephone number(s), and Web site of the State agency that licenses or charters the remittance transfer provider with respect to the remittance transfer and the name, toll-free telephone number(s), and Web site of the Consumer Financial Protection Bureau; and

(vii) For any remittance transfer scheduled by the sender at least three business days before the date of the transfer, or the first transfer in a series of preauthorized remittance transfers, the date the remittance transfer provider will make or made the remittance transfer, using the term ''Transfer Date,'' or a substantially similar term.

(3) *Combined disclosure*—(i) *In general*. As an alternative to providing the disclosures described in paragraph (b)(1) and (2) of this section, a remittance transfer provider may provide the disclosures described in paragraph (b)(2) of this section, as applicable, in a single disclosure pursuant to the timing requirements in paragraph (e)(1) of this

section. Except as provided in paragraph (b)(3)(ii) of this section, if the remittance transfer provider provides the combined disclosure and the sender completes the transfer, the remittance transfer provider must provide the sender with proof of payment when payment is made for the remittance transfer. The proof of payment must be clear and conspicuous, provided in writing or electronically, and provided in a retainable form.

(ii) *Transfers scheduled before the date of transfer*. If the disclosure described in paragraph (b)(3)(i) of this section is provided in accordance with § 1005.36(a)(1)(i) and payment is not processed by the remittance transfer provider at the time the remittance transfer is scheduled, a remittance transfer provider may provide confirmation that the transaction has been scheduled in lieu of the proof of payment otherwise required by paragraph (b)(3)(i) of this section. The confirmation of scheduling must be clear and conspicuous, provided in writing or electronically, and provided in a retainable form.

(4) *Long form error resolution and cancellation notice*. Upon the sender's request, a remittance transfer provider must promptly provide to the sender a notice describing the sender's error resolution and cancellation rights, using language set forth in Model Form A–36 of Appendix A to this part or substantially similar language. For any remittance transfer scheduled by the sender at least three business days before the date of the transfer, the description of the rights of the sender regarding cancellation must instead reflect the requirements of § 1005.36(c).

(c) *Specific format requirements*—(1) *Grouping*. The information required by paragraphs (b)(1)(i), (ii), and (iii) of this section generally must be grouped together. The information required by paragraphs (b)(1)(v), (vi), (vii), and (viii) of this section generally must be grouped together. Disclosures provided via mobile application or text message, to the extent permitted by paragraph (a)(5) of this section, generally need not comply with the grouping requirements of this paragraph, however information required or permitted by paragraph (b)(1)(viii) of this section must be grouped with information required by paragraph (b)(1)(vii) of this section.

(2) *Proximity*. The information required by paragraph (b)(1)(iv) of this section generally must be disclosed in close proximity to the other information required by paragraph (b)(1) of this section. The information required by paragraph (b)(2)(iv) of this section generally must be disclosed in close proximity to the other information required by paragraph (b)(2) of this section. The information required or permitted by paragraph (b)(1)(viii) must be in close proximity to the information required by paragraph (b)(1)(vii) of this section. Disclosures provided via mobile application or text message, to the extent permitted by paragraph (a)(5) of this section, generally need not comply with the proximity requirements of this paragraph, however information required or permitted by paragraph (b)(1)(viii) of this section must follow the information required by paragraph (b)(1)(vii) of this section.

(3) *Prominence and size*. Written disclosures required by this subpart or permitted by paragraph (b)(1)(viii) of this section must be provided on the front of the page on which the disclosure is printed. Disclosures required by this subpart or permitted by paragraph (b)(1)(viii) of this section that are provided in writing or electronically must be in a minimum eight-point font, except for disclosures provided via mobile application or text message, to the extent permitted by paragraph (a)(5) of this section. Disclosures required by paragraph (b) of this section or permitted by paragraph (b)(1)(viii) of this section that are provided in writing or electronically must be in equal prominence to each other.

(4) *Segregation*. Except for disclosures provided via mobile application or text message, to the extent permitted by paragraph (a)(5) of this section, disclosures required by this subpart that are provided in writing or electronically must be segregated from everything else and must contain only information that is directly related to the disclosures required under this subpart.

(d) *Estimates*. Estimated disclosures may be provided to the extent permitted by § 1005.32. Estimated disclosures must be described using the term

''Estimated'' or a substantially similar term in close proximity to the estimated term or terms.

(e) *Timing.* (1) Except as provided in §1005.36(a), a pre-payment disclosure required by paragraph (b)(1) of this section or a combined disclosure required by paragraph (b)(3) of this section must be provided to the sender when the sender requests the remittance transfer, but prior to payment for the transfer.

(2) Except as provided in §1005.36(a), a receipt required by paragraph (b)(2) of this section generally must be provided to the sender when payment is made for the remittance transfer. If a transaction is conducted entirely by telephone, a receipt required by paragraph (b)(2) of this section may be mailed or delivered to the sender no later than one business day after the date on which payment is made for the remittance transfer. If a transaction is conducted entirely by telephone and involves the transfer of funds from the sender's account held by the provider, the receipt required by paragraph (b)(2) of this section may be provided on or with the next regularly scheduled periodic statement for that account or within 30 days after payment is made for the remittance transfer if a periodic statement is not provided. The statement about the rights of the sender regarding cancellation required by paragraph (b)(2)(iv) of this section may, but need not, be disclosed pursuant to the timing requirements of this paragraph if a provider discloses this information pursuant to paragraphs (a)(3)(iii) or (a)(5)(iii) of this section.

(f) *Accurate when payment is made.* Except as provided in §1005.36(b), disclosures required by this section or permitted by paragraph (b)(1)(viii) of this section must be accurate when a sender makes payment for the remittance transfer, except to the extent estimates are permitted by §1005.32.

(g) *Foreign language disclosures*—(1) *General.* Except as provided in paragraph (g)(2) of this section, disclosures required by this subpart or permitted by paragraph (b)(1)(viii) of this section or §1005.33(h)(3) must be made in English and, if applicable, either in:

(i) Each of the foreign languages principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services, either orally, in writing, or electronically, at the office in which a sender conducts a transaction or asserts an error; or

(ii) The foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction (or for written or electronic disclosures made pursuant to §1005.33, in the foreign language primarily used by the sender with the remittance transfer provider to assert the error), provided that such foreign language is principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services, either orally, in writing, or electronically, at the office in which a sender conducts a transaction or asserts an error, respectively.

(2) *Oral, mobile application, or text message disclosures.* Disclosures provided orally for transactions conducted orally and entirely by telephone under paragraph (a)(3) of this section or orally or via mobile application or text message for transactions conducted via mobile application or text message under paragraph (a)(5) of this section shall be made in the language primarily used by the sender with the remittance transfer provider to conduct the transaction. Disclosures provided orally under paragraph (a)(4) of this section for error resolution purposes shall be made in the language primarily used by the sender with the remittance transfer provider to assert the error.

[77 FR 6285, Feb. 7, 2012, as amended at 77 FR 50282, Aug. 20, 2012; 77 FR 30703, May 22, 2013]

§1005.32 Estimates.

(a) *Temporary exception for insured institutions*—(1) *General.* For disclosures described in §§1005.31(b)(1) through (3) and 1005.36(a)(1) and (2), estimates may be provided in accordance with paragraph (c) of this section for the amounts required to be disclosed under §1005.31(b)(1)(iv) through (vii), if:

(i) A remittance transfer provider cannot determine the exact amounts for reasons beyond its control;

(ii) A remittance transfer provider is an insured institution; and

(iii) The remittance transfer is sent from the sender's account with the institution.

(2) *Sunset date.* Paragraph (a)(1) of this section expires on July 21, 2020.

(3) *Insured institution.* For purposes of this section, the term ''insured institution'' means insured depository institutions (which includes uninsured U.S. branches and agencies of foreign depository institutions) as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), and insured credit unions as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(b) *Permanent exceptions*—(1) *Permanent exception for transfers to certain countries*—(i) *General.* For disclosures described in §§1005.31(b)(1) through (b)(3) and 1005.36(a)(1) and (a)(2), estimates may be provided for transfers to certain countries in accordance with paragraph (c) of this section for the amounts required to be disclosed under §1005.31(b)(1)(iv) through (b)(1)(vii), if a remittance transfer provider cannot determine the exact amounts when the disclosure is required because:

(A) The laws of the recipient country do not permit such a determination, or

(B) The method by which transactions are made in the recipient country does not permit such determination.

(ii) *Safe harbor.* A remittance transfer provider may rely on the list of countries published by the Bureau to determine whether estimates may be provided under paragraph (b)(1) of this section, unless the provider has information that a country's laws or the method by which transactions are conducted in that country permits a determination of the exact disclosure amount.

(2) *Permanent exception for transfers scheduled before the date of transfer.* (i) Except as provided in paragraph (b)(2)(ii) of this section, for disclosures described in §§1005.36(a)(1)(i) and (a)(2)(i), estimates may be provided in accordance with paragraph (d) of this section for the amounts to be disclosed under §§1005.31(b)(1)(iv) through (vii) if the remittance transfer is scheduled by a sender five or more business days before the date of the transfer. In addition, if, at the time the sender schedules such a transfer, the provider agrees to a sender's request to fix the amount to be transferred in the currency in which the remittance transfer will be received and not the currency in which it is funded, estimates may also be provided for the amounts to be disclosed under §§1005.31(b)(1)(i) through (iii), except as provided in paragraph (b)(2)(iii) of this section.

(ii) Covered third-party fees described in §1005.31(b)(1)(vi) may be estimated under paragraph (b)(2)(i) of this section only if the exchange rate is also estimated under paragraph (b)(2)(i) of this section and the estimated exchange rate affects the amount of such fees.

(iii) Fees and taxes described in §1005.31(b)(1)(ii) may be estimated under paragraph (b)(2)(i) of this section only if the amount that will be transferred in the currency in which it is funded is also estimated under paragraph (b)(2)(i) of this section, and the estimated amount affects the amount of such fees and taxes.

(3) *Permanent exception for optional disclosure of non-covered third-party fees and taxes collected by a person other than the provider.* For disclosures described in §§1005.31(b)(1) through (3) and 1005.36(a)(1) and (2), estimates may be provided for applicable non-covered third-party fees and taxes collected on the remittance transfer by a person other than the provider, which are permitted to be disclosed under §1005.31(b)(1)(viii), provided such estimates are based on reasonable sources of information.

(c) *Bases for estimates generally.* Estimates provided pursuant to the exceptions in paragraph (a) or (b)(1) of this section must be based on the below-listed approach or approaches, except as otherwise permitted by this paragraph. If a remittance transfer provider bases an estimate on an approach that is not listed in this paragraph, the provider is deemed to be in compliance with this paragraph so long as the designated recipient receives the same, or greater, amount of funds than the remittance transfer provider disclosed under §1005.31(b)(1)(vii).

(1) *Exchange rate.* In disclosing the exchange rate as required under §1005.31(b)(1)(iv), an estimate must be based on one of the following:

(i) For remittance transfers sent via international ACH that qualify for the exception in paragraph (b)(1)(ii) of this section, the most recent exchange rate set by the recipient country's central bank or other governmental authority and reported by a Federal Reserve Bank;

(ii) The most recent publicly available wholesale exchange rate and, if applicable, any spread that the remittance transfer provider or its correspondent typically applies to such a wholesale rate for remittance transfers for that currency; or

(iii) The most recent exchange rate offered or used by the person making funds available directly to the designated recipient or by the person setting the exchange rate.

(2) *Transfer amount in the currency in which the funds will be received by the designated recipient.* In disclosing the transfer amount in the currency in which the funds will be received by the designated recipient, as required under §1005.31(b)(1)(v), an estimate must be based on the estimated exchange rate provided in accordance with paragraph (c)(1) of this section, prior to any rounding of the estimated exchange rate.

(3) *Covered third-party fees*—(i) *Imposed as percentage of amount transferred.* In disclosing covered third-party fees, as described under §1005.31(b)(1)(vi), that are a percentage of the amount transferred to the designated recipient, an estimated exchange rate must be based on the estimated exchange rate provided in accordance with paragraph (c)(1) of this section, prior to any rounding of the estimated exchange rate.

(ii) *Imposed by the intermediary or final institution.* In disclosing covered third-party fees pursuant to §1005.31(b)(1)(vi), an estimate must be based on one of the following:

(A) The remittance transfer provider's most recent remittance transfer to the designated recipient's institution, or

(B) A representative transmittal route identified by the remittance transfer provider.

(4) Amount of currency that will be received by the designated recipient. In disclosing the amount of currency that will be received by the designated recipient as required under §1005.31(b)(1)(vii), an estimate must be based on the information provided in accordance with paragraphs (c)(1) through (3) of this section, as applicable.

(d) *Bases for estimates for transfers scheduled before the date of transfer.* Estimates provided pursuant to paragraph (b)(2) of this section must be based on the exchange rate or, where applicable, the estimated exchange rate based on an estimation methodology permitted under paragraph (c) of this section that the provider would have used or did use that day in providing disclosures to a sender requesting such a remittance transfer to be made on the same day. If, in accordance with this paragraph, a remittance transfer provider uses a basis described in paragraph (c) of this section but not listed in paragraph (c)(1) of this section, the provider is deemed to be in compliance with this paragraph regardless of the amount received by the designated recipient, so long as the estimation methodology is the same that the provider would have used or did use in providing disclosures to a sender requesting such a remittance transfer to be made on the same day.

[77 FR 6285, Feb. 7, 2012, as amended at 77 FR 50283, Aug. 20, 2012; 78 FR 30704, May 22, 2013; 79 FR 55991, Sept. 18, 2014]

§1005.33 Procedures for resolving errors.

(a) *Definition of error*—(1) *Types of transfers or inquiries covered.* For purposes of this section, the term *error* means:

(i) An incorrect amount paid by a sender in connection with a remittance transfer unless the disclosure stated an estimate of the amount paid by a sender in accordance with §1005.32(b)(2) and the difference results from application of the actual exchange rate, fees, and taxes, rather than any estimated amount;

(ii) A computational or bookkeeping error made by the remittance transfer provider relating to a remittance transfer;

(iii) The failure to make available to a designated recipient the amount of currency disclosed pursuant to

§ 1005.31(b)(1)(vii) and stated in the disclosure provided to the sender under § 1005.31(b)(2) or (3) for the remittance transfer, unless:

(A) The disclosure stated an estimate of the amount to be received in accordance with § 1005.32(a), (b)(1) or (b)(2) and the difference results from application of the actual exchange rate, fees, and taxes, rather than any estimated amounts; or

(B) The failure resulted from extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated; or

(C) The difference results from the application of non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider and the provider provided the disclosure required by § 1005.31(b)(1)(viii).

(iv) The failure to make funds available to a designated recipient by the date of availability stated in the disclosure provided to the sender under § 1005.31(b)(2) or (3) for the remittance transfer, unless the failure to make the funds available resulted from:

(A) Extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated;

(B) Delays related to a necessary investigation or other special action by the remittance transfer provider or a third party as required by the provider's fraud screening procedures or in accordance with the Bank Secrecy Act, 31 U.S.C. 5311 *et seq.*, Office of Foreign Assets Control requirements, or similar laws or requirements;

(C) The remittance transfer being made with fraudulent intent by the sender or any person acting in concert with the sender; or

(D) The sender having provided the remittance transfer provider an incorrect account number or recipient institution identifier for the designated recipient's account or institution, provided that the remittance transfer provider meets the conditions set forth in paragraph (h) of this section;

(v) The sender's request for documentation required by § 1005.31 or for additional information or clarification concerning a remittance transfer, including a request a sender makes to determine whether an error exists under paragraphs (a)(1)(i) through (iv) of this section.

(2) *Types of transfers or inquiries not covered.* The term *error* does not include:

(i) An inquiry about the status of a remittance transfer, except where the funds from the transfer were not made available to a designated recipient by the disclosed date of availability as described in paragraph (a)(1)(iv) of this section;

(ii) A request for information for tax or other recordkeeping purposes;

(iii) A change requested by the designated recipient; or

(iv) A change in the amount or type of currency received by the designated recipient from the amount or type of currency stated in the disclosure provided to the sender under § 1005.31(b)(2) or (3) if the remittance transfer provider relied on information provided by the sender as permitted under § 1005.31 in making such disclosure.

(b) *Notice of error from sender*—(1) *Timing; contents.* A remittance transfer provider shall comply with the requirements of this section with respect to any oral or written notice of error from a sender that:

(i) Is received by the remittance transfer provider no later than 180 days after the disclosed date of availability of the remittance transfer;

(ii) Enables the provider to identify:

(A) The sender's name and telephone number or address;

(B) The recipient's name, and if known, the telephone number or address of the recipient; and

(C) The remittance transfer to which the notice of error applies; and

(iii) Indicates why the sender believes an error exists and includes to the extent possible the type, date, and amount of the error, except for requests for documentation, additional information, or clarification described in paragraph (a)(1)(v) of this section.

(2) *Request for documentation or clarification.* When a notice of error is based on documentation, additional information, or clarification that the sender previously requested under paragraph (a)(1)(v) of this section, the sender's notice of error is timely if received by the

remittance transfer provider the later of 180 days after the disclosed date of availability of the remittance transfer or 60 days after the provider sent the documentation, information, or clarification that had been requested.

(c) *Time limits and extent of investigation*—(1) *Time limits for investigation and report to consumer of error*. A remittance transfer provider shall investigate promptly and determine whether an error occurred within 90 days of receiving a notice of error. The remittance transfer provider shall report the results to the sender, including notice of any remedies available for correcting any error that the provider determines has occurred, within three business days after completing its investigation.

(2) *Remedies*. Except as provided in paragraph (c)(2)(iii) of this section, if, following an assertion of an error by a sender, the remittance transfer provider determines an error occurred, the provider shall, within one business day of, or as soon as reasonably practicable after, receiving the sender's instructions regarding the appropriate remedy, correct the error as designated by the sender by:

(i) In the case of any error under paragraphs (a)(1)(i) through (iii) of this section, as applicable, either:

(A) Refunding to the sender the amount of funds provided by the sender in connection with a remittance transfer which was not properly transmitted, or the amount appropriate to resolve the error; or

(B) Making available to the designated recipient, without additional cost to the sender or to the designated recipient, the amount appropriate to resolve the error;

(ii) Except as provided in paragraph (c)(2)(iii) of this section, in the case of an error under paragraph (a)(1)(iv) of this section

(A) As applicable, either:

(*1*) Refunding to the sender the amount of funds provided by the sender in connection with a remittance transfer which was not properly transmitted, or the amount appropriate to resolve the error; or

(*2*) Making available to the designated recipient the amount appropriate to resolve the error. Such amount must be made available to the designated recipient without additional cost to the sender or to the designated recipient; and

(B) Refunding to the sender any fees imposed and, to the extent not prohibited by law, taxes collected on the remittance transfer;

(iii) In the case of an error under paragraph (a)(1)(iv) of this section that occurred because the sender provided incorrect or insufficient information in connection with the remittance transfer, the remittance transfer provider shall provide the remedies required by paragraphs (c)(2)(ii)(A)(*1*) and (c)(2)(ii)(B) of this section within three business days of providing the report required by paragraph (c)(1) or (d)(1) of this section except that the provider may agree to the sender's request, upon receiving the results of the error investigation, that the funds be applied towards a new remittance transfer, rather than be refunded, if the provider has not yet processed a refund. The provider may deduct from the amount refunded or applied towards a new transfer any fees actually imposed on or, to the extent not prohibited by law, taxes actually collected on the remittance transfer as part of the first unsuccessful remittance transfer attempt except that the provider shall not deduct its own fee.

(iv) In the case of a request under paragraph (a)(1)(v) of this section, providing the requested documentation, information, or clarification.

(d) *Procedures if remittance transfer provider determines no error or different error occurred*. In addition to following the procedures specified in paragraph (c) of this section, the remittance transfer provider shall follow the procedures set forth in this paragraph (d) if it determines that no error occurred or that an error occurred in a manner or amount different from that described by the sender.

(1) *Explanation of results of investigation*. The remittance transfer provider's report of the results of the investigation shall include a written explanation of the provider's findings and shall note the sender's right to request the documents on which the provider relied in making its determination. The explanation shall also address the specific complaint of the sender.

(2) *Copies of documentation.* Upon the sender's request, the remittance transfer provider shall promptly provide copies of the documents on which the provider relied in making its error determination.

(e) *Reassertion of error.* A remittance transfer provider that has fully complied with the error resolution requirements of this section has no further responsibilities under this section should the sender later reassert the same error, except in the case of an error asserted by the sender following receipt of information provided under paragraph (a)(1)(v) of this section.

(f) *Relation to other laws*—(1) *Relation to Regulation E § 1005.11 for incorrect EFTs from a sender's account.* If an alleged error involves an incorrect electronic fund transfer from a sender's account in connection with a remittance transfer, and the sender provides a notice of error to the account-holding institution, the account-holding institution shall comply with the requirements of § 1005.11 governing error resolution rather than the requirements of this section, provided that the account-holding institution is not also the remittance transfer provider. If the remittance transfer provider is also the financial institution that holds the consumer's account, then the error-resolution provisions of this section apply when the sender provides such notice of error.

(2) *Relation to Truth in Lending Act and Regulation Z.* If an alleged error involves an incorrect extension of credit in connection with a remittance transfer, an incorrect amount received by the designated recipient under paragraph (a)(1)(iii) of this section that is an extension of credit for property or services not delivered as agreed, or the failure to make funds available by the disclosed date of availability under paragraph (a)(1)(iv) of this section that is an extension of credit for property or services not delivered as agreed, and the sender provides a notice of error to the creditor extending the credit, the provisions of Regulation Z, 12 CFR 1026.13, governing error resolution apply to the creditor, rather than the requirements of this section, even if the creditor is the remittance transfer provider. However, if the creditor is the remittance transfer provider, paragraph (b) of this section will apply instead of 12 CFR 1026.13(b). If the sender instead provides a notice of error to the remittance transfer provider that is not also the creditor, then the error-resolution provisions of this section apply to the remittance transfer provider.

(3) *Unauthorized remittance transfers.* If an alleged error involves an unauthorized electronic fund transfer for payment in connection with a remittance transfer, §§ 1005.6 and 1005.11 apply with respect to the account-holding institution. If an alleged error involves an unauthorized use of a credit account for payment in connection with a remittance transfer, the provisions of Regulation Z, 12 CFR 1026.12(b), if applicable, and § 1026.13, apply with respect to the creditor.

(g) *Error resolution standards and recordkeeping requirements*—(1) *Compliance program.* A remittance transfer provider shall develop and maintain written policies and procedures that are designed to ensure compliance with the error resolution requirements applicable to remittance transfers under this section.

(2) *Retention of error-related documentation.* The remittance transfer provider's policies and procedures required under paragraph (g)(1) of this section shall include policies and procedures regarding the retention of documentation related to error investigations. Such policies and procedures must ensure, at a minimum, the retention of any notices of error submitted by a sender, documentation provided by the sender to the provider with respect to the alleged error, and the findings of the remittance transfer provider regarding the investigation of the alleged error. Remittance transfer providers are subject to the record retention requirements under § 1005.13.

(h) *Incorrect account number or recipient institution identifier provided by the sender.* The exception in paragraph (a)(1)(iv)(D) of this section applies if:

(1) The remittance transfer provider can demonstrate that the sender provided an incorrect account number or recipient institution identifier to the provider in connection with the remittance transfer;

(2) For any instance in which the sender provided the incorrect recipient institution identifier, prior to or when sending the transfer, the provider used reasonably available means to verify that the recipient institution identifier provided by the sender corresponded to the recipient institution name provided by the sender;

(3) The provider provided notice to the sender before the sender made payment for the remittance transfer that, in the event the sender provided an incorrect account number or recipient institution identifier, the sender could lose the transfer amount. For purposes of providing this disclosure, §1005.31(a)(2) applies to this notice unless the notice is given at the same time as other disclosures required by this subpart for which information is permitted to be disclosed orally or via mobile application or text message, in which case this disclosure may be given in the same medium as those other disclosures;

(4) The incorrect account number or recipient institution identifier resulted in the deposit of the remittance transfer into a customer's account that is not the designated recipient's account; and

(5) The provider promptly used reasonable efforts to recover the amount that was to be received by the designated recipient.

[77 FR 6285, Feb. 7, 2012, as amended at 77 FR 50284, Aug. 20, 2012; 78 FR 30704, May 22, 2013; 78 FR 49366, Aug. 14, 2013; 79 FR 55991, Sept. 18, 2014]

§1005.34 Procedures for cancellation and refund of remittance transfers.

(a) *Sender right of cancellation and refund.* Except as provided in §1005.36(c), a remittance transfer provider shall comply with the requirements of this section with respect to any oral or written request to cancel a remittance transfer from the sender that is received by the provider no later than 30 minutes after the sender makes payment in connection with the remittance transfer if:

(1) The request to cancel enables the provider to identify the sender's name and address or telephone number and the particular transfer to be cancelled; and

(2) The transferred funds have not been picked up by the designated recipient or deposited into an account of the designated recipient.

(b) *Time limits and refund requirements.* A remittance transfer provider shall refund, at no additional cost to the sender, the total amount of funds provided by the sender in connection with a remittance transfer, including any fees and, to the extent not prohibited by law, taxes imposed in connection with the remittance transfer, within three business days of receiving a sender's request to cancel the remittance transfer.

§1005.35 Acts of agents.

A remittance transfer provider is liable for any violation of this subpart by an agent when such agent acts for the provider.

§1005.36 Transfers scheduled before the date of transfer.

(a) *Timing.* (1) For a one-time transfer scheduled five or more business days before the date of transfer or for the first in a series of preauthorized remittance transfers, the remittance transfer provider must:

(i) Provide either the pre-payment disclosure described in §1005.31(b)(1) and the receipt described in §1005.31(b)(2) or the combined disclosure described in §1005.31(b)(3), in accordance with the timing requirements set forth in §1005.31(e); and

(ii) If any of the disclosures provided pursuant to paragraph (a)(1)(i) of this section contain estimates as permitted by §1005.32(b)(2), mail or deliver to the sender an additional receipt meeting the requirements described in §1005.31(b)(2) no later than one business day after the date of the transfer. If the transfer involves the transfer of funds from the sender's account held by the provider, the receipt required by this paragraph may be provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided.

(2) For each subsequent preauthorized remittance transfer:

(i) If any of the information on the most recent receipt provided pursuant to paragraph (a)(1)(i) of this section, or

by this paragraph (a)(2)(i), other than the temporal disclosures required by §1005.31(b)(2)(ii) and (b)(2)(vii), is no longer accurate with respect to a subsequent preauthorized remittance transfer for reasons other than as permitted by §1005.32, then the remittance transfer provider must provide an updated receipt meeting the requirements described in §1005.31(b)(2) to the sender. The provider must mail or deliver this receipt to the sender within a reasonable time prior to the scheduled date of the next subsequent preauthorized remittance transfer. Such receipt must clearly and conspicuously indicate that it contains updated disclosures.

(ii) Unless a receipt was provided in accordance with paragraph (a)(2)(i) of this section that contained no estimates pursuant to §1005.32, the remittance transfer provider must mail or deliver to the sender a receipt meeting the requirements described in §1005.31(b)(2) no later than one business day after the date of the transfer. If the remittance transfer involves the transfer of funds from the sender's account held by the provider, the receipt required by this paragraph may be provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided.

(iii) A remittance transfer provider must provide the disclosures required by paragraph (d) of this section in accordance with the timing requirements of that section.

(b) *Accuracy*. (1) For a one-time transfer scheduled five or more business days in advance or for the first in a series of preauthorized remittance transfers, disclosures provided pursuant to paragraph (a)(1)(i) of this section must comply with §1005.31(f) by being accurate when a sender makes payment except to the extent estimates are permitted by §1005.32.

(2) For each subsequent preauthorized remittance transfer, the most recent receipt provided pursuant to paragraph (a)(1)(i) or (a)(2)(i) of this section must be accurate as of when such transfer is made, except:

(i) The temporal elements required by §1005.31(b)(2)(ii) and (b)(2)(vii) must be accurate only if the transfer is the first transfer to occur after the disclosure was provided; and

(ii) To the extent estimates are permitted by §1005.32.

(3) Disclosures provided pursuant to paragraph (a)(1)(ii) or (a)(2)(ii) of this section must be accurate as of when the remittance transfer to which it pertains is made, except to the extent estimates are permitted by §1005.32(a) or (b)(1).

(c) *Cancellation*. For any remittance transfer scheduled by the sender at least three business days before the date of the transfer, a remittance transfer provider shall comply with any oral or written request to cancel the remittance transfer from the sender if the request to cancel:

(1) Enables the provider to identify the sender's name and address or telephone number and the particular transfer to be cancelled; and

(2) Is received by the provider at least three business days before the scheduled date of the remittance transfer.

(d) *Additional requirements for subsequent preauthorized remittance transfers*—(1) *Disclosure requirement*. (i) For any subsequent transfer in a series of preauthorized remittance transfers, the remittance transfer provider must disclose to the sender:

(A) The date the provider will make the subsequent transfer, using the term ''Future Transfer Date,'' or a substantially similar term;

(B) A statement about the rights of the sender regarding cancellation as described in §1005.31(b)(2)(iv); and

(C) The name, telephone number(s), and Web site of the remittance transfer provider.

(ii) If the future date or dates of transfer are described as occurring in regular periodic intervals, *e.g.*, the 15th of every month, rather than as a specific calendar date or dates, the remittance transfer provider must disclose any future date or dates of transfer that do not conform to the described interval.

(2) *Notice requirements*. (i) Except as described in paragraph (d)(2)(ii) of this section, the disclosures required by paragraph (d)(1) of this section must be received by the sender no more than 12 months, and no less than five business

days prior to the date of any subsequent transfer to which it pertains. The disclosures required by paragraph (d)(1) of this section may be provided in a separate disclosure or may be provided on one or more disclosures required by this subpart related to the same series of preauthorized transfers, so long as the consumer receives the required information for each subsequent preauthorized remittance transfer in accordance with the timing requirements of this paragraph (d)(2)(i).

(ii) For any subsequent preauthorized remittance transfer for which the date of transfer is four or fewer business days after the date payment is made for that transfer, the information required by paragraph (d)(1) of this section must be provided on or with the receipt described in §1005.31(b)(2), or disclosed as permitted by §1005.31(a)(3) or (a)(5), for the initial transfer in that series in accordance with paragraph (a)(1)(i) of this section.

(3) *Specific format requirement.* The information required by paragraph (d)(1)(i)(A) of this section generally must be disclosed in close proximity to the other information required by paragraph (d)(1)(i)(B) of this section.

(4) *Accuracy.* Any disclosure required by paragraph (d)(1) of this section must be accurate as of the date the preauthorized remittance transfer to which it pertains is made.

[76 FR 81023, Dec. 27, 2011, as amended at 77 FR 50284, Aug. 20, 2012]

APPENDIX A TO PART 1005—MODEL DISCLOSURE CLAUSES AND FORMS

A–1—Model Clauses for Unsolicited Issuance (§1005.5(b)(2))
A–2—Model Clauses for Initial Disclosures (§1005.7(b))
A–3—Model Forms for Error Resolution Notice (§§1005.7(b)(10) and 1005.8(b))
A–4—Model Form for Service-Providing Institutions (§1005.14(b)(1)(ii))
A–5—Model Forms for Government Agencies (§1005.15(d)(1) and (2))
A–6—Model Clauses for Authorizing One-Time Electronic Fund Transfers Using Information From a Check (§1005.3(b)(2))
A–7—Model Clauses for Financial Institutions Offering Payroll Card Accounts (§1005.18(c))
A–8—Model Clause for Electronic Collection of Returned Item Fees (§1005.3(b)(3))
A–9—Model Consent Form for Overdraft Services (§1005.17)
A–10 through A–30 [Reserved]
A–30(a)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency including a disclaimer where non-covered third-party fees and foreign taxes may apply (§1005.31(b)(1))
A–30(b) —Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency including a disclaimer with estimate for non-covered third-party fees (§1005.31(b)(1) and §1005.32(b)(3))
A–30(c)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency including a disclaimer with estimate for foreign taxes (§1005.31(b)(1) and §1005.32(b)(3))
A–30(d)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency, including a disclaimer with estimates for non-covered third-party fees and foreign taxes (§1005.31(b)(1) and §1005.32(b)(3))
A–31—Model Form for Receipts for Remittance Transfers Exchanged into Local Currency (§1005.31(b)(2))
A–32—Model Form for Combined Disclosures for Remittance Transfers Exchanged into Local Currency (§1005.31(b)(3))
A–34—Model Form for Receipts for Dollar-to-Dollar Remittance Transfers (§1005.31(b)(2))
A–35—Model Form for Combined Disclosures for Dollar-to-Dollar Remittance Transfers (§1005.31(b)(3))
A–36—Model Form for Error Resolution and Cancellation Disclosures (Long) (§1005.31(b)(4))
A–37—Model Form for Error Resolution and Cancellation Disclosures (Short) (§1005.31(b)(2)(iv) and (b)(2)(vi))
A–39—Model Form for Receipts for Remittance Transfers Exchanged into Local Currency—Spanish (§1005.31(b)(2))
A–40—Model Form for Combined Disclosures for Remittance Transfers Exchanged into Local Currency—Spanish (§1005.31(b)(3))
A–41—Model Form for Error Resolution and Cancellation Disclosures (Long)—Spanish (§1005.31(b)(4))

A–1—MODEL CLAUSES FOR UNSOLICITED ISSUANCE (§1005.5(b)(2))

(a) *Accounts using cards.* You cannot use the enclosed card to transfer money into or out of your account until we have validated it. If you do not want to use the card, please (destroy it at once by cutting it in half).

[Financial institution may add validation instructions here.]

(b) *Accounts using codes.* You cannot use the enclosed code to transfer money into or out of your account until we have validated it. If you do not want to use the code, please (destroy this notice at once).

[Financial institution may add validation instructions here.]

A–2—MODEL CLAUSES FOR INITIAL DISCLOSURES (§ 1005.7(b))

(a) *Consumer Liability (§ 1005.7(b)(1))*.

(Tell us AT ONCE if you believe your [card] [code] has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission using information from your check. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days after you learn of the loss or theft of your [card] [code], you can lose no more than $50 if someone used your [card][code] without your permission.)

If you do NOT tell us within 2 business days after you learn of the loss or theft of your [card] [code], and we can prove we could have stopped someone from using your [card] [code] without your permission if you had told us, you could lose as much as $500.

Also, if your statement shows transfers that you did not make, including those made by card, code or other means, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

(b) *Contact in event of unauthorized transfer (§ 1005.7(b)(2))*. If you believe your [card] [code] has been lost or stolen, call: [Telephone number] or write: [Name of person or office to be notified] [Address].

You should also call the number or write to the address listed above if you believe a transfer has been made using the information from your check without your permission.

(c) *Business days (§ 1005.7(b)(3))*. For purposes of these disclosures, our business days are (Monday through Friday) (Monday through Saturday) (any day including Saturdays and Sundays). Holidays are (not) included.

(d) *Transfer types and limitations (§ 1005.7(b)(4))* (1) *Account access*. You may use your [card][code] to:

(i) Withdraw cash from your [checking] [or] [savings] account.

(ii) Make deposits to your [checking] [or] [savings] account.

(iii) Transfer funds between your checking and savings accounts whenever you request.

(iv) Pay for purchases at places that have agreed to accept the [card] [code].

(v) Pay bills directly [by telephone] from your [checking] [or] [savings] account in the amounts and on the days you request.

Some of these services may not be available at all terminals.

(2) *Electronic check conversion*. You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to:

(i) Pay for purchases.

(ii) Pay bills.

(3) *Limitations on frequency of transfers*. (i) You may make only [insert number, *e.g.*, 3] cash withdrawals from our terminals each [insert time period, *e.g.*, week].

(ii) You can use your telephone bill-payment service to pay [insert number] bills each [insert time period] [telephone call].

(iii) You can use our point-of-sale transfer service for [insert number] transactions each [insert time period].

(iv) For security reasons, there are limits on the number of transfers you can make using our [terminals] [telephone bill-payment service] [point-of-sale transfer service].

(4) *Limitations on dollar amounts of transfers* (i) You may withdraw up to [insert dollar amount] from our terminals each [insert time period] time you use the [card] [code].

(ii) You may buy up to [insert dollar amount] worth of goods or services each [insert time period] time you use the [card] [code] in our point-of-sale transfer service.

(e) *Fees (§ 1005.7(b)(5))* (1) *Per transfer charge*. We will charge you [insert dollar amount] for each transfer you make using our [automated teller machines] [telephone bill-payment service] [point-of-sale transfer service].

(2) *Fixed charge*. We will charge you [insert dollar amount] each [insert time period] for our [automated teller machine service] [telephone bill-payment service] [point-of-sale transfer service].

(3) *Average or minimum balance charge*. We will only charge you for using our [automated teller machines] [telephone bill-payment service] [point-of-sale transfer service] if the [average] [minimum] balance in your [checking account] [savings account] [accounts] falls below [insert dollar amount]. If it does, we will charge you [insert dollar amount] each [transfer] [insert time period].

(f) *Confidentiality (§ 1005.7(b)(9))*. We will disclose information to third parties about your account or the transfers you make:

(i) Where it is necessary for completing transfers, or

(ii) In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant, or

(iii) In order to comply with government agency or court orders, or

(iv) If you give us your written permission.

(g) *Documentation (§ 1005.7(b)(6))* (1) *Terminal transfers*. You can get a receipt at the time you make any transfer to or from your account using one of our [automated teller machines] [or] [point-of-sale terminals].

(2) *Preauthorized credits.* If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, (we will let you know if the deposit is [not] made.) [the person or company making the deposit will tell you every time they send us the money] [you can call us at (insert telephone number) to find out whether or not the deposit has been made].

(3) *Periodic statements.* You will get a [monthly] [quarterly] account statement (unless there are no transfers in a particular month. In any case you will get the statement at least quarterly).

(4) *Passbook account where the only possible electronic fund transfers are preauthorized credits.* If you bring your passbook to us, we will record any electronic deposits that were made to your account since the last time you brought in your passbook.

(h) *Preauthorized payments (§1005.7(b) (6), (7) and (8); §1005.10(d))* (1) *Right to stop payment and procedure for doing so.* If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Here's how:

Call us at [insert telephone number], or write us at [insert address], in time for us to receive your request 3 business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. (We will charge you [insert amount] for each stop-payment order you give.)

(2) *Notice of varying amounts.* If these regular payments may vary in amount, [we] [the person you are going to pay] will tell you, 10 days before each payment, when it will be made and how much it will be. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)

(3) *Liability for failure to stop payment of preauthorized transfer.* If you order us to stop one of these payments 3 business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

(i) *Financial institution's liability (§1005.7(b)(8)).* If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

(1) If, through no fault of ours, you do not have enough money in your account to make the transfer.

(2) If the transfer would go over the credit limit on your overdraft line.

(3) If the automated teller machine where you are making the transfer does not have enough cash.

(4) If the [terminal] [system] was not working properly and you knew about the breakdown when you started the transfer.

(5) If circumstances beyond our control (such as fire or flood) prevent the transfer, despite reasonable precautions that we have taken.

(6) There may be other exceptions stated in our agreement with you.

(j) *ATM fees (§1005.7(b)(11)).* When you use an ATM not owned by us, you may be charged a fee by the ATM operator [or any network used] (and you may be charged a fee for a balance inquiry even if you do not complete a fund transfer).

A–3—Model Forms for Error Resolution Notice (§§1005.7(b)(10) and 1005.8(b))

(a) *Initial and annual error resolution notice (§§1005.7(b)(10) and 1005.8(b)).*

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [insert telephone number] Write us at [insert address] [or email us at [insert email address]] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You

may ask for copies of the documents that we used in our investigation.

(b) *Error resolution notice on periodic statements (§ 1005.8(b)).*

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [insert telephone number] or Write us at [insert address] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

A–4—Model Form for Service-Providing Institutions (§ 1005.14(b)(1)(ii))

ALL QUESTIONS ABOUT TRANSACTIONS MADE WITH YOUR (NAME OF CARD) CARD MUST BE DIRECTED TO US (NAME OF SERVICE PROVIDER), AND NOT TO THE BANK OR OTHER FINANCIAL INSTITUTION WHERE YOU HAVE YOUR ACCOUNT. We are responsible for the [name of service] service and for resolving any errors in transactions made with your [name of card] card.

We will not send you a periodic statement listing transactions that you make using your [name of card] card. The transactions will appear only on the statement issued by your bank or other financial institution. SAVE THE RECEIPTS YOU ARE GIVEN WHEN YOU USE YOUR [NAME OF CARD] CARD, AND CHECK THEM AGAINST THE ACCOUNT STATEMENT YOU RECEIVE FROM YOUR BANK OR OTHER FINANCIAL INSTITUTION. If you have any questions about one of these transactions, call or write us at [telephone number and address] [the telephone number and address indicated below].

IF YOUR [NAME OF CARD] CARD IS LOST OR STOLEN, NOTIFY US AT ONCE by calling or writing to us at [telephone number and address].

A–5—Model Forms for Government Agencies (§ 1005.15(d)(1) and (2))

(a) *Disclosure by government agencies of information about obtaining account balances and account histories (§ 1005.15(d)(1)(i) and (ii)).*

You may obtain information about the amount of benefits you have remaining by calling [telephone number]. That information is also available [on the receipt you get when you make a transfer with your card at (an ATM)(a POS terminal)][when you make a balance inquiry at an ATM][when you make a balance inquiry at specified locations].

You also have the right to receive a written summary of transactions for the 60 days preceding your request by calling [telephone number]. [Optional: Or you may request the summary by contacting your caseworker.]

(b) *Disclosure of error resolution procedures for government agencies that do not provide periodic statements (§ 1005.15(d)(1)(iii) and (d)(2)).*

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [telephone number] Write us at [insert address] [or email us at [insert email address]] as soon as you can, if you think an error has occurred in your [EBT][agency's name for program] account. We must hear from you no later than 60 days after you learn of the error. You will need to tell us:

- Your name and [case] [file] number.
- Why you believe there is an error, and the dollar amount involved.
- Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You

may ask for copies of the documents that we used in our investigation.

If you need more information about our error resolution procedures, call us at [telephone number][the telephone number shown above].

A–6—MODEL CLAUSES FOR AUTHORIZING ONE-TIME ELECTRONIC FUND TRANSFERS USING INFORMATION FROM A CHECK (§1005.3(b)(2))

(a) Notice About Electronic Check Conversion.

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

(b) Alternative Notice About Electronic Check Conversion (Optional).

When you provide a check as payment, you authorize us to use information from your check to make a one-time electronic fund transfer from your account. In certain circumstances, such as for technical or processing reasons, we may process your payment as a check transaction.

[*Specify other circumstances (at payee's option).*]

(c) Notice For Providing Additional Information About Electronic Check Conversion.

When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day [you make] [we receive] your payment[, and you will not receive your check back from your financial institution].

A–7—MODEL CLAUSES FOR FINANCIAL INSTITUTIONS OFFERING PAYROLL CARD ACCOUNTS (§1005.18(c))

(a) Disclosure by financial institutions of information about obtaining account information for payroll card accounts. §1005.18(c)(1).

You may obtain information about the amount of money you have remaining in your payroll card account by calling [telephone number]. This information, along with a 60-day history of account transactions, is also available online at [internet address].

You also have the right to obtain a 60-day written history of account transactions by calling [telephone number], or by writing us at [address].

(b) Disclosure of error-resolution procedures for financial institutions that provide alternative means of obtaining payroll card account information (§1005.18(c)(1)(ii) and (c)(2)).

In Case of Errors or Questions About Your Payroll Card Account Telephone us at [telephone number] or Write us at [address] [or email us at [email address]] as soon as you can, if you think an error has occurred in your payroll card account. We must allow you to report an error until 60 days after the earlier of the date you electronically access your account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared. You may request a written history of your transactions at any time by calling us at [telephone number] or writing us at [address]. You will need to tell us:

Your name and [payroll card account] number.

Why you believe there is an error, and the dollar amount involved.

Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

If you need more information about our error-resolution procedures, call us at [telephone number] [the telephone number shown above] [or visit [internet address]].

A–8—MODEL CLAUSE FOR ELECTRONIC COLLECTION OF RETURNED ITEM FEES (§1005.3(b)(3))

If your payment is returned unpaid, you authorize [us/name of person collecting the fee electronically] to make a one-time electronic fund transfer from your account to collect a fee of [$_____]. [If your payment is returned unpaid, you authorize [us/name of person collecting the fee electronically] to make a one-time electronic fund transfer from your account to collect a fee. The fee will be determined [by]/[as follows]:

A-9 Model Consent Form for Overdraft Services § 1005.17

What You Need to Know about Overdrafts and Overdraft Fees

An overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway. We can cover your overdrafts in two different ways:

1. We have standard overdraft practices that come with your account.
2. We also offer overdraft protection plans, such as a link to a savings account, which may be less expensive than our standard overdraft practices. To learn more, ask us about these plans.

This notice explains our standard overdraft practices.

➢ **What are the standard overdraft practices that come with my account?**

We do authorize and pay overdrafts for the following types of transactions:

- Checks and other transactions made using your checking account number
- Automatic bill payments

We do not authorize and pay overdrafts for the following types of transactions unless you ask us to (see below)

- ATM transactions
- Everyday debit card transactions

We pay overdrafts at our discretion, which means we do not guarantee that we will always authorize and pay any type of transaction.

If we do not authorize and pay an overdraft, your transaction will be declined.

➢ **What fees will I be charged if [Institution Name] pays my overdraft?**

Under our standard overdraft practices:

- We will charge you a fee of up to **$30** each time we pay an overdraft.
- Also, if your account is overdrawn for 5 or more consecutive business days, we will charge an additional $5 per day.
- There is no limit on the total fees we can charge you for overdrawing your account.

➢ **What if I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions?**

If you also want us to authorize and pay overdrafts on ATM and everyday debit card transactions, call [telephone number], visit [website], or complete the form below and [present it at a branch][mail it to:

____ I do not want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

____ I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

Printed Name: _____

Date: _____

[Account Number]: _____

A–10 THROUGH A–29 [RESERVED]

A–30(a)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency (§1005.31(b)(1))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2014

NOT A RECEIPT

Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees:	-30.00 MXN
Total to Recipient:	1,197.00 MXN

Recipient may receive less due to fees charged by the recipient's bank and foreign taxes.

A–30(b)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency (§1005.31(b)(1))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2014

NOT A RECEIPT

Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees:	-30.00 MXN
Total to Recipient:	1,197.00 MXN

Recipient may receive less due to fees charged by the recipient's bank (Est. 40 MXN).

A–30(c)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency (§1005.31(b)(1))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2014

NOT A RECEIPT

Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees:	-30.00 MXN
Total to Recipient:	1,197.00 MXN

Recipient may receive less due to foreign taxes (Est. 10 MXN).

A–30(d)—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency (§1005.31(b)(1))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2014

NOT A RECEIPT

Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees:	-30.00 MXN
Total to Recipient:	1,197.00 MXN

Recipient may receive less due to fees charged by the recipient's bank (Est. 30 MXN) and foreign taxes (Est. 10 MXN).

A–31—Model Form for Receipts for Remittance Transfers Exchanged into Local Currency (§1005.31(b)(2))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2014

RECEIPT

SENDER:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
222-555-1212

RECIPIENT:
Carlos Gomez
123 Calle XXX
Mexico City
Mexico

PICK-UP LOCATION:
ABC Company
65 Avenida YYY
Mexico City
Mexico

Confirmation Code: ABC 123 DEF 456

Date Available: March 4, 2014

Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees:	-30.00 MXN
Total to Recipient:	1,197.00 MXN

Recipient may receive less due to fees charged by the recipient's bank and foreign taxes.

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at 800-123-4567 or www.abccompany.com. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
consumerfinance.gov/sending-money

A–32—Model Form for Combined Disclosures for Remittance Transfers Exchanged into Local Currency (§1005.31(b)(3))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2014

SENDER:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
222-555-1212

RECIPIENT:
Carlos Gomez
123 Calle XXX
Mexico City
Mexico

PICK-UP LOCATION:
ABC Company
65 Avenida YYY
Mexico City
Mexico

Confirmation Code: ABC 123 DEF 456

Date Available: March 4, 2014

Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees:	-30.00 MXN
Total to Recipient:	1,197.00 MXN

Recipient may receive less due to fees charged by the recipient's bank and foreign taxes.

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at 800-123-4567 or www.abccompany.com. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov

A–33—Model Form for Pre-Payment Disclosures for Dollar-to-Dollar Remittance Transfers (§1005.31(b)(1))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2014

NOT A RECEIPT

Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00

Transfer Amount:	$100.00
Other Fees:	-$4.00
Total to Recipient:	$96.00

Recipient may receive less due to fees charged by the recipient's bank and foreign taxes.

A–34—Model Form for Receipts for Dollar-to-Dollar Remittance Transfers (§1005.31(b)(2))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2014

RECEIPT

SENDER:	RECIPIENT:
Pat Jones	Carlos Gomez
100 Anywhere Street	106 Calle XXX
Anytown, Anywhere 54321	Mexico City
301-555-1212	Mexico
	PICK-UP LOCATION:
	ABC Company
	65 Avenida YYY
	Mexico City
	Mexico

Confirmation Code:	ABC 123 DEF 456
Date Available:	March 4, 2014
Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00

Transfer Amount:	$100.00
Other Fees:	-$4.00
Total to Recipient:	$96.00

Recipient may receive less due to fees charged by the recipient's bank and foreign taxes.

You have a right to dispute errors in your transaction. If you think there an error, contact us within 180 days at 800-123-4567 or www.abccompany.com. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov

A–35—Model Form for Combined Disclosures for Dollar-to-Dollar Remittance Transfers (§1005.31(b)(3))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2014

SENDER:	RECIPIENT:
Pat Jones	Carlos Gomez
100 Anywhere Street	106 Calle XXX
Anytown, Anywhere 54321	Mexico City
301-555-1212	Mexico
	PICK-UP LOCATION:
	ABC Company
	65 Avenida YYY
	Mexico City
	Mexico

Confirmation Code:	ABC 123 DEF 456
Date Available:	March 4, 2014
Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00
Transfer Amount:	$100.00
Other Fees:	-$4.00
Total to Recipient:	$96.00

Recipient may receive less due to fees charged by the recipient's bank and foreign taxes.

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at 800-123-4567 or www.abccompany.com. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov

A–36—Model Form for Error Resolution and Cancellation Disclosures (Long) (§1005.31(b)(4))

What to do if you think there has been an error or problem:

If you think there has been an error or problem with your remittance transfer:

- Call us at [insert telephone number][; or]
- Write us at [insert address][; or]
- [E-mail us at [insert electronic mail address]].

You must contact us within 180 days of the date we promised to you that funds would be made available to the recipient. When you do, please tell us:

(1) Your name and address [or telephone number];

(2) The error or problem with the transfer, and why you believe it is an error or problem;

(3) The name of the person receiving the funds, and if you know it, his or her telephone number or address; [and]

(4) The dollar amount of the transfer; [and

(5) The confirmation code or number of the transaction.]

We will determine whether an error occurred within 90 days after you contact us and we will correct any error promptly. We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of any documents we used in our investigation.

What to do if you want to cancel a remittance transfer:
You have the right to cancel a remittance transfer and obtain a refund of all funds paid to us, including any fees. In order to cancel, you must contact us at the [phone number or e-mail address] above within 30 minutes of payment for the transfer.

When you contact us, you must provide us with information to help us identify the transfer you wish to cancel, including the amount and location where the funds were sent. We will refund your money within three business days of your request to cancel a transfer as long as the funds have not already been picked up or deposited into a recipient's account.

A–37—Model Form for Error Resolution and Cancellation Disclosures (Short) (§1005.31(b)(2)(iv) and (b)(2)(vi))

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at [insert telephone number] or [insert website]. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about [insert name of remittance transfer provider], contact:

A–38—Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency—Spanish (§ 1005.31(b)(1))

ABC Company

1000 XYZ Avenue
Anytown, Anystate 12345

Fecha: 3 de marzo de 2014

ESTE NO ES UN RECIBO

Cantidad de Envío:	$100.00
Cargos por Envío:	+$7.00
Impuestos de Envío:	+$3.00
Total:	$110.00

Tasa de Cambio: US$1.00 = 12.27 MXN

Cantidad de Envío:	1,227.00 MXN
Otros Cargos por Envío:	-30.00 MXN
Total al Destinatario:	1,197.00 MXN

El beneficiario podría recibir menos dinero debido a las comisiones cobradas por el banco del beneficiario e impuestos extranjeros.

A–39—Model Form for Receipts for Remittance Transfers Exchanged into Local Currency—Spanish (§1005.31(b)(2))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Fecha: 3 de marzo de 2014

RECIBO

REMITENTE:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
222-555-1212

DESTINATARIO:
Carlos Gomez
123 Calle XXX
Ciudad de Mexico, D.F.
Mexico

PUNTO DE PAGO:
ABC Company
65 Avenida YYY
Ciudad de Mexico, D.F.
Mexico

Código de Confirmación: ABC 123 DEF 456

Fecha Disponible: 4 de marzo de 2014

Cantidad de Envío:	$100.00
Cargos por Envío:	+$7.00
Impuestos de Envío:	+$3.00
Total:	$110.00

Tasa de Cambio: US$1.00 = 12.27 MXN

Cantidad de Envío:	1,227.00 MXN
Otros Cargos por Envío:	-30.00 MXN
Total al Destinatario:	1,197.00 MXN

El beneficiario podría recibir menos dinero debido a las comisiones cobradas por el banco del beneficiario e impuestos extranjeros.

Usted tiene el derecho de discutir errores en su transaccion. Si cree que hay un error, contáctenos dentro de 180 días al 800-123-4567 o www.abccompany.com. También puede contactarnos para obtener una explicación escrita de sus derechos.

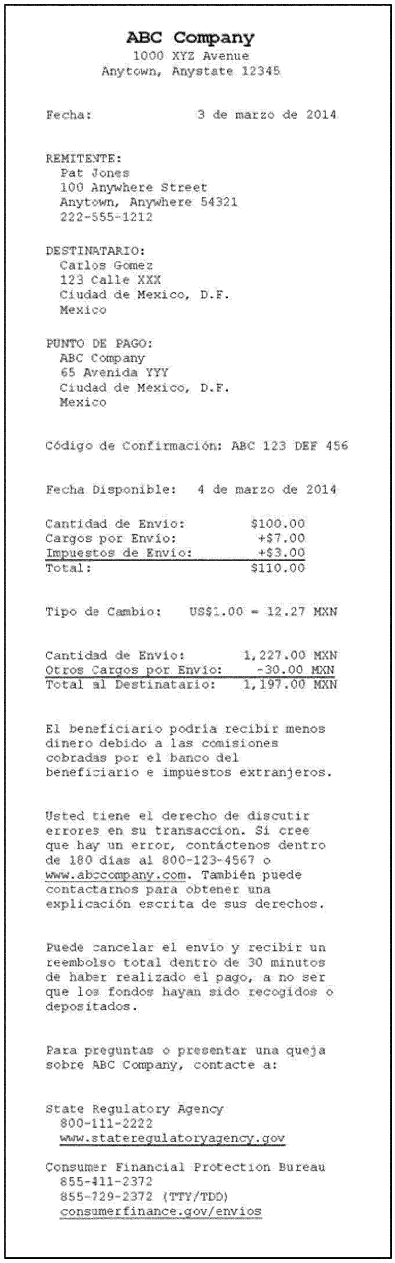
Puede cancelar el envío y recibir un reembolso total dentro de 30 minutos de haber realizado el pago, a no ser que los fondos hayan sido recogidos o depositados.

Para preguntas o presentar una queja
sobre ABC Company, contacte a:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov

A–40—Model Form for Combined Disclosures for Remittance Transfers Exchanged into Local Currency—Spanish (§1005.31(b)(3))



ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Fecha: 3 de marzo de 2014

REMITENTE:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
222-555-1212

DESTINATARIO:
Carlos Gomez
123 Calle XXX
Ciudad de Mexico, D.F.
Mexico

PUNTO DE PAGO:
ABC Company
65 Avenida YYY
Ciudad de Mexico, D.F.
Mexico

Código de Confirmación: ABC 123 DEF 456

Fecha Disponible: 4 de marzo de 2014

Cantidad de Envío:	$100.00
Cargos por Envío:	+$7.00
Impuestos de Envío:	+$3.00
Total:	$110.00

Tipo de Cambio: US$1.00 = 12.27 MXN

Cantidad de Envío:	1,227.00 MXN
Otros Cargos por Envío:	-30.00 MXN
Total al Destinatario:	1,197.00 MXN

El beneficiario podría recibir menos dinero debido a las comisiones cobradas por el banco del beneficiario e impuestos extranjeros.

Usted tiene el derecho de discutir errores en su transacción. Si cree que hay un error, contáctenos dentro de 180 días al 800-123-4567 o www.abccompany.com. También puede contactarnos para obtener una explicación escrita de sus derechos.

Puede cancelar el envío y recibir un reembolso total dentro de 30 minutos de haber realizado el pago, a no ser que los fondos hayan sido recogidos o depositados.

Para preguntas o presentar una queja sobre ABC Company, contacte a:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
consumerfinance.gov/envios

A–41—Model Form for Error Resolution and Cancellation Disclosures (Long)—Spanish (§1005.31(b)(4))

Lo que usted debe hacer si cree que hay un error o problema:

Si cree que hay un error o problema con su envío de dinero:

- Llámenos a [inserte número de teléfono][; o]
- Escríbanos a [inserte dirección][; o]
- [Envíenos un correo electrónico a [inserte dirección de correo electrónico]].

Debe contactarnos dentro de 180 días a partir de la fecha en que se le prometió que los fondos estarían disponibles al destinatario. Cuando se comunique con nosotros, por favor provea la siguiente información:

(1) Su nombre y dirección [o número de teléfono];

(2) El error o problema con su envío de dinero, y por qué cree que hay un error o problema;

(3) El nombre del destinatario, y si lo sabe, su número de teléfono o dirección; [y]

(4) El monto del envío en dólares; [y

(5) El código de confirmación o el número de la transacción.]

Nosotros determinaremos si ocurrió un error dentro de 90 días después de que usted nos contacte y lo corregiremos rápidamente. Le diremos los resultados dentro de tres días hábiles después de terminar nuestra investigación. Si decidimos que no hubo un error, le enviaremos a usted una explicación escrita. Usted puede pedir copias de los documentos que usamos en nuestra investigación.

Lo que usted debe hacer si quiere cancelar un envío de dinero:

Tiene el derecho de cancelar un envío de dinero y obtener un reembolso de todo el dinero, incluyendo tarifas o gastos que usted nos pagó. Para cancelar debe contactarnos al [número de teléfono o dirección de correo electrónico] que se encuentra arriba dentro de 30 minutos de haber realizado el pago para el envío de dinero.

Cuando nos contacte, debe proveernos información que nos ayudará a identificar el envío de dinero que quiere cancelar, incluyendo la cantidad del envío y el lugar adonde fue enviado. Le reembolsaremos su dinero dentro de tres días hábiles de su petición de cancelar, a no ser que los fondos hayan sido recogidos o depositados en la cuenta del destinatario.

[76 FR 81023, Dec. 27, 2011, as amended at 77 FR 6290, Feb. 7, 2012; 77 FR 40459, July 10, 2012; 78 FR 30705, May 22, 2013; 79 FR 55991, Sept. 18, 2014]

APPENDIX B TO PART 1005 [RESERVED]

APPENDIX C TO PART 1005—ISSUANCE OF OFFICIAL INTERPRETATIONS

OFFICIAL INTERPRETATIONS

Pursuant to section 916(d) of the Act, the Bureau has designated the Associate Director and other officials of the Division of Research, Markets, and Regulations as officials ''duly authorized'' to issue, at their discretion, official interpretations of this part. Except in unusual circumstances, such interpretations will not be issued separately but

will be incorporated in an official commentary to this part, which will be amended periodically.

REQUESTS FOR ISSUANCE OF OFFICIAL INTERPRETATIONS

A request for an official interpretation shall be in writing and addressed to the Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006. The request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

SCOPE OF INTERPRETATIONS

No interpretations will be issued approving financial institutions' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

SUPPLEMENT I TO PART 1005—OFFICIAL INTERPRETATIONS

SECTION 1005.2 DEFINITIONS

2(a) Access Device

1. *Examples.* The term ''access device'' includes debit cards, personal identification numbers (PINs), telephone transfer and telephone bill payment codes, and other means that may be used by a consumer to initiate an electronic fund transfer (EFT) to or from a consumer account. The term does not include magnetic tape or other devices used internally by a financial institution to initiate electronic transfers.

2. *Checks used to capture information.* The term ''access device'' does not include a check or draft used to capture the Magnetic Ink Character Recognition (MICR) encoding to initiate a one-time automated clearinghouse (ACH) debit. For example, if a consumer authorizes a one-time ACH debit from the consumer's account using a blank, partially completed, or fully completed and signed check for the merchant to capture the routing, account, and serial numbers to initiate the debit, the check is not an access device. (Although the check is not an access device under Regulation E, the transaction is nonetheless covered by the regulation. *See* comment 3(b)(1)–1.v.)

2(b) Account

1. *Consumer asset account.* The term ''consumer asset account'' includes:

i. Club accounts, such as vacation clubs. In many cases, however, these accounts are exempt from the regulation under §1005.3(c)(5) because all electronic transfers to or from the account have been preauthorized by the consumer and involve another account of the consumer at the same institution.

ii. A retail repurchase agreement (repo), which is a loan made to a financial institution by a consumer that is collateralized by government or government-insured securities.

2. *Certain employment-related cards not covered.* The term ''payroll card account'' does not include a card used solely to disburse incentive-based payments (other than commissions which can represent the primary means through which a consumer is paid), such as bonuses, which are unlikely to be a consumer's primary source of salary or other compensation. The term also does not include a card used solely to make disbursements unrelated to compensation, such as petty cash reimbursements or travel per diem payments. Similarly, a payroll card account does not include a card that is used in isolated instances to which an employer typically does not make recurring payments, such as when providing final payments or in emergency situations when other payment methods are unavailable. However, all transactions involving the transfer of funds to or from a payroll card account are covered by the regulation, even if a particular transaction involves payment of a bonus, other incentive-based payment, or reimbursement, or the transaction does not represent a transfer of wages, salary, or other employee compensation.

3. Examples of accounts not covered by Regulation E (12 CFR part 1005) include:

i. Profit-sharing and pension accounts established under a trust agreement, which are exempt under §1005.2(b)(2).

ii. Escrow accounts, such as those established to ensure payment of items such as real estate taxes, insurance premiums, or completion of repairs or improvements.

iii. Accounts for accumulating funds to purchase U.S. savings bonds.

Paragraph 2(b)(2)

1. *Bona fide trust agreements.* The term ''bona fide trust agreement'' is not defined by the Act or regulation; therefore, financial institutions must look to state or other applicable law for interpretation.

2. *Custodial agreements.* An account held under a custodial agreement that qualifies as a trust under the Internal Revenue Code, such as an individual retirement account, is considered to be held under a trust agreement for purposes of Regulation E.

2(d) Business Day

1. *Duration.* A business day includes the entire 24-hour period ending at midnight, and a notice required by the regulation is effective even if given outside normal business hours. The regulation does not require, however, that a financial institution make telephone lines available on a 24-hour basis.

2. *Substantially all business functions.* Substantially all business functions include both the public and the back-office operations of

the institution. For example, if the offices of an institution are open on Saturdays for handling some consumer transactions (such as deposits, withdrawals, and other teller transactions), but not for performing internal functions (such as investigating account errors), then Saturday is not a business day for that institution. In this case, Saturday does not count toward the business-day standard set by the regulation for reporting lost or stolen access devices, resolving errors, *etc.*

3. *Short hours.* A financial institution may determine, at its election, whether an abbreviated day is a business day. For example, if an institution engages in substantially all business functions until noon on Saturdays instead of its usual 3 p.m. closing, it may consider Saturday a business day.

4. *Telephone line.* If a financial institution makes a telephone line available on Sundays for reporting the loss or theft of an access device, but performs no other business functions, Sunday is not a business day under the substantially all business functions standard.

2(h) Electronic Terminal

1. *Point-of-sale (POS) payments initiated by telephone.* Because the term ''electronic terminal'' excludes a telephone operated by a consumer, a financial institution need not provide a terminal receipt when:

i. A consumer uses a debit card at a public telephone to pay for the call.

ii. A consumer initiates a transfer by a means analogous in function to a telephone, such as by home banking equipment or a facsimile machine.

2. *POS terminals.* A POS terminal that captures data electronically, for debiting or crediting to a consumer's asset account, is an electronic terminal for purposes of Regulation E even if no access device is used to initiate the transaction. *See* §1005.9 for receipt requirements.

3. *Teller-operated terminals.* A terminal or other computer equipment operated by an employee of a financial institution is not an electronic terminal for purposes of the regulation. However, transfers initiated at such terminals by means of a consumer's access device (using the consumer's PIN, for example) are EFTs and are subject to other requirements of the regulation. If an access device is used only for identification purposes or for determining the account balance, the transfers are not EFTs for purposes of the regulation.

2(k) Preauthorized Electronic Fund Transfer

1. *Advance authorization.* A preauthorized electronic fund transfer under Regulation E is one authorized by the consumer in advance of a transfer that will take place on a recurring basis, at substantially regular intervals, and will require no further action by the consumer to initiate the transfer. In a bill-payment system, for example, if the consumer authorizes a financial institution to make monthly payments to a payee by means of EFTs, and the payments take place without further action by the consumer, the payments are preauthorized EFTs. In contrast, if the consumer must take action each month to initiate a payment (such as by entering instructions on a touch-tone telephone or home computer), the payments are not preauthorized EFTs.

2(m) Unauthorized Electronic Fund Transfer

1. *Transfer by institution's employee.* A consumer has no liability for erroneous or fraudulent transfers initiated by an employee of a financial institution.

2. *Authority.* If a consumer furnishes an access device and grants authority to make transfers to a person (such as a family member or co-worker) who exceeds the authority given, the consumer is fully liable for the transfers unless the consumer has notified the financial institution that transfers by that person are no longer authorized.

3. *Access device obtained through robbery or fraud.* An unauthorized EFT includes a transfer initiated by a person who obtained the access device from the consumer through fraud or robbery.

4. *Forced initiation.* An EFT at an ATM is an unauthorized transfer if the consumer has been induced by force to initiate the transfer.

5. *Reversal of direct deposits.* The reversal of a direct deposit made in error is not an unauthorized EFT when it involves:

i. A credit made to the wrong consumer's account;

ii. A duplicate credit made to a consumer's account; or

iii. A credit in the wrong amount (for example, when the amount credited to the consumer's account differs from the amount in the transmittal instructions).

SECTION 1005.3 COVERAGE

3(a) General

1. *Accounts covered.* The requirements of the regulation apply only to an account for which an agreement for EFT services to or from the account has been entered into between:

i. The consumer and the financial institution (including an account for which an access device has been issued to the consumer, for example);

ii. The consumer and a third party (for preauthorized debits or credits, for example), when the account-holding institution has received notice of the agreement and the fund transfers have begun.

2. *Automated clearing house (ACH) membership.* The fact that membership in an ACH

requires a financial institution to accept EFTs to accounts at the institution does not make every account of that institution subject to the regulation.

3. *Foreign applicability.* Regulation E applies to all persons (including branches and other offices of foreign banks located in the United States) that offer EFT services to residents of any state, including resident aliens. It covers any account located in the United States through which EFTs are offered to a resident of a state. This is the case whether or not a particular transfer takes place in the United States and whether or not the financial institution is chartered in the United States or a foreign country. The regulation does not apply to a foreign branch of a U.S. bank unless the EFT services are offered in connection with an account in a state as defined in §1005.2(l).

3(b) Electronic Fund Transfer

3(b)(1) Definition

1. *Fund transfers covered.* The term ''electronic fund transfer'' includes:

i. A deposit made at an ATM or other electronic terminal (including a deposit in cash or by check) provided a specific agreement exists between the financial institution and the consumer for EFTs to or from the account to which the deposit is made.

ii. A transfer sent via ACH. For example, social security benefits under the U.S. Treasury's direct-deposit program are covered, even if the listing of payees and payment amounts reaches the account-holding institution by means of a computer printout from a correspondent bank.

iii. A preauthorized transfer credited or debited to an account in accordance with instructions contained on magnetic tape, even if the financial institution holding the account sends or receives a composite check.

iv. A transfer from the consumer's account resulting from a debit-card transaction at a merchant location, even if no electronic terminal is involved at the time of the transaction, if the consumer's asset account is subsequently debited for the amount of the transfer.

v. A transfer via ACH where a consumer has provided a check to enable the merchant or other payee to capture the routing, account, and serial numbers to initiate the transfer, whether the check is blank, partially completed, or fully completed and signed; whether the check is presented at POS or is mailed to a merchant or other payee or lockbox and later converted to an EFT; or whether the check is retained by the consumer, the merchant or other payee, or the payee's financial institution.

vi. A payment made by a bill payer under a bill-payment service available to a consumer via computer or other electronic means, unless the terms of the bill-payment service explicitly state that all payments, or all payments to a particular payee or payees, will be solely by check, draft, or similar paper instrument drawn on the consumer's account, and the payee or payees that will be paid in this manner are identified to the consumer.

2. *Fund transfers not covered.* The term ''electronic fund transfer'' does not include:

i. A payment that does not debit or credit a consumer asset account, such as a payroll allotment to a creditor to repay a credit extension (which is deducted from salary).

ii. A payment made in currency by a consumer to another person at an electronic terminal.

iii. A preauthorized check drawn by the financial institution on the consumer's account (such as an interest or other recurring payment to the consumer or another party), even if the check is computer-generated.

iv. Transactions arising from the electronic collection, presentment, or return of checks through the check collection system, such as through transmission of electronic check images.

3(b)(2) Electronic Fund Transfer Using Information From a Check

1. *Notice at POS not furnished due to inadvertent error.* If the copy of the notice under section 1005.3(b)(2)(ii) for electronic check conversion (ECK) transactions is not provided to the consumer at POS because of a bona fide unintentional error, such as when a terminal printing mechanism jams, no violation results if the payee maintains procedures reasonably adapted to avoid such occurrences.

2. *Authorization to process a transaction as an EFT or as a check.* In order to process a transaction as an EFT, or alternatively as a check, the payee must obtain the consumer's authorization to do so. A payee may, at its option, specify the circumstances under which a check may not be converted to an EFT. *See* model clauses in appendix A–6.

3. *Notice for each transfer.* Generally, a notice to authorize an electronic check conversion transaction must be provided for each transaction. For example, a consumer must receive a notice that the transaction will be processed as an EFT for each transaction at POS or each time a consumer mails a check in an accounts receivable (ARC) transaction to pay a bill, such as a utility bill, if the payee intends to convert a check received as payment. Similarly, the consumer must receive notice if the payee intends to collect a service fee for insufficient or uncollected funds via an EFT for each transaction whether at POS or if the consumer mails a check to pay a bill. The notice about when funds may be debited from a consumer's account and the non-return of consumer

checks by the consumer's financial institution must also be provided for each transaction. However, if in an ARC transaction, a payee provides a coupon book to a consumer, for example, for mortgage loan payments, and the payment dates and amounts are set out in the coupon book, the payee may provide a single notice on the coupon book stating all of the required disclosures under paragraph (b)(2) of this section in order to obtain authorization for each conversion of a check and any debits via EFT to the consumer's account to collect any service fees imposed by the payee for insufficient or uncollected funds in the consumer's account. The notice must be placed on a conspicuous location of the coupon book that a consumer can retain—for example, on the first page, or inside the front cover.

4. *Multiple payments/multiple consumers.* If a merchant or other payee will use information from a consumer's check to initiate an EFT from the consumer's account, notice to a consumer listed on the billing account that a check provided as payment during a single billing cycle or after receiving an invoice or statement will be processed as a one-time EFT or as a check transaction constitutes notice for all checks provided in payment for the billing cycle or the invoice for which notice has been provided, whether the check(s) is submitted by the consumer or someone else. The notice applies to all checks provided in payment for the billing cycle or invoice until the provision of notice on or with the next invoice or statement. Thus, if a merchant or other payee receives a check as payment for the consumer listed on the billing account after providing notice that the check will be processed as a one-time EFT, the authorization from that consumer constitutes authorization to convert any other checks provided for that invoice or statement. Other notices required under this paragraph (b)(2) (for example, to collect a service fee for insufficient or uncollected funds via an EFT) provided to the consumer listed on the billing account also constitutes notice to any other consumer who may provide a check for the billing cycle or invoice.

5. *Additional disclosures about ECK transactions at POS.* When a payee initiates an EFT at POS using information from the consumer's check, and returns the check to the consumer at POS, the payee need not provide a notice to the consumer that the check will not be returned by the consumer's financial institution.

3(b)(3) Collection of Returned Item Fees via Electronic Fund Transfer

1. *Fees imposed by account-holding institution.* The requirement to obtain a consumer's authorization to collect a fee via EFT for the return of an EFT or check unpaid applies only to the person that intends to initiate an EFT to collect the returned item fee from the consumer's account. The authorization requirement does not apply to any fees assessed by the consumer's account-holding financial institution when it returns the unpaid underlying EFT or check or pays the amount of an overdraft.

2. *Accounts receivable transactions.* In an ARC transaction where a consumer sends in a payment for amounts owed (or makes an in-person payment at a biller's physical location, such as when a consumer makes a loan payment at a bank branch or places a payment in a drop box), a person seeking to electronically collect a fee for items returned unpaid must obtain the consumer's authorization to collect the fee in this manner. A consumer authorizes a person to electronically collect a returned item fee when the consumer receives notice, typically on an invoice or statement, that the person may collect the fee through an EFT to the consumer's account, and the consumer goes forward with the underlying transaction by providing payment. The notice must also state the dollar amount of the fee. However, an explanation of how that fee will be determined may be provided in place of the dollar amount of the fee if the fee may vary due to the amount of the transaction or due to other factors, such as the number of days the underlying transaction is left outstanding. For example, if a state law permits a maximum fee of $30 or 10% of the underlying transaction, whichever is greater, the person collecting the fee may explain how the fee is determined, rather than state a specific dollar amount for the fee.

3. *Disclosure of dollar amount of fee for POS transactions.* The notice provided to the consumer in connection with a POS transaction under §1005.3(b)(3)(ii) must state the amount of the fee for a returned item if the dollar amount of the fee can be calculated at the time the notice is provided or mailed. For example, if notice is provided to the consumer at the time of the transaction, if the applicable state law sets a maximum fee that may be collected for a returned item based on the amount of the underlying transaction (such as where the amount of the fee is expressed as a percentage of the underlying transaction), the person collecting the fee must state the actual dollar amount of the fee on the notice provided to the consumer. Alternatively, if the amount of the fee to be collected cannot be calculated at the time of the transaction (for example, where the amount of the fee will depend on the number of days a debt continues to be owed), the person collecting the fee may provide a description of how the fee will be determined on both the posted notice as well as on the notice provided at the time of the transaction. However, if the person collecting the fee elects to send the consumer notice after the person has initiated an EFT

to collect the fee, that notice must state the amount of the fee to be collected.

4. *Third party providing notice.* The person initiating an EFT to a consumer's account to electronically collect a fee for an item returned unpaid may obtain the authorization and provide the notices required under §1005.3(b)(3) through third parties, such as merchants.

3(c) Exclusions From Coverage

3(c)(1) Checks

1. *Re-presented checks.* The electronic representment of a returned check is not covered by Regulation E because the transaction originated by check. Regulation E does apply, however, to any fee debited via an EFT from a consumer's account by the payee because the check was returned for insufficient or uncollected funds. The person debiting the fee electronically must obtain the consumer's authorization.

2. *Check used to capture information for a one-time EFT. See* comment 3(b)(1)–1.v.

3(c)(2) Check Guarantee or Authorization

1. *Memo posting.* Under a check guarantee or check authorization service, debiting of the consumer's account occurs when the check or draft is presented for payment. These services are exempt from coverage, even when a temporary hold on the account is memo-posted electronically at the time of authorization.

3(c)(3) Wire or Other Similar Transfers

1. *Fedwire and ACH.* If a financial institution makes a fund transfer to a consumer's account after receiving funds through Fedwire or a similar network, the transfer by ACH is covered by the regulation even though the Fedwire or network transfer is exempt.

2. *Article 4A.* Financial institutions that offer telephone-initiated Fedwire payments are subject to the requirements of UCC section 4A–202, which encourages verification of Fedwire payment orders pursuant to a security procedure established by agreement between the consumer and the receiving bank. These transfers are not subject to Regulation E and the agreement is not considered a telephone plan if the service is offered separately from a telephone bill-payment or other prearranged plan subject to Regulation E. Regulation J of the Board of Governors of the Federal Reserve System (12 CFR part 210) specifies the rules applicable to funds handled by Federal Reserve Banks. To ensure that the rules for all fund transfers through Fedwire are consistent, the Board of Governors used its preemptive authority under UCC section 4A–107 to determine that subpart B of the Board's Regulation J, including the provisions of Article 4A, applies to all fund transfers through Fedwire, even if a portion of the fund transfer is governed by the EFTA. The portion of the fund transfer that is governed by the EFTA is not governed by subpart B of the Board's Regulation J.

3. *Similar fund transfer systems.* Fund transfer systems that are similar to Fedwire include the Clearing House Interbank Payments System (CHIPS), Society for Worldwide Interbank Financial Telecommunication (SWIFT), Telex, and transfers made on the books of correspondent banks.

3(c)(4) Securities and Commodities Transfers

1. *Coverage.* The securities exemption applies to securities and commodities that may be sold by a registered broker-dealer or futures commission merchant, even when the security or commodity itself is not regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

2. *Example of exempt transfer.* The exemption applies to a transfer involving a transfer initiated by a telephone order to a stockbroker to buy or sell securities or to exercise a margin call.

3. *Examples of nonexempt transfers.* The exemption does not apply to a transfer involving:

i. A debit card or other access device that accesses a securities or commodities account such as a money market mutual fund and that the consumer uses for purchasing goods or services or for obtaining cash.

ii. A payment of interest or dividends into the consumer's account (for example, from a brokerage firm or from a Federal Reserve Bank for government securities).

3(c)(5) Automatic Transfers by Account-Holding Institution

1. *Automatic transfers exempted.* The exemption applies to:

i. Electronic debits or credits to consumer accounts for check charges, stop-payment charges, non-sufficient funds (NSF) charges, overdraft charges, provisional credits, error adjustments, and similar items that are initiated automatically on the occurrence of certain events.

ii. Debits to consumer accounts for group insurance available only through the financial institution and payable only by means of an aggregate payment from the institution to the insurer.

iii. EFTs between a thrift institution and its paired commercial bank in the state of Rhode Island, which are deemed under state law to be intra-institutional.

iv. Automatic transfers between a consumer's accounts within the same financial institution, even if the account holders on the two accounts are not identical.

2. *Automatic transfers not exempted.* Transfers between accounts of the consumer at affiliated institutions (such as between a bank and its subsidiary or within a holding company) are not intra-institutional transfers, and thus do not qualify for the exemption.

3(c)(6) Telephone-Initiated Transfers

1. *Written plan or agreement.* A transfer that the consumer initiates by telephone is covered by Regulation E if the transfer is made under a written plan or agreement between the consumer and the financial institution making the transfer. A written statement available to the public or to account holders that describes a service allowing a consumer to initiate transfers by telephone constitutes a plan; for example, a brochure, or material included with periodic statements. The following, however, do not by themselves constitute a written plan or agreement:

i. A hold-harmless agreement on a signature card that protects the institution if the consumer requests a transfer.

ii. A legend on a signature card, periodic statement, or passbook that limits the number of telephone-initiated transfers the consumer can make from a savings account because of reserve requirements under Regulation D of the Board of Governors of the Federal Reserve System (12 CFR part 204).

iii. An agreement permitting the consumer to approve by telephone the rollover of funds at the maturity of an instrument.

2. *Examples of covered transfers.* When a written plan or agreement has been entered into, a transfer initiated by a telephone call from a consumer is covered even though:

i. An employee of the financial institution completes the transfer manually (for example, by means of a debit memo or deposit slip).

ii. The consumer is required to make a separate request for each transfer.

iii. The consumer uses the plan infrequently.

iv. The consumer initiates the transfer via a facsimile machine.

v. The consumer initiates the transfer using a financial institution's audio-response or voice-response telephone system.

3(c)(7) Small Institutions

1. *Coverage.* This exemption is limited to preauthorized transfers; institutions that offer other EFTs must comply with the applicable sections of the regulation as to such services. The preauthorized transfers remain subject to sections 913, 916, and 917 of the Act and §1005.10(e), and are therefore exempt from UCC Article 4A.

SECTION 1005.4 GENERAL DISCLOSURE REQUIREMENTS; JOINTLY OFFERED SERVICES

4(a) Form of Disclosures

1. *General.* Although no particular rules govern type size, number of pages, or the relative conspicuousness of various terms, the disclosures must be in a clear and readily understandable written form that the consumer may retain. Numbers or codes are considered readily understandable if explained elsewhere on the disclosure form.

2. *Foreign language disclosures.* Disclosures may be made in languages other than English, provided they are available in English upon request.

SECTION 1005.5 ISSUANCE OF ACCESS DEVICES

1. *Coverage.* The provisions of this section limit the circumstances under which a financial institution may issue an access device to a consumer. Making an additional account accessible through an existing access device is equivalent to issuing an access device and is subject to the limitations of this section.

5(a) Solicited Issuance

Paragraph 5(a)(1)

1. *Joint account.* For a joint account, a financial institution may issue an access device to each account holder if the requesting holder specifically authorizes the issuance.

2. *Permissible forms of request.* The request for an access device may be written or oral (for example, in response to a telephone solicitation by a card issuer).

Paragraph 5(a)(2)

1. *One-for-one rule.* In issuing a renewal or substitute access device, only one renewal or substitute device may replace a previously issued device. For example, only one new card and PIN may replace a card and PIN previously issued. A financial institution may provide additional devices at the time it issues the renewal or substitute access device, however, provided the institution complies with §1005.5(b). *See* comment 5(b)–5. If the replacement device or the additional device permits either fewer or additional types of electronic fund transfer services, a change-in-terms notice or new disclosures are required.

2. *Renewal or substitution by a successor institution.* A successor institution is an entity that replaces the original financial institution (for example, following a corporate merger or acquisition) or that acquires accounts or assumes the operation of an EFT system.

5(b) Unsolicited Issuance

1. *Compliance.* A financial institution may issue an unsolicited access device (such as the combination of a debit card and PIN) if

the institution's ATM system has been programmed not to accept the access device until after the consumer requests and the institution validates the device. Merely instructing a consumer not to use an unsolicited debit card and PIN until after the institution verifies the consumer's identity does not comply with the regulation.

2. *PINs.* A financial institution may impose no liability on a consumer for unauthorized transfers involving an unsolicited access device until the device becomes an ''accepted access device'' under the regulation. A card and PIN combination may be treated as an accepted access device once the consumer has used it to make a transfer.

3. *Functions of PIN.* If an institution issues a PIN at the consumer's request, the issuance may constitute both a way of validating the debit card and the means to identify the consumer (required as a condition of imposing liability for unauthorized transfers).

4. *Verification of identity.* To verify the consumer's identity, a financial institution may use any reasonable means, such as a photograph, fingerprint, personal visit, signature comparison, or personal information about the consumer. However, even if reasonable means were used, if an institution fails to verify correctly the consumer's identity and an imposter succeeds in having the device validated, the consumer is not liable for any unauthorized transfers from the account.

5. *Additional access devices in a renewal or substitution.* A financial institution may issue more than one access device in connection with the renewal or substitution of a previously issued accepted access device, provided that any additional access device (beyond the device replacing the accepted access device) is not validated at the time it is issued, and the institution complies with the other requirements of §1005.5(b). The institution may, if it chooses, set up the validation procedure such that both the device replacing the previously issued device and the additional device are not validated at the time they are issued, and validation will apply to both devices. If the institution sets up the validation procedure in this way, the institution should provide a clear and readily understandable disclosure to the consumer that both devices are unvalidated and that validation will apply to both devices.

SECTION 1005.6 LIABILITY OF CONSUMER FOR UNAUTHORIZED TRANSFERS

6(a) Conditions for Liability

1. *Means of identification.* A financial institution may use various means for identifying the consumer to whom the access device is issued, including but not limited to:

i. Electronic or mechanical confirmation (such as a PIN).

ii. Comparison of the consumer's signature, fingerprint, or photograph.

2. *Multiple users.* When more than one access device is issued for an account, the financial institution may, but need not, provide a separate means to identify each user of the account.

6(b) Limitations on Amount of Liability

1. *Application of liability provisions.* There are three possible tiers of consumer liability for unauthorized EFTs depending on the situation. A consumer may be liable for: (1) up to $50; (2) up to $500; or (3) an unlimited amount depending on when the unauthorized EFT occurs. More than one tier may apply to a given situation because each corresponds to a different (sometimes overlapping) time period or set of conditions.

2. *Consumer negligence.* Negligence by the consumer cannot be used as the basis for imposing greater liability than is permissible under Regulation E. Thus, consumer behavior that may constitute negligence under state law, such as writing the PIN on a debit card or on a piece of paper kept with the card, does not affect the consumer's liability for unauthorized transfers. (However, refer to comment 2(m)–2 regarding termination of the authority of given by the consumer to another person.)

3. *Limits on liability.* The extent of the consumer's liability is determined solely by the consumer's promptness in reporting the loss or theft of an access device. Similarly, no agreement between the consumer and an institution may impose greater liability on the consumer for an unauthorized transfer than the limits provided in Regulation E.

6(b)(1) Timely Notice Given

1. *$50 limit applies.* The basic liability limit is $50. For example, the consumer's card is lost or stolen on Monday and the consumer learns of the loss or theft on Wednesday. If the consumer notifies the financial institution within two business days of learning of the loss or theft (by midnight Friday), the consumer's liability is limited to $50 or the amount of the unauthorized transfers that occurred before notification, whichever is less.

2. *Knowledge of loss or theft of access device.* The fact that a consumer has received a periodic statement that reflects unauthorized transfers may be a factor in determining whether the consumer had knowledge of the loss or theft, but cannot be deemed to represent conclusive evidence that the consumer had such knowledge.

3. *Two business day rule.* The two business day period does not include the day the consumer learns of the loss or theft or any day

that is not a business day. The rule is calculated based on two 24-hour periods, without regard to the financial institution's business hours or the time of day that the consumer learns of the loss or theft. For example, a consumer learns of the loss or theft at 6 p.m. on Friday. Assuming that Saturday is a business day and Sunday is not, the two business day period begins on Saturday and expires at 11:59 p.m. on Monday, not at the end of the financial institution's business day on Monday.

6(b)(2) Timely Notice Not Given

1. *$500 limit applies.* The second tier of liability is $500. For example, the consumer's card is stolen on Monday and the consumer learns of the theft that same day. The consumer reports the theft on Friday. The $500 limit applies because the consumer failed to notify the financial institution within two business days of learning of the theft (which would have been by midnight Wednesday). How much the consumer is actually liable for, however, depends on when the unauthorized transfers take place. In this example, assume a $100 unauthorized transfer was made on Tuesday and a $600 unauthorized transfer on Thursday. Because the consumer is liable for the amount of the loss that occurs within the first two business days (but no more than $50), plus the amount of the unauthorized transfers that occurs after the first two business days and before the consumer gives notice, the consumer's total liability is $500 ($50 of the $100 transfer plus $450 of the $600 transfer, in this example). But if $600 was taken on Tuesday and $100 on Thursday, the consumer's maximum liability would be $150 ($50 of the $600 plus $100).

6(b)(3) Periodic Statement; Timely Notice Not Given

1. *Unlimited liability applies.* The standard of unlimited liability applies if unauthorized transfers appear on a periodic statement, and may apply in conjunction with the first two tiers of liability. If a periodic statement shows an unauthorized transfer made with a lost or stolen debit card, the consumer must notify the financial institution within 60 calendar days after the periodic statement was sent; otherwise, the consumer faces unlimited liability for all unauthorized transfers made after the 60-day period. The consumer's liability for unauthorized transfers before the statement is sent, and up to 60 days following, is determined based on the first two tiers of liability: up to $50 if the consumer notifies the financial institution within two business days of learning of the loss or theft of the card and up to $500 if the consumer notifies the institution after two business days of learning of the loss or theft.

2. *Transfers not involving access device.* The first two tiers of liability do not apply to unauthorized transfers from a consumer's account made without an access device. If, however, the consumer fails to report such unauthorized transfers within 60 calendar days of the financial institution's transmittal of the periodic statement, the consumer may be liable for any transfers occurring after the close of the 60 days and before notice is given to the institution. For example, a consumer's account is electronically debited for $200 without the consumer's authorization and by means other than the consumer's access device. If the consumer notifies the institution within 60 days of the transmittal of the periodic statement that shows the unauthorized transfer, the consumer has no liability. However, if in addition to the $200, the consumer's account is debited for a $400 unauthorized transfer on the 61st day and the consumer fails to notify the institution of the first unauthorized transfer until the 62nd day, the consumer may be liable for the full $400.

6(b)(4) Extension of Time Limits

1. *Extenuating circumstances.* Examples of circumstances that require extension of the notification periods under this section include the consumer's extended travel or hospitalization.

6(b)(5) Notice to Financial Institution

1. *Receipt of notice.* A financial institution is considered to have received notice for purposes of limiting the consumer's liability if notice is given in a reasonable manner, even if the consumer notifies the institution but uses an address or telephone number other than the one specified by the institution.

2. *Notice by third party.* Notice to a financial institution by a person acting on the consumer's behalf is considered valid under this section. For example, if a consumer is hospitalized and unable to report the loss or theft of an access device, notice is considered given when someone acting on the consumer's behalf notifies the bank of the loss or theft. A financial institution may require appropriate documentation from the person representing the consumer to establish that the person is acting on the consumer's behalf.

3. *Content of notice.* Notice to a financial institution is considered given when a consumer takes reasonable steps to provide the institution with the pertinent account information. Even when the consumer is unable to provide the account number or the card number in reporting a lost or stolen access device or an unauthorized transfer, the notice effectively limits the consumer's liability if the consumer otherwise identifies sufficiently the account in question. For example, the consumer may identify the account by the name on the account and the type of account in question.

SECTION 1005.7 INITIAL DISCLOSURES

7(a) Timing of Disclosures

1. *Early disclosures.* Disclosures given by a financial institution earlier than the regulation requires (for example, when the consumer opens a checking account) need not be repeated when the consumer later enters into an agreement with a third party to initiate preauthorized transfers to or from the consumer's account, unless the terms and conditions differ from those that the institution previously disclosed. This interpretation also applies to any notice provided about one-time EFTs from a consumer's account initiated using information from the consumer's check. On the other hand, if an agreement for EFT services to be provided by an account-holding institution is directly between the consumer and the account-holding institution, disclosures must be given in close proximity to the event requiring disclosure, for example, when the consumer contracts for a new service.

2. *Lack of advance notice of a transfer.* Where a consumer authorizes a third party to debit or credit the consumer's account, an account-holding institution that has not received advance notice of the transfer or transfers must provide the required disclosures as soon as reasonably possible after the first debit or credit is made, unless the institution has previously given the disclosures.

3. *Addition of new accounts.* If a consumer opens a new account permitting EFTs at a financial institution, and the consumer already has received Regulation E disclosures for another account at that institution, the institution need only disclose terms and conditions that differ from those previously given.

4. *Addition of service in interchange systems.* If a financial institution joins an interchange or shared network system (which provides access to terminals operated by other institutions), disclosures are required for additional EFT services not previously available to consumers if the terms and conditions differ from those previously disclosed.

5. *Disclosures covering all EFT services offered.* An institution may provide disclosures covering all EFT services that it offers, even if some consumers have not arranged to use all services.

7(b) Content of Disclosures

7(b)(1) Liability of Consumer

1. *No liability imposed by financial institution.* If a financial institution chooses to impose zero liability for unauthorized EFTs, it need not provide the liability disclosures. If the institution later decides to impose liability, however, it must first provide the disclosures.

2. *Preauthorized transfers.* If the only EFTs from an account are preauthorized transfers, liability could arise if the consumer fails to report unauthorized transfers reflected on a periodic statement. To impose such liability on the consumer, the institution must have disclosed the potential liability and the telephone number and address for reporting unauthorized transfers.

3. *Additional information.* At the institution's option, the summary of the consumer's liability may include advice on promptly reporting unauthorized transfers or the loss or theft of the access device.

7(b)(2) Telephone Number and Address

1. *Disclosure of telephone numbers.* An institution may use the same or different telephone numbers in the disclosures for the purpose of:

i. Reporting the loss or theft of an access device or possible unauthorized transfers;

ii. Inquiring about the receipt of a preauthorized credit;

iii. Stopping payment of a preauthorized debit;

iv. Giving notice of an error.

2. *Location of telephone number.* The telephone number need not be incorporated into the text of the disclosure; for example, the institution may instead insert a reference to a telephone number that is readily available to the consumer, such as ''Call your branch office. The number is shown on your periodic statement.'' However, an institution must provide a specific telephone number and address, on or with the disclosure statement, for reporting a lost or stolen access device or a possible unauthorized transfer.

7(b)(4) Types of Transfers; Limitations

1. *Security limitations.* Information about limitations on the frequency and dollar amount of transfers generally must be disclosed in detail, even if related to security aspects of the system. If the confidentiality of certain details is essential to the security of an account or system, these details may be withheld (but the fact that limitations exist must still be disclosed). For example, an institution limits cash ATM withdrawals to $100 per day. The institution may disclose that daily withdrawal limitations apply and need not disclose that the limitations may not always be in force (such as during periods when its ATMs are off-line).

2. *Restrictions on certain deposit accounts.* A limitation on account activity that restricts the consumer's ability to make EFTs must be disclosed even if the restriction also applies to transfers made by non-electronic means. For example, Regulation D of the Board of Governors of the Federal Reserve System (12 CFR part 204) restricts the number of payments to third parties that may be made from a money market deposit account;

an institution that does not execute fund transfers in excess of those limits must disclose the restriction as a limitation on the frequency of EFTs.

3. *Preauthorized transfers.* Financial institutions are not required to list preauthorized transfers among the types of transfers that a consumer can make.

4. *One-time EFTs initiated using information from a check.* Financial institutions must disclose the fact that one-time EFTs initiated using information from a consumer's check are among the types of transfers that a consumer can make. *See* appendix A–2.

7(b)(5) Fees

1. *Disclosure of EFT fees.* An institution is required to disclose all fees for EFTs or the right to make them. Others fees (for example, minimum-balance fees, stop-payment fees, or account overdrafts) may, but need not, be disclosed. *But see* Regulation DD, 12 CFR part 1030. An institution is not required to disclose fees for inquiries made at an ATM since no transfer of funds is involved.

2. *Fees also applicable to non-EFT.* A per-item fee for EFTs must be disclosed even if the same fee is imposed on non-electronic transfers. If a per-item fee is imposed only under certain conditions, such as when the transactions in the cycle exceed a certain number, those conditions must be disclosed. Itemization of the various fees may be provided on the disclosure statement or on an accompanying document that is referenced in the statement.

3. *Interchange system fees.* Fees paid by the account-holding institution to the operator of a shared or interchange ATM system need not be disclosed, unless they are imposed on the consumer by the account-holding institution. Fees for use of an ATM that are debited directly from the consumer's account by an institution other than the account-holding institution (for example, fees included in the transfer amount) need not be disclosed. *See* §1005.7(b)(11) for the general notice requirement regarding fees that may be imposed by ATM operators and by a network used to complete the transfer.

7(b)(9) Confidentiality

1. *Information provided to third parties.* An institution must describe the circumstances under which any information relating to an account to or from which EFTs are permitted will be made available to third parties, not just information concerning those EFTs. The term ''third parties'' includes affiliates such as other subsidiaries of the same holding company.

7(b)(10) Error Resolution

1. *Substantially similar.* The error resolution notice must be substantially similar to the model form in appendix A of part 1005. An institution may use different wording so long as the substance of the notice remains the same, may delete inapplicable provisions (for example, the requirement for written confirmation of an oral notification), and may substitute substantive state law requirements affording greater consumer protection than Regulation E.

2. *Extended time-period for certain transactions.* To take advantage of the longer time periods for resolving errors under §1005.11(c)(3) (for new accounts as defined in Regulation CC of the Board of Governors of the Federal Reserve System (12 CFR part 229), transfers initiated outside the United States, or transfers resulting from POS debit-card transactions), a financial institution must have disclosed these longer time periods. Similarly, an institution that relies on the exception from provisional crediting in §1005.11(c)(2) for accounts subject to Regulation T of the Board of Governors of the Federal Reserve System (12 CFR part 220) must have disclosed accordingly.

7(c) Addition of Electronic Fund Transfer Services

1. *Addition of electronic check conversion services.* One-time EFTs initiated using information from a consumer's check are a new type of transfer requiring new disclosures, as applicable. *See* appendix A–2.

SECTION 1005.8 CHANGE-IN-TERMS NOTICE; ERROR RESOLUTION NOTICE

8(a) Change-in-Terms Notice

1. *Form of notice.* No specific form or wording is required for a change-in-terms notice. The notice may appear on a periodic statement, or may be given by sending a copy of a revised disclosure statement, provided attention is directed to the change (for example, in a cover letter referencing the changed term).

2. *Changes not requiring notice.* The following changes do not require disclosure:

i. Closing some of an institution's ATMs;

ii. Cancellation of an access device.

3. *Limitations on transfers.* When the initial disclosures omit details about limitations because secrecy is essential to the security of the account or system, a subsequent increase in those limitations need not be disclosed if secrecy is still essential. If, however, an institution had no limits in place when the initial disclosures were given and now wishes to impose limits for the first time, it must disclose at least the fact that limits have been adopted. *See also* §1005.7(b)(4) and the related commentary.

4. *Change in telephone number or address.* When a financial institution changes the telephone number or address used for reporting possible unauthorized transfers, a change-in-terms notice is required only if the institution will impose liability on the

consumer for unauthorized transfers under §1005.6. *See also* §1005.6(a) and the related commentary.

8(b) Error Resolution Notice

1. *Change between annual and periodic notice.* If an institution switches from an annual to a periodic notice, or vice versa, the first notice under the new method must be sent no later than 12 months after the last notice sent under the old method.

2. *Exception for new accounts.* For new accounts, disclosure of the longer error resolution time periods under §1005.11(c)(3) is not required in the annual error resolution notice or in the notice that may be provided with each periodic statement as an alternative to the annual notice.

SECTION 1005.9 RECEIPTS AT ELECTRONIC TERMINALS; PERIODIC STATEMENTS

9(a) Receipts at Electronic Terminals

1. *Receipts furnished only on request.* The regulation requires that a receipt be ''made available.'' A financial institution may program its electronic terminals to provide a receipt only to consumers who elect to receive one.

2. *Third party providing receipt.* An account-holding institution may make terminal receipts available through third parties such as merchants or other financial institutions.

3. *Inclusion of promotional material.* A financial institution may include promotional material on receipts if the required information is set forth clearly (for example, by separating it from the promotional material). In addition, a consumer may not be required to surrender the receipt or that portion containing the required disclosures in order to take advantage of a promotion.

4. *Transfer not completed.* The receipt requirement does not apply to a transfer that is initiated but not completed (for example, if the ATM is out of currency or the consumer decides not to complete the transfer).

5. *Receipts not furnished due to inadvertent error.* If a receipt is not provided to the consumer because of a bona fide unintentional error, such as when a terminal runs out of paper or the mechanism jams, no violation results if the financial institution maintains procedures reasonably adapted to avoid such occurrences.

6. *Multiple transfers.* If the consumer makes multiple transfers at the same time, the financial institution may document them on a single or on separate receipts.

9(a)(1) Amount

1. *Disclosure of transaction fee.* The required display of a fee amount on or at the terminal may be accomplished by displaying the fee on a sign at the terminal or on the terminal screen for a reasonable duration. Displaying the fee on a screen provides adequate notice, as long as a consumer is given the option to cancel the transaction after receiving notice of a fee. *See* §1005.16 for the notice requirements applicable to ATM operators that impose a fee for providing EFT services.

2. *Relationship between §1005.9(a)(1) and §1005.16.* The requirements of §§1005.9(a)(1) and 1005.16 are similar but not identical.

i. Section 1005.9(a)(1) requires that if the amount of the transfer as shown on the receipt will include the fee, then the fee must be disclosed either on a sign on or at the terminal, or on the terminal screen. Section 1005.16 requires disclosure both on a sign on or at the terminal (in a prominent and conspicuous location) and on the terminal screen. Section 1005.16 permits disclosure on a paper notice as an alternative to the on-screen disclosure.

ii. The disclosure of the fee on the receipt under §1005.9(a)(1) cannot be used to comply with the alternative paper disclosure procedure under §1005.16, if the receipt is provided at the completion of the transaction because, pursuant to the statute, the paper notice must be provided before the consumer is committed to paying the fee.

iii. Section 1005.9(a)(1) applies to any type of electronic terminal as defined in Regulation E (for example, to POS terminals as well as to ATMs), while §1005.16 applies only to ATMs.

9(a)(2) Date

1. *Calendar date.* The receipt must disclose the calendar date on which the consumer uses the electronic terminal. An accounting or business date may be disclosed in addition if the dates are clearly distinguished.

9(a)(3) Type

1. *Identifying transfer and account.* Examples identifying the type of transfer and the type of the consumer's account include ''withdrawal from checking,'' ''transfer from savings to checking,'' or ''payment from savings.''

2. *Exception.* Identification of an account is not required when the consumer can access only one asset account at a particular time or terminal, even if the access device can normally be used to access more than one account. For example, the consumer may be able to access only one particular account at terminals not operated by the account-holding institution, or may be able to access only one particular account when the terminal is off-line. The exception is available even if, in addition to accessing one asset account, the consumer also can access a credit line.

3. *Access to multiple accounts.* If the consumer can use an access device to make transfers to or from different accounts of the same type, the terminal receipt must specify

which account was accessed, such as ''withdrawal from checking I'' or ''withdrawal from checking II.'' If only one account besides the primary checking account can be debited, the receipt can identify the account as ''withdrawal from other account.''

4. *Generic descriptions.* Generic descriptions may be used for accounts that are similar in function, such as share draft or NOW accounts and checking accounts. In a shared system, for example, when a credit union member initiates transfers to or from a share draft account at a terminal owned or operated by a bank, the receipt may identify a withdrawal from the account as a ''withdrawal from checking.''

5. *Point-of-sale transactions.* There is no prescribed terminology for identifying a transfer at a merchant's POS terminal. A transfer may be identified, for example, as a purchase, a sale of goods or services, or a payment to a third party. When a consumer obtains cash from a POS terminal in addition to purchasing goods, or obtains cash only, the documentation need not differentiate the transaction from one involving the purchase of goods.

9(a)(5) Terminal Location

1. *Options for identifying terminal.* The institution may provide either:

i. The city, state or foreign country, and the information in §1005.9(a)(5) (i), (ii), or (iii), or

ii. A number or a code identifying the terminal. If the institution chooses the second option, the code or terminal number identifying the terminal where the transfer is initiated may be given as part of a transaction code.

2. *Omission of city name.* The city may be omitted if the generally accepted name (such as a branch name) contains the city name.

3. *Omission of a state.* A state may be omitted from the location information on the receipt if:

i. All the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in that state, or

ii. All transfers occur at terminals located within 50 miles of the financial institution's main office.

4. *Omission of a city and state.* A city and state may be omitted if all the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in the same city.

Paragraph 9(a)(5)(i)

1. *Street address.* The address should include number and street (or intersection); the number (or intersecting street) may be omitted if the street alone uniquely identifies the terminal location.

Paragraph 9(a)(5)(ii)

1. *Generally accepted name.* Examples of a generally accepted name for a specific location include a branch of the financial institution, a shopping center, or an airport.

Paragraph 9(a)(5)(iii)

1. *Name of owner or operator of terminal.* Examples of an owner or operator of a terminal are a financial institution or a retail merchant.

9(a)(6) Third Party Transfer

1. *Omission of third-party name.* The receipt need not disclose the third-party name if the name is provided by the consumer in a form that is not machine readable (for example, if the consumer indicates the payee by depositing a payment stub into the ATM). If, on the other hand, the consumer keys in the identity of the payee, the receipt must identify the payee by name or by using a code that is explained elsewhere on the receipt.

2. *Receipt as proof of payment.* Documentation required under the regulation constitutes prima facie proof of a payment to another person, except in the case of a terminal receipt documenting a deposit.

9(b) Periodic Statements

1. *Periodic cycles.* Periodic statements may be sent on a cycle that is shorter than monthly. The statements must correspond to periodic cycles that are reasonably equal, that is, do not vary by more than four days from the regular cycle. The requirement of reasonably equal cycles does not apply when an institution changes cycles for operational or other reasons, such as to establish a new statement day or date.

2. *Interim statements.* Generally, a financial institution must provide periodic statements for each monthly cycle in which an EFT occurs, and at least quarterly if a transfer has not occurred. Where EFTs occur between regularly-scheduled cycles, interim statements must be provided. For example, if an institution issues quarterly statements at the end of March, June, September and December, and the consumer initiates an EFT in February, an interim statement for February must be provided. If an interim statement contains interest or rate information, the institution must comply with Regulation DD, 12 CFR 1030.6.

3. *Inactive accounts.* A financial institution need not send statements to consumers whose accounts are inactive as defined by the institution.

4. *Statement pickup.* A financial institution may permit, but may not require, consumers to pick up their periodic statements at the financial institution.

5. *Periodic statements limited to EFT activity.* A financial institution that uses a passbook as the primary means for displaying account

activity, but also allows the account to be debited electronically, may provide a periodic statement requirement that reflects only the EFTs and other required disclosures (such as charges, account balances, and address and telephone number for inquiries). *See* §1005.9(c)(1)(i) for the exception applicable to preauthorized transfers for passbook accounts.

6. *Codes and accompanying documents.* To meet the documentation requirements for periodic statements, a financial institution may:

i. Include copies of terminal receipts to reflect transfers initiated by the consumer at electronic terminals;

ii. Enclose posting memos, deposit slips, and other documents that, together with the statement, disclose all the required information;

iii. Use codes for names of third parties or terminal locations and explain the information to which the codes relate on an accompanying document.

9(b)(1) Transaction Information

1. *Information obtained from others.* While financial institutions must maintain reasonable procedures to ensure the integrity of data obtained from another institution, a merchant, or other third parties, verification of each transfer that appears on the periodic statement is not required.

Paragraph 9(b)(1)(i)

1. *Incorrect deposit amount.* If a financial institution determines that the amount actually deposited at an ATM is different from the amount entered by the consumer, the institution need not immediately notify the consumer of the discrepancy. The periodic statement reflecting the deposit may show either the correct amount of the deposit or the amount entered by the consumer along with the institution's adjustment.

Paragraph 9(b)(1)(iii)

1. *Type of transfer.* There is no prescribed terminology for describing a type of transfer. Placement of the amount of the transfer in the debit or the credit column is sufficient if other information on the statement, such as a terminal location or third-party name, enables the consumer to identify the type of transfer.

Paragraph 9(b)(1)(iv)

1. *Nonproprietary terminal in network.* An institution need not reflect on the periodic statement the street addresses, identification codes, or terminal numbers for transfers initiated in a shared or interchange system at a terminal operated by an institution other than the account-holding institution. The statement must, however, specify the entity that owns or operates the terminal, plus the city and state.

Paragraph 9(b)(1)(v)

1. *Recurring payments by government agency.* The third-party name for recurring payments from Federal, state, or local governments need not list the particular agency. For example, ''U.S. gov't'' or ''N.Y. sal'' will suffice.

2. *Consumer as third-party payee.* If a consumer makes an electronic fund transfer to another consumer, the financial institution must identify the recipient by name (not just by an account number, for example).

3. *Terminal location/third party.* A single entry may be used to identify both the terminal location and the name of the third party to or from whom funds are transferred. For example, if a consumer purchases goods from a merchant, the name of the party to whom funds are transferred (the merchant) and the location of the terminal where the transfer is initiated will be satisfied by a disclosure such as ''XYZ Store, Anytown, Ohio.''

4. *Account-holding institution as third party.* Transfers to the account-holding institution (by ATM, for example) must show the institution as the recipient, unless other information on the statement (such as, ''loan payment from checking'') clearly indicates that the payment was to the account-holding institution.

5. *Consistency in third-party identity.* The periodic statement must disclose a third-party name as it appeared on the receipt, whether it was, for example, the ''dba'' (doing business as) name of the third party or the parent corporation's name.

6. *Third-party identity on deposits at electronic terminal.* A financial institution need not identify third parties whose names appear on checks, drafts, or similar paper instruments deposited to the consumer's account at an electronic terminal.

9(b)(3) Fees

1. *Disclosure of fees.* The fees disclosed may include fees for EFTs and for other non-electronic services, and both fixed fees and per-item fees; they may be given as a total or may be itemized in part or in full.

2. *Fees in interchange system.* An account-holding institution must disclose any fees it imposes on the consumer for EFTs, including fees for ATM transactions in an interchange or shared ATM system. Fees for use of an ATM imposed on the consumer by an institution other than the account-holding institution and included in the amount of the transfer by the terminal-operating institution need not be separately disclosed on the periodic statement.

3. *Finance charges.* The requirement to disclose any fees assessed against the account

does not include a finance charge imposed on the account during the statement period.

9(b)(4) Account Balances

1. *Opening and closing balances.* The opening and closing balances must reflect both EFTs and other account activity.

9(b)(5) Address and Telephone Number for Inquiries

1. *Telephone number.* A single telephone number, preceded by the ''direct inquiries to'' language, will satisfy the requirements of §§1005.9(b)(5) and (6).

9(b)(6) Telephone Number for Preauthorized Transfers

1. *Telephone number. See* comment 9(b)(5)–1.

9(c) Exceptions to the Periodic Statement Requirements for Certain Accounts

1. *Transfers between accounts.* The regulation provides an exception from the periodic statement requirement for certain intra-institutional transfers between a consumer's accounts. The financial institution must still comply with the applicable periodic statement requirements for any other EFTs to or from the account. For example, a Regulation E statement must be provided quarterly for an account that also receives payroll deposits electronically, or for any month in which an account is also accessed by a withdrawal at an ATM.

9(c)(1) Preauthorized Transfers to Accounts

1. *Accounts that may be accessed only by preauthorized transfers to the account.* The exception for ''accounts that may be accessed only by preauthorized transfers to the account'' includes accounts that can be accessed by means other than EFTs, such as checks. If, however, an account may be accessed by any EFT other than preauthorized credits to the account, such as preauthorized debits or ATM transactions, the account does not qualify for the exception.

2. *Reversal of direct deposits.* For direct-deposit-only accounts, a financial institution must send a periodic statement at least quarterly. A reversal of a direct deposit to correct an error does not trigger the monthly statement requirement when the error represented a credit to the wrong consumer's account, a duplicate credit, or a credit in the wrong amount. *See also* comment 2(m)–5.

9(d) Documentation for Foreign-Initiated Transfers

1. *Foreign-initiated transfers.* An institution must make a good faith effort to provide all required information for foreign-initiated transfers. For example, even if the institution is not able to provide a specific terminal location, it should identify the country and city in which the transfer was initiated.

SECTION 1005.10 PREAUTHORIZED TRANSFERS

10(a) Preauthorized Transfers to Consumer's Account

10(a)(1) Notice by Financial Institution

1. *Content.* No specific language is required for notice regarding receipt of a preauthorized transfer. Identifying the deposit is sufficient; however, simply providing the current account balance is not.

2. *Notice of credit.* A financial institution may use different methods of notice for various types or series of preauthorized transfers, and the institution need not offer consumers a choice of notice methods.

3. *Positive notice.* A periodic statement sent within two business days of the scheduled transfer, showing the transfer, can serve as notice of receipt.

4. *Negative notice.* The absence of a deposit entry (on a periodic statement sent within two business days of the scheduled transfer date) will serve as negative notice.

5. *Telephone notice.* If a financial institution uses the telephone notice option, the institution should be able in most instances to verify during a consumer's initial call whether a transfer was received. The institution must respond within two business days to any inquiry not answered immediately.

6. *Phone number for passbook accounts.* The financial institution may use any reasonable means necessary to provide the telephone number to consumers with passbook accounts that can only be accessed by preauthorized credits and that do not receive periodic statements. For example, it may print the telephone number in the passbook, or include the number with the annual error resolution notice.

7. *Telephone line availability.* To satisfy the readily-available standard, the financial institution must provide enough telephone lines so that consumers get a reasonably prompt response. The institution need only provide telephone service during normal business hours. Within its primary service area, an institution must provide a local or toll-free telephone number. It need not provide a toll-free number or accept collect long-distance calls from outside the area where it normally conducts business.

10(b) Written Authorization for Preauthorized Transfers From Consumer's Account

1. *Preexisting authorizations.* The financial institution need not require a new authorization before changing from paper-based to electronic debiting when the existing authorization does not specify that debiting is to occur electronically or specifies that the debiting will occur by paper means. A new authorization also is not required when a

successor institution begins collecting payments.

2. *Authorization obtained by third party.* The account-holding financial institution does not violate the regulation when a third-party payee fails to obtain the authorization in writing or fails to give a copy to the consumer; rather, it is the third-party payee that is in violation of the regulation.

3. *Written authorization for preauthorized transfers.* The requirement that preauthorized EFTs be authorized by the consumer ''only by a writing'' cannot be met by a payee's signing a written authorization on the consumer's behalf with only an oral authorization from the consumer.

4. *Use of a confirmation form.* A financial institution or designated payee may comply with the requirements of this section in various ways. For example, a payee may provide the consumer with two copies of a preauthorization form, and ask the consumer to sign and return one and to retain the second copy.

5. *Similarly authenticated.* The similarly authenticated standard permits signed, written authorizations to be provided electronically. The writing and signature requirements of this section are satisfied by complying with the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.*, which defines electronic records and electronic signatures. Examples of electronic signatures include, but are not limited to, digital signatures and security codes. A security code need not originate with the account-holding institution. The authorization process should evidence the consumer's identity and assent to the authorization. The person that obtains the authorization must provide a copy of the terms of the authorization to the consumer either electronically or in paper form. Only the consumer may authorize the transfer and not, for example, a third-party merchant on behalf of the consumer.

6. *Requirements of an authorization.* An authorization is valid if it is readily identifiable as such and the terms of the preauthorized transfer are clear and readily understandable.

7. *Bona fide error.* Consumers sometimes authorize third-party payees, by telephone or online, to submit recurring charges against a credit card account. If the consumer indicates use of a credit card account when in fact a debit card is being used, the payee does not violate the requirement to obtain a written authorization if the failure to obtain written authorization was not intentional and resulted from a bona fide error, and if the payee maintains procedures reasonably adapted to avoid any such error. Procedures reasonably adapted to avoid error will depend upon the circumstances. Generally, requesting the consumer to specify whether the card to be used for the authorization is a debit (or check) card or a credit card is a reasonable procedure. Where the consumer has indicated that the card is a credit card (or that the card is not a debit or check card), the payee may rely on the consumer's statement without seeking further information about the type of card. If the payee believes, at the time of the authorization, that a credit card is involved, and later finds that the card used is a debit card (for example, because the consumer later brings the matter to the payee's attention), the payee must obtain a written and signed or (where appropriate) a similarly authenticated authorization as soon as reasonably possible, or cease debiting the consumer's account.

10(c) Consumer's Right to Stop Payment

1. *Stop-payment order.* The financial institution must honor an oral stop-payment order made at least three business days before a scheduled debit. If the debit item is resubmitted, the institution must continue to honor the stop-payment order (for example, by suspending all subsequent payments to the payee-originator until the consumer notifies the institution that payments should resume).

2. *Revocation of authorization.* Once a financial institution has been notified that the consumer's authorization is no longer valid, it must block all future payments for the particular debit transmitted by the designated payee-originator. *But see* comment 10(c)–3. The institution may not wait for the payee-originator to terminate the automatic debits. The institution may confirm that the consumer has informed the payee-originator of the revocation (for example, by requiring a copy of the consumer's revocation as written confirmation to be provided within 14 days of an oral notification). If the institution does not receive the required written confirmation within the 14-day period, it may honor subsequent debits to the account.

3. *Alternative procedure for processing a stop-payment request.* If an institution does not have the capability to block a preauthorized debit from being posted to the consumer's account—as in the case of a preauthorized debit made through a debit card network or other system, for example—the institution may instead comply with the stop-payment requirements by using a third party to block the transfer(s), as long as the consumer's account is not debited for the payment.

10(d) Notice of Transfers Varying in Amount

10(d)(1) Notice

1. *Preexisting authorizations.* A financial institution holding the consumer's account does not violate the regulation if the designated payee fails to provide notice of varying amounts.

10(d)(2) Range

1. *Range.* A financial institution or designated payee that elects to offer the consumer a specified range of amounts for debiting (in lieu of providing the notice of transfers varying in amount) must provide an acceptable range that could be anticipated by the consumer. For example, if the transfer is for payment of a gas bill, an appropriate range might be based on the highest bill in winter and the lowest bill in summer.

2. *Transfers to an account of the consumer held at another institution.* A financial institution need not provide a consumer the option of receiving notice with each varying transfer, and may instead provide notice only when a debit to an account of the consumer falls outside a specified range or differs by more than a specified amount from the most recent transfer, if the funds are transferred and credited to an account of the consumer held at another financial institution. The specified range or amount, however, must be one that reasonably could be anticipated by the consumer, and the institution must notify the consumer of the range or amount at the time the consumer provides authorization for the preauthorized transfers. For example, if the transfer is for payment of interest for a fixed-rate certificate of deposit account, an appropriate range might be based on a month containing 28 days and a month containing 31 days.

10(e) Compulsory Use

10(e)(1) Credit

1. *Loan payments.* Creditors may not require repayment of loans by electronic means on a preauthorized, recurring basis. A creditor may offer a program with a reduced annual percentage rate or other cost-related incentive for an automatic repayment feature, provided the program with the automatic payment feature is not the only loan program offered by the creditor for the type of credit involved. Examples include:

i. Mortgages with graduated payments in which a pledged savings account is automatically debited during an initial period to supplement the monthly payments made by the borrower.

ii. Mortgage plans calling for preauthorized biweekly payments that are debited electronically to the consumer's account and produce a lower total finance charge.

2. *Overdraft.* A financial institution may require the automatic repayment of an overdraft credit plan even if the overdraft extension is charged to an open-end account that may be accessed by the consumer in ways other than by overdrafts.

10(e)(2) Employment or Government Benefit

1. *Payroll.* An employer (including a financial institution) may not require its employees to receive their salary by direct deposit to any particular institution. An employer may require direct deposit of salary by electronic means if employees are allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their salary deposited at a particular institution (designated by the employer) or receiving their salary by another means, such as by check or cash.

SECTION 1005.11 PROCEDURES FOR RESOLVING ERRORS

11(a) Definition of Error

1. *Terminal location.* With regard to deposits at an ATM, a consumer's request for the terminal location or other information triggers the error resolution procedures, but the financial institution need only provide the ATM location if it has captured that information.

2. *Verifying an account debit or credit.* If the consumer contacts the financial institution to ascertain whether a payment (for example, in a home-banking or bill-payment program) or any other type of EFT was debited to the account, or whether a deposit made via ATM, preauthorized transfer, or any other type of EFT was credited to the account, without asserting an error, the error resolution procedures do not apply.

3. *Loss or theft of access device.* A financial institution is required to comply with the error resolution procedures when a consumer reports the loss or theft of an access device if the consumer also alleges possible unauthorized use as a consequence of the loss or theft.

4. *Error asserted after account closed.* The financial institution must comply with the error resolution procedures when a consumer properly asserts an error, even if the account has been closed.

5. *Request for documentation or information.* A request for documentation or other information must be treated as an error unless it is clear that the consumer is requesting a duplicate copy for tax or other record-keeping purposes.

6. *Terminal receipts for transfers of $15 or less.* The fact that an institution does not make a terminal receipt available for a transfer of $15 or less in accordance with §1005.9(e) is not an error for purposes of §1005.11(a)(1)(vi) or (vii).

11(b) Notice of Error From Consumer

11(b)(1) Timing; Contents

1. *Content of error notice.* The notice of error is effective even if it does not contain

the consumer's account number, so long as the financial institution is able to identify the account in question. For example, the consumer could provide a Social Security number or other unique means of identification.

2. *Investigation pending receipt of information.* While a financial institution may request a written, signed statement from the consumer relating to a notice of error, it may not delay initiating or completing an investigation pending receipt of the statement.

3. *Statement held for consumer.* When a consumer has arranged for periodic statements to be held until picked up, the statement for a particular cycle is deemed to have been transmitted on the date the financial institution first makes the statement available to the consumer.

4. *Failure to provide statement.* When a financial institution fails to provide the consumer with a periodic statement, a request for a copy is governed by this section if the consumer gives notice within 60 days from the date on which the statement should have been transmitted.

5. *Discovery of error by institution.* The error resolution procedures of this section apply when a notice of error is received from the consumer, and not when the financial institution itself discovers and corrects an error.

6. *Notice at particular phone number or address.* A financial institution may require the consumer to give notice only at the telephone number or address disclosed by the institution, provided the institution maintains reasonable procedures to refer the consumer to the specified telephone number or address if the consumer attempts to give notice to the institution in a different manner.

7. *Effect of late notice.* An institution is not required to comply with the requirements of this section for any notice of error from the consumer that is received by the institution later than 60 days from the date on which the periodic statement first reflecting the error is sent. Where the consumer's assertion of error involves an unauthorized EFT, however, the institution must comply with §1005.6 before it may impose any liability on the consumer.

11(b)(2) Written Confirmation

1. *Written confirmation-of-error notice.* If the consumer sends a written confirmation of error to the wrong address, the financial institution must process the confirmation through normal procedures. But the institution need not provisionally credit the consumer's account if the written confirmation is delayed beyond 10 business days in getting to the right place because it was sent to the wrong address.

11(c) Time Limits and Extent of Investigation

1. *Notice to consumer.* Unless otherwise indicated in this section, the financial institution may provide the required notices to the consumer either orally or in writing.

2. *Written confirmation of oral notice.* A financial institution must begin its investigation promptly upon receipt of an oral notice. It may not delay until it has received a written confirmation.

3. *Charges for error resolution.* If a billing error occurred, whether as alleged or in a different amount or manner, the financial institution may not impose a charge related to any aspect of the error-resolution process (including charges for documentation or investigation). Since the Act grants the consumer error-resolution rights, the institution should avoid any chilling effect on the good-faith assertion of errors that might result if charges are assessed when no billing error has occurred.

4. *Correction without investigation.* A financial institution may make, without investigation, a final correction to a consumer's account in the amount or manner alleged by the consumer to be in error, but must comply with all other applicable requirements of §1005.11.

5. *Correction notice.* A financial institution may include the notice of correction on a periodic statement that is mailed or delivered within the 10-business-day or 45-calendar-day time limits and that clearly identifies the correction to the consumer's account. The institution must determine whether such a mailing will be prompt enough to satisfy the requirements of this section, taking into account the specific facts involved.

6. *Correction of an error.* If the financial institution determines an error occurred, within either the 10-day or 45-day period, it must correct the error (subject to the liability provisions of §§1005.6(a) and (b)) including, where applicable, the crediting of interest and the refunding of any fees imposed by the institution. In a combined credit/EFT transaction, for example, the institution must refund any finance charges incurred as a result of the error. The institution need not refund fees that would have been imposed whether or not the error occurred.

7. *Extent of required investigation.* A financial institution complies with its duty to investigate, correct, and report its determination regarding an error described in §1005.11(a)(1)(vii) by transmitting the requested information, clarification, or documentation within the time limits set forth in §1005.11(c). If the institution has provisionally credited the consumer's account in accordance with §1005.11(c)(2), it may debit the amount upon transmitting the requested information, clarification, or documentation.

Paragraph 11(c)(2)(i)

1. *Compliance with all requirements.* Financial institutions exempted from provisionally crediting a consumer's account under §§1005.11(c)(2)(i)(A) and (B) must still comply with all other requirements of §1005.11.

11(c)(3) Extension of Time Periods

1. *POS debit card transactions.* The extended deadlines for investigating errors resulting from POS debit card transactions apply to all debit card transactions, including those for cash only, at merchants' POS terminals, and also including mail and telephone orders. The deadlines do not apply to transactions at an ATM, however, even though the ATM may be in a merchant location.

11(c)(4) Investigation

1. *Third parties.* When information or documentation requested by the consumer is in the possession of a third party with whom the financial institution does not have an agreement, the institution satisfies the error resolution requirement by so advising the consumer within the specified time period.

2. *Scope of investigation.* When an alleged error involves a payment to a third party under the financial institution's telephone bill-payment plan, a review of the institution's own records is sufficient, assuming no agreement exists between the institution and the third party concerning the bill-payment service.

3. *POS transfers.* When a consumer alleges an error involving a transfer to a merchant via a POS terminal, the institution must verify the information previously transmitted when executing the transfer. For example, the financial institution may request a copy of the sales receipt to verify that the amount of the transfer correctly corresponds to the amount of the consumer's purchase.

4. *Agreement.* An agreement that a third party will honor an access device is an agreement for purposes of this paragraph. A financial institution does not have an agreement for purposes of §1005.11(c)(4)(ii) solely because it participates in transactions that occur under the Federal recurring payments programs, or that are cleared through an ACH or similar arrangement for the clearing and settlement of fund transfers generally, or because the institution agrees to be bound by the rules of such an arrangement.

5. *No EFT agreement.* When there is no agreement between the institution and the third party for the type of EFT involved, the financial institution must review any relevant information within the institution's own records for the particular account to resolve the consumer's claim. The extent of the investigation required may vary depending on the facts and circumstances. However, a financial institution may not limit its investigation solely to the payment instructions where additional information within its own records pertaining to the particular account in question could help to resolve a consumer's claim. Information that may be reviewed as part of an investigation might include:

i. The ACH transaction records for the transfer;

ii. The transaction history of the particular account for a reasonable period of time immediately preceding the allegation of error;

iii. Whether the check number of the transaction in question is notably out-of-sequence;

iv. The location of either the transaction or the payee in question relative to the consumer's place of residence and habitual transaction area;

v. Information relative to the account in question within the control of the institution's third-party service providers if the financial institution reasonably believes that it may have records or other information that could be dispositive; or

vi. Any other information appropriate to resolve the claim.

11(d) Procedures if Financial Institution Determines No Error or Different Error Occurred

1. *Error different from that alleged.* When a financial institution determines that an error occurred in a manner or amount different from that described by the consumer, it must comply with the requirements of both §§1005.11(c) and (d), as relevant. The institution may give the notice of correction and the explanation separately or in a combined form.

11(d)(1) Written Explanation

1. *Request for documentation.* When a consumer requests copies of documents, the financial institution must provide the copies in an understandable form. If an institution relied on magnetic tape, it must convert the applicable data into readable form, for example, by printing it and explaining any codes.

11(d)(2) Debiting Provisional Credit

1. *Alternative procedure for debiting of credited funds.* The financial institution may comply with the requirements of this section by notifying the consumer that the consumer's account will be debited five business days from the transmittal of the notification, specifying the calendar date on which the debiting will occur.

2. *Fees for overdrafts.* The financial institution may not impose fees for items it is required to honor under §1005.11. It may, however, impose any normal transaction or item fee that is unrelated to an overdraft resulting from the debiting. If the account is still overdrawn after five business days, the institution may impose the fees or finance

charges to which it is entitled, if any, under an overdraft credit plan.

11(e) Reassertion of Error

1. *Withdrawal of error; right to reassert.* The financial institution has no further error resolution responsibilities if the consumer voluntarily withdraws the notice alleging an error. A consumer who has withdrawn an allegation of error has the right to reassert the allegation unless the financial institution had already complied with all of the error resolution requirements before the allegation was withdrawn. The consumer must do so, however, within the original 60-day period.

SECTION 1005.12 RELATION TO OTHER LAWS

12(a) Relation to Truth in Lending

1. *Determining applicable regulation.* i. For transactions involving access devices that also function as credit cards, whether Regulation E or Regulation Z (12 CFR part 1026) applies depends on the nature of the transaction. For example, if the transaction solely involves an extension of credit, and does not include a debit to a checking account (or other consumer asset account), the liability limitations and error resolution requirements of Regulation Z apply. If the transaction debits a checking account only (with no credit extended), the provisions of Regulation E apply. If the transaction debits a checking account but also draws on an overdraft line of credit attached to the account, Regulation E's liability limitations apply, in addition to §§1026.13(d) and (g) of Regulation Z (which apply because of the extension of credit associated with the overdraft feature on the checking account). If a consumer's access device is also a credit card and the device is used to make unauthorized withdrawals from a checking account, but also is used to obtain unauthorized cash advances directly from a line of credit that is separate from the checking account, both Regulation E and Regulation Z apply.

ii. The following examples illustrate these principles:

A. A consumer has a card that can be used either as a credit card or a debit card. When used as a debit card, the card draws on the consumer's checking account. When used as a credit card, the card draws only on a separate line of credit. If the card is stolen and used as a credit card to make purchases or to get cash advances at an ATM from the line of credit, the liability limits and error resolution provisions of Regulation Z apply; Regulation E does not apply.

B. In the same situation, if the card is stolen and is used as a debit card to make purchases or to get cash withdrawals at an ATM from the checking account, the liability limits and error resolution provisions of Regulation E apply; Regulation Z does not apply.

C. In the same situation, assume the card is stolen and used both as a debit card and as a credit card; for example, the thief makes some purchases using the card as a debit card, and other purchases using the card as a credit card. Here, the liability limits and error resolution provisions of Regulation E apply to the unauthorized transactions in which the card was used as a debit card, and the corresponding provisions of Regulation Z apply to the unauthorized transactions in which the card was used as a credit card.

D. Assume a somewhat different type of card, one that draws on the consumer's checking account and can also draw on an overdraft line of credit attached to the checking account. There is no separate line of credit, only the overdraft line, associated with the card. In this situation, if the card is stolen and used, the liability limits and the error resolution provisions of Regulation E apply. In addition, if the use of the card has resulted in accessing the overdraft line of credit, the error resolution provisions of §§1026.13(d) and (g) of Regulation Z also apply, but not the other error resolution provisions of Regulation Z.

2. *Issuance rules.* For access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance) or an overdraft service, as defined in §1005.17(a). Regulation Z (12 CFR part 1026) rules apply if there is another type of credit feature; for example, one permitting direct extensions of credit that do not involve the asset account.

3. *Overdraft service.* The addition of an overdraft service, as that term is defined in §1005.17(a), to an accepted access device does not constitute the addition of a credit feature subject to Regulation Z. Instead, the provisions of Regulation E apply, including the liability limitations (§1005.6) and the requirement to obtain consumer consent to the service before any fees or charges for paying an overdraft may be assessed on the account (§1005.17).

12(b) Preemption of Inconsistent State Laws

1. *Specific determinations.* The regulation prescribes standards for determining whether state laws that govern EFTs, and state laws regarding gift certificates, store gift cards, or general-use prepaid cards that govern dormancy, inactivity, or service fees, or expiration dates, are preempted by the Act and the regulation. A state law that is inconsistent may be preempted even if the Bureau has not issued a determination. However, nothing in §1005.12(b) provides a financial institution with immunity for violations of state law if the institution chooses not to make state disclosures and the Bureau later determines that the state law is not preempted.

2. *Preemption determination.* The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. The Board of Governors determined that certain provisions in the state law of Michigan are preempted by the Federal law, effective March 30, 1981:

i. Definition of unauthorized use. Section 5(4) is preempted to the extent that it relates to the section of state law governing consumer liability for unauthorized use of an access device.

ii. Consumer liability for unauthorized use of an account. Section 14 is inconsistent with §1005.6 and is less protective of the consumer than the Federal law. The state law places liability on the consumer for the unauthorized use of an account in cases involving the consumer's negligence. Under the Federal law, a consumer's liability for unauthorized use is not related to the consumer's negligence and depends instead on the consumer's promptness in reporting the loss or theft of the access device.

iii. Error resolution. Section 15 is preempted because it is inconsistent with §1005.11 and is less protective of the consumer than the Federal law. The state law allows financial institutions up to 70 days to resolve errors, whereas the Federal law generally requires errors to be resolved within 45 days.

iv. Receipts and periodic statements. Sections 17 and 18 are preempted because they are inconsistent with §1005.9. The state provisions require a different disclosure of information than does the Federal law. The receipt provision is also preempted because it allows the consumer to be charged for receiving a receipt if a machine cannot furnish one at the time of a transfer.

SECTION 1005.13 ADMINISTRATIVE ENFORCEMENT; RECORD RETENTION

13(b) Record Retention

1. *Requirements.* A financial institution need not retain records that it has given disclosures and documentation to each consumer; it need only retain evidence demonstrating that its procedures reasonably ensure the consumers' receipt of required disclosures and documentation.

SECTION 1005.14 ELECTRONIC FUND TRANSFER SERVICE PROVIDER NOT HOLDING CONSUMER'S ACCOUNT

14(a) Electronic Fund Transfer Service Providers Subject to Regulation

1. *Applicability.* This section applies only when a service provider issues an access device to a consumer for initiating transfers to or from the consumer's account at a financial institution and the two entities have no agreement regarding this EFT service. If the service provider does not issue an access device to the consumer for accessing an account held by another institution, it does not qualify for the treatment accorded by §1005.14. For example, this section does not apply to an institution that initiates preauthorized payroll deposits to consumer accounts on behalf of an employer. By contrast, §1005.14 can apply to an institution that issues a code for initiating telephone transfers to be carried out through the ACH from a consumer's account at another institution. This is the case even if the consumer has accounts at both institutions.

2. *ACH agreements.* The ACH rules generally do not constitute an agreement for purposes of this section. However, an ACH agreement under which members specifically agree to honor each other's debit cards is an ''agreement,'' and thus this section does not apply.

14(b) Compliance by Electronic Fund Transfer Service Provider

1. *Liability.* The service provider is liable for unauthorized EFTs that exceed limits on the consumer's liability under §1005.6.

14(b)(1) Disclosures and Documentation

1. *Periodic statements from electronic fund transfer service provider.* A service provider that meets the conditions set forth in this paragraph does not have to issue periodic statements. A service provider that does not meet the conditions need only include on periodic statements information about transfers initiated with the access device it has issued.

14(b)(2) Error Resolution

1. *Error resolution.* When a consumer notifies the service provider of an error, the EFT service provider must investigate and resolve the error in compliance with §1005.11 as modified by §1005.14(b)(2). If an error occurred, any fees or charges imposed as a result of the error, either by the service provider or by the account-holding institution (for example, overdraft or dishonor fees) must be reimbursed to the consumer by the service provider.

14(c) Compliance by Account-Holding Institution

14(c)(1) Documentation

1. *Periodic statements from account-holding institution.* The periodic statement provided by the account-holding institution need only contain the information required by §1005.9(b)(1).

SECTION 1005.17 REQUIREMENTS FOR OVERDRAFT SERVICES

17(a) Definition

1. *Exempt securities- and commodities-related lines of credit.* The definition of ''overdraft service'' does not include the payment of transactions in a securities or commodities account pursuant to which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

17(b) Opt-In Requirement

1. *Scope.* i. *Account-holding institutions.* Section 1005.17(b) applies to ATM and one-time debit card transactions made with a debit card issued by or on behalf of the account-holding institution. Section 1005.17(b) does not apply to ATM and one-time debit card transactions made with a debit card issued by or through a third party unless the debit card is issued on behalf of the account-holding institution.

ii. *Coding of transactions.* A financial institution complies with the rule if it adapts its systems to identify debit card transactions as either one-time or recurring. If it does so, the financial institution may rely on the transaction's coding by merchants, other institutions, and other third parties as a one-time or a preauthorized or recurring debit card transaction.

iii. *One-time debit card transactions.* The opt-in applies to any one-time debit card transaction, whether the card is used, for example, at a point-of-sale, in an online transaction, or in a telephone transaction.

iv. *Application of fee prohibition.* The prohibition on assessing overdraft fees under §1005.17(b)(1) applies to all institutions. For example, the prohibition applies to an institution that has a policy and practice of declining to authorize and pay any ATM or one-time debit card transactions when the institution has a reasonable belief at the time of the authorization request that the consumer does not have sufficient funds available to cover the transaction. However, the institution is not required to comply with §§1005.17(b)(1)(i)–(iv), including the notice and opt-in requirements, if it does not assess overdraft fees for paying ATM or one-time debit card transactions that overdraw the consumer's account. Assume an institution does not provide an opt-in notice, but authorizes an ATM or one-time debit card transaction on the reasonable belief that the consumer has sufficient funds in the account to cover the transaction. If, at settlement, the consumer has insufficient funds in the account (for example, due to intervening transactions that post to the consumer's account), the institution is not permitted to assess an overdraft fee or charge for paying that transaction.

2. *No affirmative consent.* A financial institution may pay overdrafts for ATM and one-time debit card transactions even if a consumer has not affirmatively consented or opted in to the institution's overdraft service. If the institution pays such an overdraft without the consumer's affirmative consent, however, it may not impose a fee or charge for doing so. These provisions do not limit the institution's ability to debit the consumer's account for the amount overdrawn if the institution is permitted to do so under applicable law.

3. *Overdraft transactions not required to be authorized or paid.* Section 1005.17 does not require a financial institution to authorize or pay an overdraft on an ATM or one-time debit card transaction even if the consumer has affirmatively consented to an institution's overdraft service for such transactions.

4. *Reasonable opportunity to provide affirmative consent.* A financial institution provides a consumer with a reasonable opportunity to provide affirmative consent when, among other things, it provides reasonable methods by which the consumer may affirmatively consent. A financial institution provides such reasonable methods, if:

i. *By mail.* The institution provides a form for the consumer to fill out and mail to affirmatively consent to the service.

ii. *By telephone.* The institution provides a readily-available telephone line that consumers may call to provide affirmative consent.

iii. *By electronic means.* The institution provides an electronic means for the consumer to affirmatively consent. For example, the institution could provide a form that can be accessed and processed at its Web site, where the consumer may click on a check box to provide consent and confirm that choice by clicking on a button that affirms the consumer's consent.

iv. *In person.* The institution provides a form for the consumer to complete and present at a branch or office to affirmatively consent to the service.

5. *Implementing opt-in at account-opening.* A financial institution may provide notice regarding the institution's overdraft service prior to or at account-opening. A financial institution may require a consumer, as a necessary step to opening an account, to choose whether or not to opt into the payment of ATM or one-time debit card transactions pursuant to the institution's overdraft service. For example, the institution could require the consumer, at account opening, to sign a signature line or check a box on a form (consistent with comment 17(b)–6) indicating whether or not the consumer affirmatively consents at account opening. If the consumer does not check any box or provide a signature, the institution must assume that the consumer does not opt in. Or,

the institution could require the consumer to choose between an account that does not permit the payment of ATM or one-time debit card transactions pursuant to the institution's overdraft service and an account that permits the payment of such overdrafts, provided that the accounts comply with §1005.17(b)(2) and §1005.17(b)(3).

6. *Affirmative consent required.* A consumer's affirmative consent, or opt-in, to a financial institution's overdraft service must be obtained separately from other consents or acknowledgements obtained by the institution, including a consent to receive disclosures electronically. An institution may obtain a consumer's affirmative consent by providing a blank signature line or check box that the consumer could sign or select to affirmatively consent, provided that the signature line or check box is used solely for purposes of evidencing the consumer's choice whether or not to opt into the overdraft service and not for other purposes. An institution does not obtain a consumer's affirmative consent by including preprinted language about the overdraft service in an account disclosure provided with a signature card or contract that the consumer must sign to open the account and that acknowledges the consumer's acceptance of the account terms. Nor does an institution obtain a consumer's affirmative consent by providing a signature card that contains a pre-selected check box indicating that the consumer is requesting the service.

7. *Confirmation.* A financial institution may comply with the requirement in §1005.17(b)(1)(iv) to provide confirmation of the consumer's affirmative consent by mailing or delivering to the consumer a copy of the consumer's completed opt-in notice, or by mailing or delivering a letter or notice to the consumer acknowledging that the consumer has elected to opt into the institution's service. The confirmation, which must be provided in writing, or electronically if the consumer agrees, must include a statement informing the consumer of the right to revoke the opt-in at any time. *See* §1005.17(d)(6), which permits institutions to include the revocation statement on the initial opt-in notice. An institution complies with the confirmation requirement if it has adopted reasonable procedures designed to ensure that overdraft fees are assessed only in connection with transactions paid after the confirmation has been mailed or delivered to the consumer.

8. *Outstanding Negative Balance.* If a fee or charge is based on the amount of the outstanding negative balance, an institution is prohibited from assessing any such fee if the negative balance is solely attributable to an ATM or one-time debit card transaction, unless the consumer has opted into the institution's overdraft service for ATM or one-time debit card transactions. However, the rule does not prohibit an institution from assessing such a fee if the negative balance is attributable in whole or in part to a check, ACH, or other type of transaction not subject to the prohibition on assessing overdraft fees in §1005.17(b)(1).

9. *Daily or Sustained Overdraft, Negative Balance, or Similar Fee or Charge* i. *Daily or sustained overdraft, negative balance, or similar fees or charges.* If a consumer has not opted into the institution's overdraft service for ATM or one-time debit card transactions, the fee prohibition in §1005.17(b)(1) applies to all overdraft fees or charges for paying those transactions, including but not limited to daily or sustained overdraft, negative balance, or similar fees or charges. Thus, where a consumer's negative balance is solely attributable to an ATM or one-time debit card transaction, the rule prohibits the assessment of such fees unless the consumer has opted in. However, the rule does not prohibit an institution from assessing daily or sustained overdraft, negative balance, or similar fees or charges if a negative balance is attributable in whole or in part to a check, ACH, or other type of transaction not subject to the fee prohibition. When the negative balance is attributable in part to an ATM or one-time debit card transaction, and in part to a check, ACH, or other type of transaction not subject to the fee prohibition, the date on which such a fee may be assessed is based on the date on which the check, ACH, or other type of transaction is paid into overdraft.

ii. *Examples.* The following examples illustrate how an institution complies with the fee prohibition. For each example, assume the following: (a) The consumer has not opted into the payment of ATM or one-time debit card overdrafts; (b) these transactions are paid into overdraft because the amount of the transaction at settlement exceeded the amount authorized or the amount was not submitted for authorization; (c) under the account agreement, the institution may charge a per-item fee of $20 for each overdraft, and a one-time sustained overdraft fee of $20 on the fifth consecutive day the consumer's account remains overdrawn; (d) the institution posts ATM and debit card transactions before other transactions; and (e) the institution allocates deposits to account debits in the same order in which it posts debits.

A. Assume that a consumer has a $50 account balance on March 1. That day, the institution posts a one-time debit card transaction of $60 and a check transaction of $40. The institution charges an overdraft fee of $20 for the check overdraft but cannot assess an overdraft fee for the debit card transaction. At the end of the day, the consumer has an account balance of negative $70. The consumer does not make any deposits to the

account, and no other transactions occur between March 2 and March 6. Because the consumer's negative balance is attributable in part to the $40 check (and associated overdraft fee), the institution may charge a sustained overdraft fee on March 6 in connection with the check.

B. Same facts as in A., except that on March 3, the consumer deposits $40 in the account. The institution allocates the $40 to the debit card transaction first, consistent with its posting order policy. At the end of the day on March 3, the consumer has an account balance of negative $30, which is attributable to the check transaction (and associated overdraft fee). The consumer does not make any further deposits to the account, and no other transactions occur between March 4 and March 6. Because the remaining negative balance is attributable to the March 1 check transaction, the institution may charge a sustained overdraft fee on March 6 in connection with the check.

C. Assume that a consumer has a $50 account balance on March 1. That day, the institution posts a one-time debit card transaction of $60. At the end of that day, the consumer has an account balance of negative $10. The institution may not assess an overdraft fee for the debit card transaction. On March 3, the institution pays a check transaction of $100 and charges an overdraft fee of $20. At the end of that day, the consumer has an account balance of negative $130. The consumer does not make any deposits to the account, and no other transactions occur between March 4 and March 8. Because the consumer's negative balance is attributable in part to the check, the institution may assess a $20 sustained overdraft fee. However, because the check was paid on March 3, the institution must use March 3 as the start date for determining the date on which the sustained overdraft fee may be assessed. Thus, the institution may charge a $20 sustained overdraft fee on March 8.

iii. *Alternative approach.* For a consumer who does not opt into the institution's overdraft service for ATM and one-time debit card transactions, an institution may also comply with the fee prohibition in §1005.17(b)(1) by not assessing daily or sustained overdraft, negative balance, or similar fees or charges unless a consumer's negative balance is attributable solely to check, ACH or other types of transactions not subject to the fee prohibition while that negative balance remains outstanding. In such case, the institution would not have to determine how to allocate subsequent deposits that reduce but do not eliminate the negative balance. For example, if a consumer has a negative balance of $30, of which $10 is attributable to a one-time debit card transaction, an institution complies with the fee prohibition if it does not assess a sustained overdraft fee while that negative balance remains outstanding.

17(b)(2) Conditioning Payment of Other Overdrafts on Consumer's Affirmative Consent

1. *Application of the same criteria.* The prohibitions on conditioning in §1005.17(b)(2) generally require an institution to apply the same criteria for deciding when to pay overdrafts for checks, ACH transactions, and other types of transactions, whether or not the consumer has affirmatively consented to the institution's overdraft service with respect to ATM and one-time debit card overdrafts. For example, if an institution's internal criteria would lead the institution to pay a check overdraft if the consumer had affirmatively consented to the institution's overdraft service for ATM and one-time debit card transactions, it must also apply the same criteria in a consistent manner in determining whether to pay the check overdraft if the consumer has not opted in.

2. *No requirement to pay overdrafts on checks, ACH transactions, or other types of transactions.* The prohibition on conditioning in §1005.17(b)(2) does not require an institution to pay overdrafts on checks, ACH transactions, or other types of transactions in all circumstances. Rather, the rule simply prohibits institutions from considering the consumer's decision not to opt in when deciding whether to pay overdrafts for checks, ACH transactions, or other types of transactions.2≤17(b)(3) Same Account Terms, Conditions, and Features

1. *Variations in terms, conditions, or features.* A financial institution may not vary the terms, conditions, or features of an account provided to a consumer who does not affirmatively consent to the payment of ATM or one-time debit card transactions pursuant to the institution's overdraft service. This includes, but is not limited to:

i. Interest rates paid and fees assessed;

ii. The type of ATM or debit card provided to the consumer. For instance, an institution may not provide consumers who do not opt in a PIN-only card while providing a debit card with both PIN and signature-debit functionality to consumers who opt in;

iii. Minimum balance requirements; or

iv. Account features such as online bill payment services.

2. *Limited-feature bank accounts.* Section 1005.17(b)(3) does not prohibit institutions from offering deposit account products with limited features, provided that a consumer is not required to open such an account because the consumer did not opt in. For example, §1005.17(b)(3) does not prohibit an institution from offering a checking account designed to comply with state basic banking laws, or designed for consumers who are not eligible for a checking account because of their credit or checking account history,

which may include features limiting the payment of overdrafts. However, a consumer who applies, and is otherwise eligible, for a full-service or other particular deposit account product may not be provided instead with the account with more limited features because the consumer has declined to opt in.

17(c) Timing

1. *Permitted fees or charges.* Fees or charges for ATM and one-time debit card overdrafts may be assessed only for overdrafts paid on or after the date the financial institution receives the consumer's affirmative consent to the institution's overdraft service. *See also* comment 17(b)–7.

17(d) Content and Format

1. *Overdraft service.* The description of the institution's overdraft service should indicate that the consumer has the right to affirmatively consent, or opt into payment of overdrafts for ATM and one-time debit card transactions. The description should also disclose the institution's policies regarding the payment of overdrafts for other transactions, including checks, ACH transactions, and automatic bill payments, provided that this content is not more prominent than the description of the consumer's right to opt into payment of overdrafts for ATM and one-time debit card transactions. As applicable, the institution also should indicate that it pays overdrafts at its discretion, and should briefly explain that if the institution does not authorize and pay an overdraft, it may decline the transaction.

2. *Maximum fee.* If the amount of a fee may vary from transaction to transaction, the financial institution may indicate that the consumer may be assessed a fee ''up to'' the maximum fee. The financial institution must disclose all applicable overdraft fees, including but not limited to:

i. Per item or per transaction fees;

ii. Daily overdraft fees;

iii. Sustained overdraft fees, where fees are assessed when the consumer has not repaid the amount of the overdraft after some period of time (for example, if an account remains overdrawn for five or more business days); or

iv. Negative balance fees.

3. *Opt-in methods.* The opt-in notice must include the methods by which the consumer may consent to the overdraft service for ATM and one-time debit card transactions. Institutions may tailor Model Form A–9 to the methods offered to consumers for affirmatively consenting to the service. For example, an institution need not provide the tear-off portion of Model Form A–9 if it is only permitting consumers to opt-in telephonically or electronically. Institutions may, but are not required, to provide a signature line or check box where the consumer can indicate that he or she declines to opt in.

4. *Identification of consumer's account.* An institution may use any reasonable method to identify the account for which the consumer submits the opt-in notice. For example, the institution may include a line for a printed name and an account number, as shown in Model Form A–9. Or, the institution may print a bar code or use other tracking information. *See also* comment 17(b)–6, which describes how an institution obtains a consumer's affirmative consent.

5. *Alternative plans for covering overdrafts.* If the institution offers both a line of credit subject to Regulation Z (12 CFR part 1026) and a service that transfers funds from another account of the consumer held at the institution to cover overdrafts, the institution must state in its opt-in notice that both alternative plans are offered. For example, the notice might state ''We also offer *overdraft protection plans*, such as a link to a savings account or to an overdraft line of credit, which may be less expensive than our standard overdraft practices.'' If the institution offers one, but not the other, it must state in its opt-in notice the alternative plan that it offers. If the institution does not offer either plan, it should omit the reference to the alternative plans.

17(f) Continuing Right To Opt-In or To Revoke the Opt-In

1. *Fees or charges for overdrafts incurred prior to revocation.* Section 1005.17(f)(1) provides that a consumer may revoke his or her prior consent at any time. If a consumer does so, this provision does not require the financial institution to waive or reverse any overdraft fees assessed on the consumer's account prior to the institution's implementation of the consumer's revocation request.

17(g) Duration of Opt-In

1. *Termination of overdraft service.* A financial institution may, for example, terminate the overdraft service when the consumer makes excessive use of the service.

SECTION 1005.18 REQUIREMENTS FOR FINANCIAL INSTITUTIONS OFFERING PAYROLL CARD ACCOUNTS

18(a) Coverage

1. *Issuance of access device.* Consistent with §1005.5(a), a financial institution may issue an access device only in response to an oral or written request for the device, or as a renewal or substitute for an accepted access device. A consumer is deemed to request an access device for a payroll card account when the consumer chooses to receive salary or other compensation through a payroll card account.

2. *Application to employers and service providers.* Typically, employers and third-party service providers do not meet the definition of a ''financial institution'' subject to the regulation because they neither hold payroll card accounts nor issue payroll cards and agree with consumers to provide EFT services in connection with payroll card accounts. However, to the extent an employer or a service provider undertakes either of these functions, it would be deemed a financial institution under the regulation.

18(b) Alternative to Periodic Statements

1. *Posted transactions.* A history of transactions provided under §§1005.18(b)(1)(ii) and (iii) shall reflect transfers once they have been posted to the account. Thus, an institution does not need to include transactions that have been authorized, but that have not yet posted to the account.

2. *Electronic history.* The electronic history required under §1005.18(b)(1)(ii) must be provided in a form that the consumer may keep, as required under §1005.4(a)(1). Financial institutions may satisfy this requirement if they make the electronic history available in a format that is capable of being retained. For example, an institution satisfies the requirement if it provides a history at a Web site in a format that is capable of being printed or stored electronically using a web browser.

18(c) Modified Requirements

1. *Error resolution safe harbor provision.* Institutions that choose to investigate notices of error provided up to 120 days from the date a transaction has posted to a consumer's account may still disclose the error resolution time period required by the regulation (as set forth in the Model Form in appendix A–7). Specifically, an institution may disclose to payroll card account holders that the institution will investigate any notice of error provided within 60 days of the consumer electronically accessing an account or receiving a written history upon request that reflects the error, even if, for some or all transactions, the institution investigates any notice of error provided up to 120 days from the date that the transaction alleged to be in error has posted to the consumer's account. Similarly, an institution's summary of the consumer's liability (as required under §1005.7(b)(1)) may disclose that liability is based on the consumer providing notice of error within 60 days of the consumer electronically accessing an account or receiving a written history reflecting the error, even if, for some or all transactions, the institution allows a consumer to assert a notice of error up to 120 days from the date of posting of the alleged error.

2. *Electronic access.* A consumer is deemed to have accessed a payroll card account electronically when the consumer enters a user identification code or password or otherwise complies with a security procedure used by an institution to verify the consumer's identity. An institution is not required to determine whether a consumer has in fact accessed information about specific transactions to trigger the beginning of the 60-day periods for liability limits and error resolution under §§1005.6 and 1005.11.

3. *Untimely notice of error.* An institution that provides a transaction history under §1005.18(b)(1) is not required to comply with the requirements of §1005.11 for any notice of error from the consumer pertaining to a transfer that occurred more than 60 days prior to the earlier of the date the consumer electronically accesses the account or the date the financial institution sends a written history upon the consumer's request. (Alternatively, as provided in §1005.18(c)(4)(ii), an institution need not comply with the requirements of §1005.11 with respect to any notice of error received from the consumer more than 120 days after the date of posting of the transfer allegedly in error.) Where the consumer's assertion of error involves an unauthorized EFT, however, the institution must comply with §1005.6 before it may impose any liability on the consumer.

SECTION 1005.20 REQUIREMENTS FOR GIFT CARDS AND GIFT CERTIFICATES

20(a) Definitions

1. *Form of card, code, or device.* Section 1005.20 applies to any card, code, or other device that meets one of the definitions in §§1005.20(a)(1) through (a)(3) (and is not otherwise excluded by §1005.20(b)), even if it is not issued in card form. Section 1005.20 applies, for example, to an account number or bar code that can be used to access underlying funds. Similarly, §1005.20 applies to a device with a chip or other embedded mechanism that links the device to stored funds, such as a mobile phone or sticker containing a contactless chip that enables the consumer to access the stored funds. A card, code, or other device that meets the definition in §§1005.20(a)(1) through (a)(3) includes an electronic promise (*see* comment 20(a)–2) as well as a promise that is not electronic. *See, however,* §1005.20(b)(5). In addition, §1005.20 applies if a merchant issues a code that entitles a consumer to redeem the code for goods or services, regardless of the medium in which the code is issued (*see, however,* §1005.20(b)(5)), and whether or not it may be redeemed electronically or in the merchant's store. Thus, for example, if a merchant emails a code that a consumer may redeem in a specified amount either online or in the merchant's store, that code is covered under §1005.20, unless one of the exclusions in §1005.20(b) apply.

2. *Electronic promise.* The term ''electronic promise'' as used in EFTA sections 915(a)(2)(B), (a)(2)(C), and (a)(2)(D) means a person's commitment or obligation communicated or stored in electronic form made to a consumer to provide payment for goods or services for transactions initiated by the consumer. The electronic promise is itself represented by a card, code or other device that is issued or honored by the person, reflecting the person's commitment or obligation to pay. For example, if a merchant issues a code that can be given as a gift and that entitles the recipient to redeem the code in an online transaction for goods or services, that code represents an electronic promise by the merchant and is a card, code, or other device covered by §1005.20.

3. *Cards, codes, or other devices redeemable for specific goods or services.* Certain cards, codes, or other devices may be redeemable upon presentation for a specific good or service, or ''experience,'' such as a spa treatment, hotel stay, or airline flight. In other cases, a card, code, or other device may entitle the consumer to a certain percentage off the purchase of a good or service, such as 20% off of any purchase in a store. Such cards, codes, or other devices generally are not subject to the requirements of this section because they are not issued to a consumer ''in a specified amount'' as required under the definitions of ''gift certificate,'' ''store gift card,'' or ''general-use prepaid card.'' However, if the card, code, or other device is issued in a specified or denominated amount that can be applied toward the purchase of a specific good or service, such as a certificate or card redeemable for a spa treatment up to $50, the card, code, or other device is subject to this section, unless one of the exceptions in §1005.20(b) apply. *See, e.g.*, §1005.20(b)(3). Similarly, if the card, code, or other device states a specific monetary value, such as ''a $50 value,'' the card, code, or other device is subject to this section, unless an exclusion in §1005.20(b) applies.

4. *Issued primarily for personal, family, or household purposes.* Section 1005.20 only applies to cards, codes, or other devices that are sold or issued to a consumer primarily for personal, family, or household purposes. A card, code, or other device initially purchased by a business is subject to this section if the card, code, or other device is purchased for redistribution or resale to consumers primarily for personal, family, or household purposes. Moreover, the fact that a card, code, or other device may be primarily funded by a business, for example, in the case of certain rewards or incentive cards, does not mean the card, code, or other device is outside the scope of §1005.20, if the card, code, or other device will be provided to a consumer primarily for personal, family, or household purposes. *But see* §1005.20(b)(3). Whether a card, code, or other device is issued to a consumer primarily for personal, family, or household purposes will depend on the facts and circumstances. For example, if a program manager purchases store gift cards directly from an issuing merchant and sells those cards through the program manager's retail outlets, such gift cards are subject to the requirements of §1005.20 because the store gift cards are sold to consumers primarily for personal, family, or household purposes. In contrast, a card, code, or other device generally would not be issued to consumers primarily for personal, family, or household purposes, and therefore would fall outside the scope of §1005.20, if the purchaser of the card, code, or device is contractually prohibited from reselling or redistributing the card, code, or device to consumers primarily for personal, family, or household purposes, and reasonable policies and procedures are maintained to avoid such sale or distribution for such purposes. However, if an entity that has purchased cards, codes, or other devices for business purposes sells or distributes such cards, codes, or other devices to consumers primarily for personal, family, or household purposes, that entity does not comply with §1005.20 if it has not otherwise met the substantive and disclosure requirements of the rule or unless an exclusion in §1005.20(b) applies.

5. *Examples of cards, codes, or other devices issued for business purposes.* Examples of cards, codes, or other devices that are issued and used for business purposes and therefore excluded from the definitions of ''gift certificate,'' ''store gift card,'' or ''general-use prepaid card'' include:

i. Cards, codes, or other devices to reimburse employees for travel or moving expenses.

ii. Cards, codes, or other devices for employees to use to purchase office supplies and other business-related items.

20(a)(2) Store Gift Card

1. *Relationship between ''gift certificate'' and ''store gift card.''* The term ''store gift card'' in §1005.20(a)(2) includes ''gift certificate'' as defined in §1005.20(a)(1). For example, a numeric or alphanumeric code representing a specified dollar amount or value that is electronically sent to a consumer as a gift which can be redeemed or exchanged by the recipient to obtain goods or services may be both a ''gift certificate'' and a ''store gift card'' if the specified amount or value cannot be increased.

2. *Affiliated group of merchants.* The term ''affiliated group of merchants'' means two or more affiliated merchants or other persons that are related by common ownership or common corporate control (*see, e.g.*, 12 CFR 227.3(b) and 12 CFR 223.2) and that share the same name, mark, or logo. For example,

the term includes franchisees that are subject to a common set of corporate policies or practices under the terms of their franchise licenses. The term also applies to two or more merchants or other persons that agree among themselves, by contract or otherwise, to redeem cards, codes, or other devices bearing the same name, mark, or logo (other than the mark, logo, or brand of a payment network), for the purchase of goods or services solely at such merchants or persons. For example, assume a movie theatre chain and a restaurant chain jointly agree to issue cards that share the same ''Flix and Food'' logo that can be redeemed solely towards the purchase of movie tickets or concessions at any of the participating movie theatres, or towards the purchase of food or beverages at any of the participating restaurants. For purposes of §1005.20, the movie theatre chain and the restaurant chain would be considered to be an affiliated group of merchants, and the cards are considered to be ''store gift cards.'' However, merchants or other persons are not considered to be affiliated merely because they agree to accept a card that bears the mark, logo, or brand of a payment network.

3. *Mall gift cards. See* comment 20(a)(3)–2.

20(a)(3) General-Use Prepaid Card

1. *Redeemable upon presentation at multiple, unaffiliated merchants.* A card, code, or other device is redeemable upon presentation at multiple, unaffiliated merchants if, for example, such merchants agree to honor the card, code, or device if it bears the mark, logo, or brand of a payment network, pursuant to the rules of the payment network.

2. *Mall gift cards.* Mall gift cards that are intended to be used or redeemed for goods or services at participating retailers within a shopping mall may be considered store gift cards or general-use prepaid cards depending on the merchants with which the cards may be redeemed. For example, if a mall card may only be redeemed at merchants within the mall itself, the card is more likely to be redeemable at an affiliated group of merchants and considered a store gift card. However, certain mall cards also carry the brand of a payment network and can be used at any retailer that accepts that card brand, including retailers located outside of the mall. Such cards are considered general-use prepaid cards.

20(a)(4) Loyalty, Award, or Promotional Gift Card

1. *Examples of loyalty, award, or promotional programs.* Examples of loyalty, award, or promotional programs under §1005.20(a)(4) include, but are not limited to:

i. Consumer retention programs operated or administered by a merchant or other person that provide to consumers cards or coupons redeemable for or towards goods or services or other monetary value as a reward for purchases made or for visits to the participating merchant.

ii. Sales promotions operated or administered by a merchant or product manufacturer that provide coupons or discounts redeemable for or towards goods or services or other monetary value.

iii. Rebate programs operated or administered by a merchant or product manufacturer that provide cards redeemable for or towards goods or services or other monetary value to consumers in connection with the consumer's purchase of a product or service and the consumer's completion of the rebate submission process.

iv. Sweepstakes or contests that distribute cards redeemable for or towards goods or services or other monetary value to consumers as an invitation to enter into the promotion for a chance to win a prize.

v. Referral programs that provide cards redeemable for or towards goods or services or other monetary value to consumers in exchange for referring other potential consumers to a merchant.

vi. Incentive programs through which an employer provides cards redeemable for or towards goods or services or other monetary value to employees, for example, to recognize job performance, such as increased sales, or to encourage employee wellness and safety.

vii. Charitable or community relations programs through which a company provides cards redeemable for or towards goods or services or other monetary value to a charity or community group for their fundraising purposes, for example, as a reward for a donation or as a prize in a charitable event.

2. *Issued for loyalty, award, or promotional purposes.* To indicate that a card, code, or other device is issued for loyalty, award, or promotional purposes as required by §1005.20(a)(4)(iii), it is sufficient for the card, code, or other device to state on the front, for example, ''Reward'' or ''Promotional.''

3. *Reference to toll-free number and Web site.* If a card, code, or other device issued in connection with a loyalty, award, or promotional program does not have any fees, the disclosure under §1005.20(a)(4)(iii)(D) is not required on the card, code, or other device.

20(a)(6) Service Fee

1. *Service fees.* Under §1005.20(a)(6), a service fee includes a periodic fee for holding or use of a gift certificate, store gift card, or general-use prepaid card. A periodic fee includes any fee that may be imposed on a gift certificate, store gift card, or general-use prepaid card from time to time for holding or using the certificate or card, such as a monthly maintenance fee, a transaction fee, an ATM

fee, a reload fee, a foreign currency transaction fee, or a balance inquiry fee, whether or not the fee is waived for a certain period of time or is only imposed after a certain period of time. A service fee does not include a one-time fee or a fee that is unlikely to be imposed more than once while the underlying funds are still valid, such as an initial issuance fee, a cash-out fee, a supplemental card fee, or a lost or stolen certificate or card replacement fee.

20(a)(7) Activity

1. *Activity.* Under §1005.20(a)(7), any action that results in an increase or decrease of the funds underlying a gift certificate, store gift card, or general-use prepaid card, other than the imposition of a fee, or an adjustment due to an error or a reversal of a prior transaction, constitutes activity for purposes of §1005.20. For example, the purchase and activation of a certificate or card, the use of the certificate or card to purchase a good or service, or the reloading of funds onto a store gift card or general-use prepaid card constitutes activity. However, the imposition of a fee, the replacement of an expired, lost, or stolen certificate or card, and a balance inquiry do not constitute activity. In addition, if a consumer attempts to engage in a transaction with a gift certificate, store gift card, or general-use prepaid card, but the transaction cannot be completed due to technical or other reasons, such attempt does not constitute activity. Furthermore, if the funds underlying a gift certificate, store gift card, or general-use prepaid card are adjusted because there was an error or the consumer has returned a previously purchased good, the adjustment also does not constitute activity with respect to the certificate or card.

20(b) Exclusions

1. *Application of exclusion.* A card, code, or other device is excluded from the definition of ''gift certificate,'' ''store gift card,'' or ''general-use prepaid card'' if it meets any of the exclusions in §1005.20(b). An excluded card, code, or other device generally is not subject to any of the requirements of this section. *See, however,* §1005.20(a)(4)(iii), requiring certain disclosures for loyalty, award, or promotional gift cards.

2. *Eligibility for multiple exclusions.* A card, code, or other device may qualify for one or more exclusions. For example, a corporation may give its employees a gift card that is marketed solely to businesses for incentive-related purposes, such as to reward job performance or promote employee safety. In this case, the card may qualify for the exclusion for loyalty, award, or promotional gift cards under §1005.20(b)(3), or for the exclusion for cards, codes, or other devices not marketed to the general public under §1005.20(b)(4). In addition, as long as any one of the exclusions applies, a card, code, or other device is not covered by §1005.20, even if other exclusions do not apply. In the above example, the corporation may give its employees a type of gift card that can also be purchased by a consumer directly from a merchant. Under these circumstances, while the card does not qualify for the exclusion for cards, codes, or other devices not marketed to the general public under §1005.20(b)(4) because the card can also be obtained through retail channels, it is nevertheless exempt from the substantive requirements of §1005.20 because it is a loyalty, award, or promotional gift card. *See, however,* §1005.20(a)(4)(iii), requiring certain disclosures for loyalty, award, or promotional gift cards. Similarly, a person may market a reloadable card to teenagers for occasional expenses that enables parents to monitor spending. Although the card does not qualify for the exclusion for cards, codes, or other devices not marketed to the general public under §1005.20(b)(4), it may nevertheless be exempt from the requirements of §1005.20 under §1005.20(b)(2) if it is reloadable and not marketed or labeled as a gift card or gift certificate.

Paragraph 20(b)(1)

1. *Examples of excluded products.* The exclusion for products usable solely for telephone services applies to prepaid cards for long-distance telephone service, prepaid cards for wireless telephone service and prepaid cards for other services that function similar to telephone services, such as prepaid cards for voice over Internet protocol (VoIP) access time.

Paragraph 20(b)(2)

1. *Reloadable.* A card, code, or other device is ''reloadable'' if the terms and conditions of the agreement permit funds to be added to the card, code, or other device after the initial purchase or issuance. A card, code, or other device is not ''reloadable'' merely because the issuer or processor is technically able to add functionality that would otherwise enable the card, code, or other device to be reloaded.

2. *Marketed or labeled as a gift card or gift certificate.* The term ''marketed or labeled as a gift card or gift certificate'' means directly or indirectly offering, advertising, or otherwise suggesting the potential use of a card, code or other device, as a gift for another person. Whether the exclusion applies generally does not depend on the type of entity that makes the promotional message. For example, a card may be marketed or labeled as a gift card or gift certificate if anyone (other than the purchaser of the card), including the issuer, the retailer, the program manager that may distribute the card, or the

payment network on which a card is used, promotes the use of the card as a gift card or gift certificate. A card, code, or other device, including a general-purpose reloadable card, is marketed or labeled as a gift card or gift certificate even if it is only occasionally marketed as a gift card or gift certificate. For example, a network-branded general purpose reloadable card would be marketed or labeled as a gift card or gift certificate if the issuer principally advertises the card as a less costly alternative to a bank account but promotes the card in a television, radio, newspaper, or Internet advertisement, or on signage as ''the perfect gift'' during the holiday season. However, the mere mention of the availability of gift cards or gift certificates in an advertisement or on a sign that also indicates the availability of other excluded prepaid cards does not by itself cause the excluded prepaid cards to be marketed as a gift card or a gift certificate. For example, the posting of a sign in a store that refers to the availability of gift cards does not by itself constitute the marketing of otherwise excluded prepaid cards that may also be sold in the store as gift cards or gift certificates, provided that a consumer acting reasonably under the circumstances would not be led to believe that the sign applies to all prepaid cards sold in the store. *See, however*, comment 20(b)(2)–4.ii.

3. *Examples of marketed or labeled as a gift card or gift certificate.* i. Examples of marketed or labeled as a gift card or gift certificate include:

A. Using the word ''gift'' or ''present'' on a card, certificate, or accompanying material, including documentation, packaging and promotional displays.

B. Representing or suggesting that a certificate or card can be given to another person, for example, as a ''token of appreciation'' or a ''stocking stuffer,'' or displaying a congratulatory message on the card, certificate or accompanying material.

C. Incorporating gift-giving or celebratory imagery or motifs, such as a bow, ribbon, wrapped present, candle, or congratulatory message, on a card, certificate, accompanying documentation, or promotional material.

ii. The term does not include:

A. Representing that a card or certificate can be used as a substitute for a checking, savings, or deposit account.

B. Representing that a card or certificate can be used to pay for a consumer's health-related expenses—for example, a card tied to a health savings account.

C. Representing that a card or certificate can be used as a substitute for traveler's checks or cash.

D. Representing that a card or certificate can be used as a budgetary tool, for example, by teenagers, or to cover emergency expenses.

4. *Reasonable policies and procedures to avoid marketing as a gift card.* The exclusion for a card, code, or other device that is reloadable and not marketed or labeled as a gift card or gift certificate in §1005.20(b)(2) applies if a reloadable card, code, or other device is not marketed or labeled as a gift card or gift certificate and if persons subject to the rule, including issuers, program managers, and retailers, maintain policies and procedures reasonably designed to avoid such marketing. Such policies and procedures may include contractual provisions prohibiting a reloadable card, code, or other device from being marketed or labeled as a gift card or gift certificate, merchandising guidelines or plans regarding how the product must be displayed in a retail outlet, and controls to regularly monitor or otherwise verify that the card, code or other device is not being marketed as a gift card. Whether a reloadable card, code, or other device has been marketed as a gift card or gift certificate will depend on the facts and circumstances, including whether a reasonable consumer would be led to believe that the card, code, or other device is a gift card or gift certificate. The following examples illustrate the application of §1005.20(b)(2):

i. An issuer or program manager of prepaid cards agrees to sell general-purpose reloadable cards through a retailer. The contract between the issuer or program manager and the retailer establishes the terms and conditions under which the cards may be sold and marketed at the retailer. The terms and conditions prohibit the general-purpose reloadable cards from being marketed as a gift card or gift certificate, and require policies and procedures to regularly monitor or otherwise verify that the cards are not being marketed as such. The issuer or program manager sets up one promotional display at the retailer for gift cards and another physically separated display for excluded products under §1005.20(b), including general-purpose reloadable cards and wireless telephone cards, such that a reasonable consumer would not believe that the excluded cards are gift cards. The exclusion in §1005.20(b)(2) applies because policies and procedures reasonably designed to avoid the marketing of the general-purpose reloadable cards as gift cards or gift certificates are maintained, even if a retail clerk inadvertently stocks or a consumer inadvertently places a general-purpose reloadable card on the gift card display.

ii. Same facts as in i., except that the issuer or program manager sets up a single promotional display at the retailer on which a variety of prepaid cards are sold, including store gift cards and general-purpose reloadable cards. A sign stating ''Gift Cards'' appears prominently at the top of the display. The exclusion in §1005.20(b)(2) does not apply with respect to the general-purpose

reloadable cards because policies and procedures reasonably designed to avoid the marketing of excluded cards as gift cards or gift certificates are not maintained.

iii. Same facts as in i., except that the issuer or program manager sets up a single promotional multi-sided display at the retailer on which a variety of prepaid card products, including store gift cards and general-purpose reloadable cards are sold. Gift cards are segregated from excluded cards, with gift cards on one side of the display and excluded cards on a different side of a display. Signs of equal prominence at the top of each side of the display clearly differentiate between gift cards and the other types of prepaid cards that are available for sale. The retailer does not use any more conspicuous signage suggesting the general availability of gift cards, such as a large sign stating ''Gift Cards'' at the top of the display or located near the display. The exclusion in §1005.20(b)(2) applies because policies and procedures reasonably designed to avoid the marketing of the general-purpose reloadable cards as gift cards or gift certificates are maintained, even if a retail clerk inadvertently stocks or a consumer inadvertently places a general-purpose reloadable card on the gift card display.

iv. Same facts as in i., except that the retailer sells a variety of prepaid card products, including store gift cards and general-purpose reloadable cards, arranged side-by-side in the same checkout lane. The retailer does not affirmatively indicate or represent that gift cards are available, such as by displaying any signage or other indicia at the checkout lane suggesting the general availability of gift cards. The exclusion in §1005.20(b)(2) applies because policies and procedures reasonably designed to avoid marketing the general-purpose reloadable cards as gift cards or gift certificates are maintained.

5. *Online sales of prepaid cards.* Some Web sites may prominently advertise or promote the availability of gift cards or gift certificates in a manner that suggests to a consumer that the Web site exclusively sells gift cards or gift certificates. For example, a Web site may display a banner advertisement or a graphic on the home page that prominently states ''Gift Cards,'' ''Gift Giving,'' or similar language without mention of other available products, or use a web address that includes only a reference to gift cards or gift certificates in the address. In such a case, a consumer acting reasonably under the circumstances could be led to believe that all prepaid products sold on the Web site are gift cards or gift certificates. Under these facts, the Web site has marketed all such products, including general-purpose reloadable cards, as gift cards or gift certificates, and the exclusion in §1005.20(b)(2) does not apply.

6. *Temporary non-reloadable cards issued in connection with a general-purpose reloadable card.* Certain general-purpose reloadable cards that are typically marketed as an account substitute initially may be sold or issued in the form of a temporary non-reloadable card. After the card is purchased, the cardholder is typically required to call the issuer to register the card and to provide identifying information in order to obtain a reloadable replacement card. In most cases, the temporary non-reloadable card can be used for purchases until the replacement reloadable card arrives and is activated by the cardholder. Because the temporary non-reloadable card may only be obtained in connection with the general-purpose reloadable card, the exclusion in §1005.20(b)(2) applies so long as the card is not marketed as a gift card or gift certificate.

Paragraph 20(b)(4)

1. *Marketed to the general public.* A card, code, or other device is marketed to the general public if the potential use of the card, code, or other device is directly or indirectly offered, advertised, or otherwise promoted to the general public. A card, code, or other device may be marketed to the general public through any advertising medium, including television, radio, newspaper, the Internet, or signage. However, the posting of a company policy that funds may be disbursed by prepaid card (such as a sign posted at a cash register or customer service center stating that store credit will be issued by prepaid card) does not constitute the marketing of a card, code, or other device to the general public. In addition, the method of distribution by itself is not dispositive in determining whether a card, code, or other device is marketed to the general public. Factors that may be considered in determining whether the exclusion applies to a particular card, code, or other device include the means or channel through which the card, code, or device may be obtained by a consumer, the subset of consumers that are eligible to obtain the card, code, or device, and whether the availability of the card, code, or device is advertised or otherwise promoted in the marketplace.

2. *Examples.* The following examples illustrate the application of the exclusion in §1005.20(b)(4):

i. A merchant sells its gift cards at a discount to a business which may give them to employees or loyal consumers as incentives or rewards. In determining whether the gift card falls within the exclusion in §1005.20(b)(4), the merchant must consider whether the card is of a type that is advertised or made available to consumers generally or can be obtained elsewhere. If the card can also be purchased through retail channels, the exclusion in §1005.20(b)(4) does

not apply, even if the consumer obtained the card from the business as an incentive or reward. *See, however,* §1005.20(b)(3).

ii. A national retail chain decides to market its gift cards only to members of its frequent buyer program. Similarly, a bank may decide to sell gift cards only to its customers. If a member of the general public may become a member of the program or a customer of the bank, the card does not fall within the exclusion in §1005.20(b)(4) because the general public has the ability to obtain the cards. *See, however,* §1005.20(b)(3).

iii. A card issuer advertises a reloadable card to teenagers and their parents promoting the card for use by teenagers for occasional expenses, schoolbooks and emergencies and by parents to monitor spending. Because the card is marketed to and may be sold to any member of the general public, the exclusion in §1005.20(b)(4) does not apply. *See, however,* §1005.20(b)(2).

iv. An insurance company settles a policyholder's claim and distributes the insurance proceeds to the consumer by means of a prepaid card. Because the prepaid card is simply the means for providing the insurance proceeds to the consumer and the availability of the card is not advertised to the general public, the exclusion in §1005.20(b)(4) applies.

v. A merchant provides store credit to a consumer following a merchandise return by issuing a prepaid card that clearly indicates that the card contains funds for store credit. Because the prepaid card is issued for the stated purpose of providing store credit to the consumer and the ability to receive refunds by a prepaid card is not advertised to the general public, the exclusion in §1005.20(b)(4) applies.

vi. A tax preparation company elects to distribute tax refunds to its clients by issuing prepaid cards, but does not advertise or otherwise promote the ability to receive proceeds in this manner. Because the prepaid card is simply the mechanism for providing the tax refund to the consumer, and the tax preparer does not advertise the ability to obtain tax refunds by a prepaid card, the exclusion in §1005.20(b)(4) applies. However, if the tax preparer promotes the ability to receive tax refund proceeds through a prepaid card as a way to obtain ''faster'' access to the proceeds, the exclusion in §1005.20(b)(4) does not apply.

Paragraph 20(b)(5)

1. *Exclusion explained.* To qualify for the exclusion in §1005.20(b)(5), the sole means of issuing the card, code, or other device must be in a paper form. Thus, the exclusion generally applies to certificates issued in paper form where solely the paper itself may be used to purchase goods or services. A card, code or other device is not issued solely in paper form simply because it may be reproduced or printed on paper. For example, a bar code, card or certificate number, or certificate or coupon electronically provided to a consumer and redeemable for goods and services is not issued in paper form, even if it may be reproduced or otherwise printed on paper by the consumer. In this circumstance, although the consumer might hold a paper facsimile of the card, code, or other device, the exclusion does not apply because the information necessary to redeem the value was initially issued in electronic form. A paper certificate is within the exclusion regardless of whether it may be redeemed electronically. For example, a paper certificate or receipt that bears a bar code, code, or account number falls within the exclusion in §1005.20(b)(5) if the bar code, code, or account number is not issued in any form other than on the paper. In addition, the exclusion in §1005.20(b)(5) continues to apply in circumstances where an issuer replaces a gift certificate that was initially issued in paper form with a card or electronic code (for example, to replace a lost paper certificate).

2. *Examples.* The following examples illustrate the application of the exclusion in §1005.20(b)(5):

i. A merchant issues a paper gift certificate that entitles the bearer to a specified dollar amount that can be applied towards a future meal. The merchant fills in the certificate with the name of the certificate holder and the amount of the certificate. The certificate falls within the exclusion in §1005.20(b)(5) because it is issued in paper form only.

ii. A merchant allows a consumer to prepay for a good or service, such as a car wash or time at a parking meter, and issues a paper receipt bearing a numerical or bar code that the consumer may redeem to obtain the good or service. The exclusion in §1005.20(b)(5) applies because the code is issued in paper form only.

iii. A merchant issues a paper certificate or receipt bearing a bar code or certificate number that can later be scanned or entered into the merchant's system and redeemed by the certificate or receipt holder towards the purchase of goods or services. The bar code or certificate number is not issued by the merchant in any form other than paper. The exclusion in §1005.20(b)(5) applies because the bar code or certificate number is issued in paper form only.

iv. An online merchant electronically provides a bar code, card or certificate number, or certificate or coupon to a consumer that the consumer may print on a home printer and later redeem towards the purchase of goods or services. The exclusion in §1005.20(b)(5) does not apply because the bar code or card or certificate number was issued to the consumer in electronic form, even though it can be reproduced or otherwise printed on paper by the consumer.

Paragraph 20(b)(6)

1. *Exclusion explained.* The exclusion for cards, codes, or other devices that are redeemable solely for admission to events or venues at a particular location or group of affiliated locations generally applies to cards, codes, or other devices that are not redeemed for a specified monetary value, but rather solely for admission or entry to an event or venue. The exclusion also covers a card, code, or other device that is usable to purchase goods or services in addition to entry into the event or the venue, either at the event or venue or at an affiliated location or location in geographic proximity to the event or venue.

2. *Examples.* The following examples illustrate the application of the exclusion in §1005.20(b)(6):

i. A consumer purchases a prepaid card that entitles the holder to a ticket for entry to an amusement park. The prepaid card may only be used for entry to the park. The card qualifies for the exclusion in §1005.20(b)(6) because it is redeemable for admission or entry and for goods or services in conjunction with that admission. In addition, if the prepaid card does not have a monetary value, and therefore is not ''issued in a specified amount,'' the card does not meet the definitions of ''gift certificate,'' ''store gift card,'' or ''general-use prepaid card'' in §1005.20(a). *See* comment 20(a)–3.

ii. Same facts as in i., except that the gift card also entitles the holder of the gift card to a dollar amount that can be applied towards the purchase of food and beverages or goods or services at the park or at nearby affiliated locations. The card qualifies for the exclusion in §1005.20(b)(6) because it is redeemable for admission or entry and for goods or services in conjunction with that admission.

iii. A consumer purchases a $25 gift card that the holder of the gift card can use to make purchases at a merchant, or, alternatively, can apply towards the cost of admission to the merchant's affiliated amusement park. The card is not eligible for the exclusion in §1005.20(b)(6) because it is not redeemable solely for the admission or ticket itself (or for goods and services purchased in conjunction with such admission). The card meets the definition of ''store gift card'' and is therefore subject to §1005.20, unless a different exclusion applies.

20(c) Form of Disclosures

20(c)(1) Clear and Conspicuous

1. *Clear and conspicuous standard.* All disclosures required by this section must be clear and conspicuous. Disclosures are clear and conspicuous for purposes of this section if they are readily understandable and, in the case of written and electronic disclosures, the location and type size are readily noticeable to consumers. Disclosures need not be located on the front of the certificate or card, except where otherwise required, to be considered clear and conspicuous. Disclosures are clear and conspicuous for the purposes of this section if they are in a print that contrasts with and is otherwise not obstructed by the background on which they are printed. For example, disclosures on a card or computer screen are not likely to be conspicuous if obscured by a logo printed in the background. Similarly, disclosures on the back of a card that are printed on top of indentations from embossed type on the front of the card are not likely to be conspicuous if the indentations obstruct the readability of the disclosures. To the extent permitted, oral disclosures meet the standard when they are given at a volume and speed sufficient for a consumer to hear and comprehend them.

2. *Abbreviations and symbols.* Disclosures may contain commonly accepted or readily understandable abbreviations or symbols, such as ''mo.'' for month or a ''/'' to indicate ''per.'' Under the clear and conspicuous standard, it is sufficient to state, for example, that a particular fee is charged ''$2.50/mo. after 12 mos.''

20(c)(2) Format

1. *Electronic disclosures.* Disclosures provided electronically pursuant to this section are not subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E–Sign Act) (15 U.S.C. 7001 *et seq.).* Electronic disclosures must be in a retainable form. For example, a person may satisfy the requirement if it provides an online disclosure in a format that is capable of being printed. Electronic disclosures may not be provided through a hyperlink or in another manner by which the purchaser can bypass the disclosure. A person is not required to confirm that the consumer has read the electronic disclosures.

20(c)(3) Disclosure Prior to Purchase

1. *Method of purchase.* The disclosures required by this paragraph must be provided before a certificate or card is purchased regardless of whether the certificate or card is purchased in person, online, by telephone, or by other means.

2. *Electronic disclosures.* Section 1005.20(c)(3) provides that the disclosures required by this section must be provided to the consumer prior to purchase. For certificates or cards purchased electronically, disclosures made to the consumer after a consumer has initiated an online purchase of a certificate or card, but prior to completing the purchase of the certificate or card, would satisfy the prior-to-purchase requirement. However,

electronic disclosures made available on a person's Web site that may or may not be accessed by the consumer are not provided to the consumer and therefore would not satisfy the prior-to-purchase requirement.

3. *Non-physical certificates and cards.* If no physical certificate or card is issued, the disclosures must be provided to the consumer before the certificate or card is purchased. For example, where a gift certificate or card is a code that is provided by telephone, the required disclosures may be provided orally prior to purchase. *See also* §1005.20(c)(2).

20(c)(4) Disclosures on the Certificate or Card

1. *Non-physical certificates and cards.* If no physical certificate or card is issued, the disclosures required by this paragraph must be disclosed on the code, confirmation, or other written or electronic document provided to the consumer. For example, where a gift certificate or card is a code or confirmation that is provided to a consumer online or sent to a consumer's email address, the required disclosures may be provided electronically on the same document as the code or confirmation.2. *No disclosures on a certificate or card.* Disclosures required by §1005.20(c)(4) need not be made on a certificate or card if it is accompanied by a certificate or card that complies with this section. For example, a person may issue or sell a supplemental gift card that is smaller than a standard size and that does not bear the applicable disclosures if it is accompanied by a fully compliant certificate or card. *See also* comment 20(c)(2)–2.

20(d) Prohibition on Imposition of Fees or Charges

1. *One-year period.* Section 1005.20(d) provides that a person may impose a dormancy, inactivity, or service fee only if there has been no activity with respect to a certificate or card for one year. The following examples illustrate this rule:

i. A certificate or card is purchased on January 15 of year one. If there has been no activity on the certificate or card since the certificate or card was purchased, a dormancy, inactivity, or service fee may be imposed on the certificate or card on January 15 of year two.

ii. Same facts as i., and a fee was imposed on January 15 of year two. Because no more than one dormancy, inactivity, or service fee may be imposed in any given calendar month, the earliest date that another dormancy, inactivity, or service fee may be imposed, assuming there continues to be no activity on the certificate or card, is February 1 of year two. A dormancy, inactivity, or service fee is permitted to be imposed on February 1 of year two because there has been no activity on the certificate or card for the preceding year (February 1 of year one through January 31 of year two), and February is a new calendar month. The imposition of a fee on January 15 of year two is not activity for purposes of §1005.20(d). *See* comment 20(a)(7)–1.

iii. Same facts as i., and a fee was imposed on January 15 of year two. On January 31 of year two, the consumer uses the card to make a purchase. Another dormancy, inactivity, or service fee could not be imposed until January 31 of year three, assuming there has been no activity on the certificate or card since January 31 of year two.

2. *Relationship between §§1005.20(d)(2) and (c)(3).* Sections 1005.20(d)(2) and (c)(3) contain similar, but not identical, disclosure requirements. Section 1005.20(d)(2) requires the disclosure of dormancy, inactivity, and service fees on a certificate or card. Section 1005.20(c)(3) requires that vendor person that issues or sells such certificate or card disclose to a consumer any dormancy, inactivity, and service fees associated with the certificate or card before such certificate or card may be purchased. Depending on the context, a single disclosure that meets the clear and conspicuous requirements of both §§1005.20(d)(2) and (c)(3) may be used to disclose a dormancy, inactivity, or service fee. For example, if the disclosures on a certificate or card, required by §1005.20(d)(2), are visible to the consumer without having to remove packaging or other materials sold with the certificate or card, for a purchase made in person, the disclosures also meet the requirements of §1005.20(c)(3). Otherwise, a dormancy, inactivity, or service fee may need to be disclosed multiple times to satisfy the requirements of §§1005.20(d)(2) and (c)(3). For example, if the disclosures on a certificate or card, required by §1005.20(d)(2), are obstructed by packaging sold with the certificate or card, for a purchase made in person, they also must be disclosed on the packaging sold with the certificate or card to meet the requirements of §1005.20(c)(3).

3. *Relationship between §§1005.20(d)(2), (e)(3), and (f)(2).* In addition to any disclosures required under §1005.20(d)(2), any applicable disclosures under §§1005.20(e)(3) and (f)(2) of this section must also be provided on the certificate or card.

4. *One fee per month.* Under §1005.20(d)(3), no more than one dormancy, inactivity, or service fee may be imposed in any given calendar month. For example, if a dormancy fee is imposed on January 1, following a year of inactivity, and a consumer makes a balance inquiry on January 15, a balance inquiry fee may not be imposed at that time because a dormancy fee was already imposed earlier that month and a balance inquiry fee is a type of service fee. If, however, the dormancy fee could be imposed on January 1, following a year of inactivity, and the consumer makes a balance inquiry on the same date, the person assessing the fees may

choose whether to impose the dormancy fee or the balance inquiry fee on January 1. The restriction in §1005.20(d)(3) does not apply to any fee that is not a dormancy, inactivity, or service fee. For example, assume a service fee is imposed on a general-use prepaid card on January 1, following a year of inactivity. If a consumer cashes out the remaining funds by check on January 15, a cash-out fee, to the extent such cash-out fee is permitted under §1005.20(e)(4), may be imposed at that time because a cash-out fee is not a dormancy, inactivity, or service fee.

5. *Accumulation of fees.* Section 1005.20(d) prohibits the accumulation of dormancy, inactivity, or service fees for previous periods into a single fee because such a practice would circumvent the limitation in §1005.20(d)(3) that only one fee may be charged per month. For example, if a consumer purchases and activates a store gift card on January 1 but never uses the card, a monthly maintenance fee of $2.00 a month may not be accumulated such that a fee of $24 is imposed on January 1 the following year.

20(e) Prohibition on Sale of Gift Certificates or Cards With Expiration Dates

1. *Reasonable opportunity.* Under §1005.20(e)(1), no person may sell or issue a gift certificate, store gift card, or general-use prepaid card with an expiration date, unless there are policies and procedures in place to provide consumers with a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date. Consumers are deemed to have a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date if:

i. There are policies and procedures established to prevent the sale of a certificate or card unless the certificate or card expiration date is at least five years after the date the certificate or card was sold or initially issued to a consumer; or

ii. A certificate or card is available to consumers to purchase five years and six months before the certificate or card expiration date.

2. *Applicability to replacement certificates or cards.* Section 1005.20(e)(1) applies solely to the *purchase* of a certificate or card. Therefore, §1005.20(e)(1) does not apply to the replacement of such certificates or cards. Certificates or cards issued as a replacement may bear a certificate or card expiration date of less than five years from the date of issuance of the replacement certificate or card. If the certificate or card expiration date for a replacement certificate or card is later than the date set forth in §1005.20(e)(2)(i), then pursuant to §1005.20(e)(2), the expiration date for the underlying funds at the time the replacement certificate or card is issued must be no earlier than the expiration date for the replacement certificate or card. For purposes of §1005.20(e)(2), funds are not considered to be loaded to a store gift card or general-use prepaid card solely because a replacement card has been issued or activated for use.

3. *Disclosure of funds expiration—date not required.* Section 1005.20(e)(3)(i) does not require disclosure of the precise date the funds will expire. It is sufficient to disclose, for example, ''Funds expire 5 years from the date funds last loaded to the card.''; ''Funds can be used 5 years from the date money was last added to the card.''; or ''Funds do not expire.''

4. *Disclosure not required if no expiration date.* If the certificate or card and underlying funds do not expire, the disclosure required by §1005.20(e)(3)(i) need not be stated on the certificate or card. If the certificate or card and underlying funds expire at the same time, only one expiration date need be disclosed on the certificate or card.

5. *Reference to toll-free telephone number and Web site.* If a certificate or card does not expire, or if the underlying funds are not available after the certificate or card expires, the disclosure required by §1005.20(e)(3)(ii) need not be stated on the certificate or card. *See, however,* §1005.20(f)(2).

6. *Relationship to §226.20(f)(2).* The same toll-free telephone number and Web site may be used to comply with §§226.20(e)(3)(ii) and (f)(2). Neither a toll-free number nor a Web site must be maintained or disclosed if no fees are imposed in connection with a certificate or card, and the certificate or card and the underlying funds do not expire.

7. *Distinguishing between certificate or card expiration and funds expiration.* If applicable, a disclosure must be made on the certificate or card that notifies a consumer that the certificate or card expires, but the funds either do not expire or expire later than the certificate or card, and that the consumer may contact the issuer for a replacement card. The disclosure must be made with equal prominence and in close proximity to the certificate or card expiration date. The close proximity requirement does not apply to oral disclosures. In the case of a certificate or card, close proximity means that the disclosure must be on the same side as the certificate or card expiration date. For example, if the disclosure is the same type size and is located immediately next to or directly above or below the certificate or card expiration date, without any intervening text or graphical displays, the disclosures would be deemed to be equally prominent and in close proximity. The disclosure need not be embossed on the certificate or card to be deemed equally prominent, even if the expiration date is embossed on the certificate or card. The disclosure may state on the front of the card, for example, ''Funds expire

after card. Call for replacement card.'' or ''Funds do not expire. Call for new card after 09/2016.'' Disclosures made pursuant to §1005.20(e)(3)(iii)(A) may also fulfill the requirements of §1005.20(e)(3)(i). For example, making a disclosure that ''Funds do not expire'' to comply with §1005.20(e)(3)(iii)(A) also fulfills the requirements of §1005.20(e)(3)(i).

8. *Expiration date safe harbor.* A nonreloadable certificate or card that bears an expiration date that is at least seven years from the date of manufacture need not state the disclosure required by §1005.20(e)(3)(iii). However, §1005.20(e)(1) still prohibits the sale or issuance of such certificate or card unless there are policies and procedures in place to provide a consumer with a reasonable opportunity to purchase the certificate or card with at least five years remaining until the certificate or card expiration date. In addition, under §1005.20(e)(2), the funds may not expire before the certificate or card expiration date, even if the expiration date of the certificate or card bears an expiration date that is more than five years from the date of purchase. For purposes of this safe harbor, the date of manufacture is the date on which the certificate or card expiration date is printed on the certificate or card.

9. *Relationship between §§1005.20(d)(2), (e)(3), and (f)(2).* In addition to any disclosures required to be made under §1005.20(e)(3), any applicable disclosures under §§1005.20(d)(2) and (f)(2) must also be provided on the certificate or card.

10. *Replacement or remaining balance of an expired certificate or card.* When a certificate or card expires, but the underlying funds have not expired, an issuer, at its option in accordance with applicable state law, may provide either a replacement certificate or card or otherwise provide the certificate or card holder, for example, by check, with the remaining balance on the certificate or card. In either case, the issuer may not charge a fee for the service.

11. *Replacement of a lost or stolen certificate or card not required.* Section 1005.20(e)(4) does not require the replacement of a certificate or card that has been lost or stolen.

12. *Date of issuance or loading.* For purposes of §1005.20(e)(2)(i), a certificate or card is not issued or loaded with funds until the certificate or card is activated for use.

13. *Application of expiration date provisions after redemption of certificate or card.* The requirement that funds underlying a certificate or card must not expire for at least five years from the date of issuance or date of last load ceases to apply once the certificate or card has been fully redeemed, even if the underlying funds are not used to contemporaneously purchase a specific good or service. For example, some certificates or cards can be used to purchase music, media, or virtual goods. Once redeemed by a consumer, the entire balance on the certificate or card is debited from the certificate or card and credited or transferred to another ''account'' established by the merchant of such goods or services. The consumer can then make purchases of songs, media, or virtual goods from the merchant using that ''account'' either at the time the value is transferred from the certificate or card or at a later time. Under these circumstances, once the card has been fully redeemed and the ''account'' credited with the amount of the underlying funds, the five-year minimum expiration term no longer applies to the underlying funds. However, if the consumer only partially redeems the value of the certificate or card, the five-year minimum expiration term requirement continues to apply to the funds remaining on the certificate or card.

20(f) Additional Disclosure Requirements for Gift Certificates or Cards

1. *Reference to toll-free telephone number and Web site.* If a certificate or card does not have any fees, the disclosure under §1005.20(f)(2) is not required on the certificate or card. *See, however,* §1005.20(e)(3)(ii).

2. *Relationship to §226.20(e)(3)(ii).* The same toll-free telephone number and Web site may be used to comply with §§226.20(e)(3)(ii) and (f)(2). Neither a toll-free number nor a Web site must be maintained or disclosed if no fees are imposed in connection with a certificate or card, and both the certificate or card and underlying funds do not expire.

3. *Relationship between §§1005.20(d)(2), (e)(3), and (f)(2).* In addition to any disclosures required pursuant to §1005.20(f)(2), any applicable disclosures under §§1005.20(d)(2) and (e)(3) must also be provided on the certificate or card.

20(g) Compliance Dates

1. *Period of eligibility for loyalty, award, or promotional programs.* For purposes of §1005.20(g)(2), the period of eligibility is the time period during which a consumer must engage in a certain action or actions to meet the terms of eligibility for a loyalty, award, or promotional program and obtain the card, code, or other device. Under §1005.20(g)(2), a gift card issued pursuant to a loyalty, award, or promotional program that began prior to August 22, 2010 need not state the disclosures in §1005.20(a)(4)(iii) regardless of whether the consumer became eligible to receive the gift card prior to August 22, 2010, or after that date. For example, a product manufacturer may provide a $20 rebate card to a consumer if the consumer purchases a particular product and submits a fully completed entry between January 1, 2010 and December 31, 2010. Similarly, a merchant may provide a $20 gift card to a consumer if the consumer makes $200 worth of qualifying purchases between June 1, 2010 and October 30, 2010. Under both

examples, gift cards provided pursuant to these loyalty, award, or promotional programs need not state the disclosures in §1005.20(a)(4)(iii) to qualify for the exclusion in §1005.20(b)(3) for loyalty, award, or promotional gift cards because the period of eligibility for each program began prior to August 22, 2010.

20(h) Temporary Exemption

20(h)(1) Delayed Effective Date

1. *Application to certificates or cards produced prior to April 1, 2010.* Certificates or cards produced prior to April 1, 2010 may be sold to a consumer on or after August 22, 2010 without satisfying the requirements of §§1005.20(c)(3), (d)(2), (e)(1), (e)(3), and (f) through January 30, 2011, provided that issuers of such certificates or cards comply with the additional substantive and disclosure requirements of §§1005.20(h)(1)(i) through (iv). Issuers of certificates or cards produced prior to April 1, 2010 need not satisfy these additional requirements if the certificates or cards fully comply with the rule (§§1005.20(a) through (f)). For example, the in-store signage and other disclosures required by §1005.20(h)(2) do not apply to gift cards produced prior to April 1, 2010 that do not have fees and do not expire, and which otherwise comply with the rule.

2. *Expiration of temporary exemption.* Certificates or cards produced prior to April 1, 2010 that do not fully comply with §§1005.20(a) through (f) may not be issued or sold to consumers on or after January 31, 2011.

20(h)(2) Additional Disclosures

1. *Disclosures through third parties.* Issuers may make the disclosures required by §1005.20(h)(2) through a third party, such as a retailer or merchant. For example, an issuer may have a merchant install in-store signage with the disclosures required by §1005.20(h)(2) on the issuer's behalf.

2. *General advertising disclosures.* Section 1005.20(h)(2) does not impose an obligation on the issuer to advertise gift certificates, store gift cards, or general-use prepaid cards.

SECTION 1005.30—REMITTANCE TRANSFER DEFINITIONS

1. *Applicability of definitions in subpart A.* Except as modified or limited by subpart B (which modifications or limitations apply only to subpart B), the definitions in §1005.2 apply to all of Regulation E, including subpart B.

30(b) Business Day

1. *General.* A business day, as defined in §1005.30(b), includes the entire 24-hour period ending at midnight, and a notice given pursuant to any section of subpart B is effective even if given outside of normal business hours. A remittance transfer provider is not required under subpart B to make telephone lines available on a 24-hour basis.

2. *Substantially all business functions.* ''Substantially all business functions'' include both the public and the back-office operations of the provider. For example, if the offices of a provider are open on Saturdays for customers to request remittance transfers, but not for performing internal functions (such as investigating errors), then Saturday is not a business day for that provider. In this case, Saturday does not count toward the business-day standard set by subpart B for resolving errors, processing refunds, etc.

3. *Short hours.* A provider may determine, at its election, whether an abbreviated day is a business day. For example, if a provider engages in substantially all business functions until noon on Saturdays instead of its usual 3 p.m. closing, it may consider Saturday a business day.

4. *Telephone line.* If a provider makes a telephone line available on Sundays for cancelling the transfer, but performs no other business functions, Sunday is not a business day under the ''substantially all business functions'' standard.

30(c) Designated Recipient

1. *Person.* A designated recipient can be either a natural person or an organization, such as a corporation. *See* §1005.2(j) (definition of person). The designated recipient is identified by the name of the person provided by the sender to the remittance transfer provider and disclosed by the provider to the sender pursuant to §1005.31(b)(1)(iii).

2. *Location in a foreign country.* i. A remittance transfer is received at a location in a foreign country if funds are to be received at a location physically outside of any State, as defined in §1005.2(l). A specific pick-up location need not be designated for funds to be received at a location in a foreign country. If it is specified that the funds will be transferred to a foreign country to be picked up by the designated recipient, the transfer will be received at a location in a foreign country, even though a specific pick-up location within that country has not been designated. If it is specified that the funds will be received at a location on a U.S. military installation that is physically located in a foreign country, the transfer will be received in a State.

ii. For transfers to a designated recipient's account, whether funds are to be received at a location physically outside of any State depends on where the recipient's account is located. If the account is located in a State, the funds will not be received at a location in a foreign country. Accounts that are located on a U.S. military installation that is physically located in a foreign country are located in a State.

iii. Where the sender does not specify information about a designated recipient's account, but instead provides information about the recipient, a remittance transfer provider may make the determination of whether the funds will be received at a location in a foreign country on information that is provided by the sender, and other information the provider may have, at the time the transfer is requested. For example, if a consumer in a State gives a provider the recipient's email address, and the provider has no other information about whether the funds will be received by the recipient at a location in a foreign country, then the provider may determine that funds are not to be received at a location in a foreign country. However, if the provider at the time the transfer is requested has additional information indicating that funds are to be received in a foreign country, such as if the recipient's email address is already registered with the provider and associated with a foreign account, then the provider has sufficient information to conclude that the remittance transfer will be received at a location in a foreign country. Similarly, if a consumer in a State purchases a prepaid card, and the provider mails or delivers the card directly to the consumer, the provider may conclude that funds are not to be received in a foreign country, because the provider does not know whether the consumer will subsequently send the prepaid card to a recipient in a foreign country. In contrast, the provider has sufficient information to conclude that the funds are to be received in a foreign country if the remittance transfer provider sends a prepaid card to a specified recipient in a foreign country, even if a person located in a State, including the sender, retains the ability to access funds on the prepaid card.

3. *Sender as designated recipient.* A ''sender,'' as defined in §1005.30(g), may also be a designated recipient if the sender meets the definition of ''designated recipient'' in §1005.30(c). For example, a sender may request that a provider send an electronic transfer of funds from the sender's checking account in a State to the sender's checking account located in a foreign country. In this case, the sender would also be a designated recipient.

30(d) Preauthorized Remittance Transfer

1. *Advance authorization.* A preauthorized remittance transfer is a remittance transfer authorized in advance of a transfer that will take place on a recurring basis, at substantially regular intervals, and will require no further action by the consumer to initiate the transfer. In a bill-payment system, for example, if the consumer authorizes a remittance transfer provider to make monthly payments to a payee by means of a remittance transfer, and the payments take place without further action by the consumer, the payments are preauthorized remittance transfers. In contrast, if the consumer must take action each month to initiate a transfer (such as by entering instructions on a telephone or home computer), the payments are not preauthorized remittance transfers.

30(e) Remittance Transfer

1. *Electronic transfer of funds.* The definition of ''remittance transfer'' requires an electronic transfer of funds. The term electronic has the meaning given in section 106(2) of the Electronic Signatures in Global and National Commerce Act. There may be an electronic transfer of funds if a provider makes an electronic book entry between different settlement accounts to effectuate the transfer. However, where a sender mails funds directly to a recipient, or provides funds to a courier for delivery to a foreign country, there is not an electronic transfer of funds. Similarly, generally, where a provider issues a check, draft, or other paper instrument to be mailed to a person abroad, there is not an electronic transfer of funds. Nonetheless, an electronic transfer of funds occurs for a payment made by a provider under a bill-payment service available to a consumer via computer or other electronic means, unless the terms of the bill-payment service explicitly state that all payments, or all payments to a particular payee or payees, will be solely by check, draft, or similar paper instrument drawn on the consumer's account to be mailed abroad, and the payee or payees that will be paid in this manner are identified to the consumer. With respect to such a bill-payment service, if a provider provides a check, draft or similar paper instrument drawn on a consumer's account to be mailed abroad for a payee that is not identified to the consumer as described above, this payment by check, draft or similar payment instrument will be an electronic transfer of funds.

2. *Sent by a remittance transfer provider.* i. The definition of ''remittance transfer'' requires that a transfer be ''sent by a remittance transfer provider.'' This means that there must be an intermediary that is directly engaged with the sender to send an electronic transfer of funds on behalf of the sender to a designated recipient.

ii. A payment card network or other third party payment service that is functionally similar to a payment card network does not send a remittance transfer when a consumer provides a debit, credit or prepaid card directly to a foreign merchant as payment for goods or services. In such a case, the payment card network or third party payment service is not directly engaged with the sender to send a transfer of funds to a person in a foreign country; rather, the network or

third party payment service is merely providing contemporaneous third-party payment processing and settlement services on behalf of the merchant or the card issuer, rather than on behalf of the sender. In such a case, the card issuer also is not directly engaged with the sender to send an electronic transfer of funds to the foreign merchant when the card issuer provides payment to the merchant. Similarly, where a consumer provides a checking or other account number, or a debit, credit or prepaid card, directly to a foreign merchant as payment for goods or services, the merchant is not acting as an intermediary that sends a transfer of funds on behalf of the sender when it submits the payment information for processing.

iii. However, a card issuer or a payment network may offer a service to a sender where the card issuer or a payment network is an intermediary that is directly engaged with the sender to obtain funds using the sender's debit, prepaid or credit card and to send those funds to a recipient's checking account located in a foreign country. In this case, the card issuer or the payment network is an intermediary that is directly engaged with the sender to send an electronic transfer of funds on behalf of the sender, and this transfer of funds is a remittance transfer because it is made to a designated recipient. *See* comment 30(c)–2.ii.

3. *Examples of remittance transfers.*

i. Examples of remittance transfers include:

A. Transfers where the sender provides cash or another method of payment to a money transmitter or financial institution and requests that funds be sent to a specified location or account in a foreign country.

B. Consumer wire transfers, where a financial institution executes a payment order upon a sender's request to wire money from the sender's account to a designated recipient.

C. An addition of funds to a prepaid card by a participant in a prepaid card program, such as a prepaid card issuer or its agent, that is directly engaged with the sender to add these funds, where the prepaid card is sent or was previously sent by a participant in the prepaid card program to a person in a foreign country, even if a person located in a State (including a sender) retains the ability to withdraw such funds.

D. International ACH transactions sent by the sender's financial institution at the sender's request.

E. Online bill payments and other electronic transfers that a sender schedules in advance, including preauthorized remittance transfers, made by the sender's financial institution at the sender's request to a designated recipient.

ii. The term remittance transfer does not include, for example:

A. A consumer's provision of a debit, credit or prepaid card, directly to a foreign merchant as payment for goods or services because the issuer is not directly engaged with the sender to send an electronic transfer of funds to the foreign merchant when the issuer provides payment to the merchant. *See* comment 30(e)–2.

B. A consumer's deposit of funds to a checking or savings account located in a State, because there has not been a transfer of funds to a designated recipient. *See* comment 30(c)–2.ii.

C. Online bill payments and other electronic transfers that senders can schedule in advance, including preauthorized transfers, made through the Web site of a merchant located in a foreign country and via direct provision of a checking account, credit card, debit card or prepaid card number to the merchant, because the financial institution is not directly engaged with the sender to send an electronic transfer of funds to the foreign merchant when the institution provides payment to the merchant. *See* comment 30(e)–2.

30(f) Remittance Transfer Provider

1. *Agents.* A person is not deemed to be acting as a remittance transfer provider when it performs activities as an agent on behalf of a remittance transfer provider.

2. *Normal course of business.* i. *General.* Whether a person provides remittance transfers in the normal course of business depends on the facts and circumstances, including the total number and frequency of remittance transfers sent by the provider. For example, if a financial institution generally does not make remittance transfers available to customers, but sends a couple of such transfers in a given year as an accommodation for a customer, the institution does not provide remittance transfers in the normal course of business. In contrast, if a financial institution makes remittance transfers generally available to customers (whether described in the institution's deposit account agreement, or in practice) and makes transfers many times per month, the institution provides remittance transfers in the normal course of business.

ii. *Safe harbor.* Under §1005.30(f)(2)(i), a person that provided 100 or fewer remittance transfers in the previous calendar year and provides 100 or fewer remittance transfers in the current calendar year is deemed not to be providing remittance transfers in the normal course of its business. Accordingly, a person that qualifies for the safe harbor in §1005.30(f)(2)(i) is not a ''remittance transfer provider'' and is not subject to the requirements of subpart B. For purposes of determining whether a person qualifies for the safe harbor under §1005.30(f)(2)(i), the number of remittance transfers provided includes any transfers excluded from the definition of

''remittance transfer'' due simply to the safe harbor. In contrast, the number of remittance transfers provided does not include any transfers that are excluded from the definition of ''remittance transfer'' for reasons other than the safe harbor, such as small value transactions or securities and commodities transfers that are excluded from the definition of ''remittance transfer'' by §1005.30(e)(2).

iii. *Transition period.* A person may cease to satisfy the requirements of the safe harbor described in §1005.30(f)(2)(i) if the person provides in excess of 100 remittance transfers in a calendar year. For example, if a person that provided 100 or fewer remittance transfers in the previous calendar year provides more than 100 remittance transfers in the current calendar year, the safe harbor applies to the first 100 remittance transfers that the person provides in the current calendar year. For any additional remittance transfers provided in the current calendar year and for any remittance transfers provided in the subsequent calendar year, whether the person provides remittance transfers for a consumer in the normal course of its business, as defined in §1005.30(f)(1), and is thus a remittance transfer provider for those additional transfers, depends on the facts and circumstances. Section 1005.30(f)(2)(ii) provides a reasonable period of time, not to exceed six months, for such a person to begin complying with subpart B, if that person is then providing remittance transfers in the normal course of its business. At the end of that reasonable period of time, such person would be required to comply with subpart B unless, based on the facts and circumstances, the person is not a remittance transfer provider.

iv. *Example of safe harbor and transition period.* Assume that a person provided 90 remittance transfers in 2012 and 90 such transfers in 2013. The safe harbor will apply to the person's transfers in 2013, as well as the person's first 100 remittance transfers in 2014. However, if the person provides a 101st transfer on September 5, the facts and circumstances determine whether the person provides remittance transfers in the normal course of business and is thus a remittance transfer provider for the 101st and any subsequent remittance transfers that it provides in 2014. Furthermore, the person would not qualify for the safe harbor described in §1005.30(f)(2)(i) in 2015 because the person did not provide 100 or fewer remittance transfers in 2014. However, for the 101st remittance transfer provided in 2014, as well as additional remittance transfers provided thereafter in 2014 and 2015, if that person is then providing remittance transfers for a consumer in the normal course of business, the person will have a reasonable period of time, not to exceed six months, to come into compliance with subpart B. Assume that in this case, a reasonable period of time is six months. Thus, compliance with subpart B is not required for remittance transfers made on or before March 5, 2015 (*i.e.*, six months after September 5, 2014). After March 5, 2015, the person is required to comply with subpart B if, based on the facts and circumstances, the person provides remittance transfers in the normal course of business and is thus a remittance transfer provider.

3. *Multiple remittance transfer providers.* If the remittance transfer involves more than one remittance transfer provider, only one set of disclosures must be given, and the remittance transfer providers must agree among themselves which provider must take the actions necessary to comply with the requirements that subpart B imposes on any or all of them. Even though the providers must designate one provider to take the actions necessary to comply with the requirements that subpart B imposes on any or all of them, all remittance transfer providers involved in the remittance transfer remain responsible for compliance with the applicable provisions of the EFTA and Regulation E.

30(g) Sender

1. *Determining whether a consumer is located in a State.* Under §1005.30(g), the definition of ''sender'' means a consumer in a State who, primarily for personal, family, or household purposes, requests a remittance transfer provider to send a remittance transfer to a designated recipient. A sender located on a U.S. military installation that is physically located in a foreign country is located in a State. For transfers from a consumer's account, whether a consumer is located in a State depends on where the consumer's account is located. If the account is located in a State, the consumer will be located in a State for purposes of the definition of ''sender'' in §1005.30(g), notwithstanding comment 3(a)–3. Accounts that are located on a U.S. military installation that is physically located in a foreign country are located in a State. Where a transfer is requested electronically or by telephone and the transfer is not from an account, the provider may make the determination of whether a consumer is located in a State based on information that is provided by the consumer and on any records associated with the consumer that the provider may have, such as an address provided by the consumer.

2. *Personal, family, or household purposes.* Under §1005.30(g), a consumer is a ''sender'' only where he or she requests a transfer primarily for personal, family, or household purposes. A consumer who requests a transfer primarily for other purposes, such as business or commercial purposes, is not a sender under §1005.30(g). For transfers from an account that was established primarily for personal, family, or household purposes,

a remittance transfer provider may generally deem that the transfer is requested primarily for personal, family, or household purposes and the consumer is therefore a ''sender'' under §1005.30(g). But if the consumer indicates that he or she is requesting the transfer primarily for other purposes, such as business or commercial purposes, then the consumer is not a sender under §1005.30(g), even if the consumer is requesting the transfer from an account that is used primarily for personal, family, or household purposes.

3. *Non-consumer accounts.* A provider may deem that a transfer that is requested to be sent from an account that was not established primarily for personal, family, or household purposes, such as an account that was established as a business or commercial account or an account held by a business entity such as a corporation, not-for-profit corporation, professional corporation, limited liability company, partnership, or sole proprietorship, as not being requested primarily for personal, family, or household purposes. A consumer requesting a transfer from such an account therefore is not a sender under §1005.30(g). Additionally, a transfer that is requested to be sent from an account held by a financial institution under a *bona fide* trust agreement pursuant to §1005.2(b)(3) is not requested primarily for personal, family, or household purposes, and a consumer requesting a transfer from such an account is therefore not a sender under §1005.30(g).

30(h) Third-Party Fees

1. *Fees imposed on the remittance transfer.* Fees imposed on the remittance transfer by a person other than the remittance transfer provider include only those fees that are charged to the designated recipient and are specifically related to the remittance transfer. For example, overdraft fees that are imposed by a recipient's bank or funds that are garnished from the proceeds of a remittance transfer to satisfy an unrelated debt are not fees imposed on the remittance transfer because these charges are not specifically related to the remittance transfer. Account fees are also not specifically related to a remittance transfer if such fees are merely assessed based on general account activity and not for receiving transfers. Where an incoming remittance transfer results in a balance increase that triggers a monthly maintenance fee, that fee is not specifically related to a remittance transfer. Similarly, fees that banks charge one another for handling a remittance transfer or other fees that do not affect the total amount of the transaction or the amount that will be received by the designated recipient are not fees imposed on the remittance transfer. For example, an interchange fee that is charged to a provider when a sender uses a credit or debit card to pay for a remittance transfer is not a fee imposed upon the remittance transfer. Fees that specifically relate to a remittance transfer may be structured on a flat per-transaction basis, or may be conditioned on other factors (such as account status or the quantity of remittance transfers received) in addition to the remittance transfer itself. For example, where an institution charges an incoming transfer fee on most customers' accounts, but not on preferred accounts, such a fee is nonetheless specifically related to a remittance transfer. Similarly, if the institution assesses a fee for every transfer beyond the fifth received each month, such a fee would be specifically related to the remittance transfer regardless of how many remittance transfers preceded it that month.

2. *Covered third-party fees.* i. Under §1005.30(h)(1), a covered third-party fee means any fee that is imposed on the remittance transfer by a person other than the remittance transfer provider that is not a non-covered third-party fee.

ii. Examples of covered third-party fees include:

A. Fees imposed on a remittance transfer by intermediary institutions in connection with a wire transfer (sometimes referred to as ''lifting fees'').

B. Fees imposed on a remittance transfer by an agent of the provider at pick-up for receiving the transfer.

3. *Non-covered third-party fees.* Under §1005.30(h)(2), a non-covered third-party fee means any fee imposed by the designated recipient's institution for receiving a remittance transfer into an account except if such institution acts as the agent of the remittance transfer provider. For example, a fee imposed by the designated recipient's institution for receiving an incoming transfer into an account is a non-covered third-party fee, provided such institution is not acting as the agent of the remittance transfer provider. *See also* comment 31(b)(1)(viii)–1. Furthermore, designated recipient's account in §1005.30(h)(2) refers to an asset account, regardless of whether it is a consumer asset account, established for any purpose and held by a bank, savings association, credit union, or equivalent institution. A designated recipient's account does not, however, include a credit card, prepaid card, or a virtual account held by an Internet-based or mobile telephone company that is not a bank, savings association, credit union or equivalent institution.

SECTION 1005.31—DISCLOSURES

31(a) General Form of Disclosures

31(a)(1) Clear and Conspicuous

1. *Clear and conspicuous standard.* Disclosures are clear and conspicuous for purposes

of subpart B if they are readily understandable and, in the case of written and electronic disclosures, the location and type size are readily noticeable to senders. Oral disclosures as permitted by §1005.31(a)(3), (4), and (5) are clear and conspicuous when they are given at a volume and speed sufficient for a sender to hear and comprehend them.

2. *Abbreviations and symbols.* Disclosures may contain commonly accepted or readily understandable abbreviations or symbols, such as ''USD'' to indicate currency in U.S. dollars or ''MXN'' to indicate currency in Mexican pesos.

31(a)(2) Written and Electronic Disclosures

1. *E–Sign Act requirements.* If a sender electronically requests the remittance transfer provider to send a remittance transfer, the disclosures required by §1005.31(b)(1) may be provided to the sender in electronic form without regard to the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E–Sign Act) (15 U.S.C. 7001 *et seq.*). If a sender electronically requests the provider to send a remittance transfer, the disclosures required by §1005.31(b)(2) may be provided to the sender in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E–Sign Act. *See* §1005.4(a)(1).

2. *Paper size.* Written disclosures may be provided on any size paper, as long as the disclosures are clear and conspicuous. For example, disclosures may be provided on a register receipt or on an 8.5 inch by 11 inch sheet of paper.

3. *Retainable electronic disclosures.* A remittance transfer provider may satisfy the requirement to provide electronic disclosures in a retainable form if it provides an online disclosure in a format that is capable of being printed. Electronic disclosures may not be provided through a hyperlink or in another manner by which the sender can bypass the disclosure. A provider is not required to confirm that the sender has read the electronic disclosures.

4. *Pre-payment disclosures to a mobile telephone.* Disclosures provided via mobile application or text message, to the extent permitted by §1005.31(a)(5), need not be retainable. However, disclosures provided electronically to a mobile telephone that are not provided via mobile application or text message must be retainable. For example, disclosures provided via email must be retainable, even if a sender accesses them by mobile telephone.

5. *Disclosures provided by fax.* For purposes of disclosures required to be provided pursuant to §1005.31 or §1005.36, disclosures provided by facsimile transmission (*i.e.*, fax) are considered to be provided in writing for purposes of providing disclosures in writing pursuant to subpart B and are not subject to the requirements for electronic disclosures set forth in §1005.31(a)(2).

31(a)(3) Disclosures for Oral Telephone Transactions

1. *Transactions conducted partially by telephone.* Except as provided in comment 31(a)(3)–2, for transactions conducted partially by telephone, providing the information required by §1005.31(b)(1) to a sender orally does not fulfill the requirement to provide the disclosures required by §1005.31(b)(1). For example, a sender may begin a remittance transfer at a remittance transfer provider's dedicated telephone in a retail store, and then provide payment in person to a store clerk to complete the transaction. In such cases, all disclosures must be provided in writing. A provider complies with this requirement, for example, by providing the written pre-payment disclosure in person prior to the sender's payment for the transaction, and the written receipt when the sender pays for the transaction.

2. *Oral telephone transactions.* Section 1005.31(a)(3) applies to transactions conducted orally and entirely by telephone, such as transactions conducted orally on a landline or mobile telephone. A remittance transfer provider may treat a written or electronic communication as an inquiry when it believes that treating the communication as a request would be impractical. For example, if a sender physically located abroad contacts a U.S. branch of the sender's financial institution and attempts to initiate a remittance transfer by first sending a mailed letter, further communication with the sender by letter may be impractical due to the physical distance and likely mail delays. In such circumstances, a provider may conduct the transaction orally and entirely by telephone pursuant to §1005.31(a)(3) when the provider treats that initial communication as an inquiry and subsequently responds to the consumer's inquiry by calling the consumer on a telephone and orally gathering or confirming the information needed to identify and understand a request for a remittance transfer and otherwise conducts the transaction orally and entirely by telephone.

31(a)(5) Disclosures for Mobile Application or Text Message Transactions

1. *Mobile application and text message transactions.* A remittance transfer provider may provide the required pre-payment disclosures orally or via mobile application or text message if the transaction is conducted entirely by telephone via mobile application or text message, the remittance transfer provider complies with the requirements of §1005.31(g)(2), and the provider discloses orally or via mobile application or text message a statement about the rights of the sender

regarding cancellation required by §1005.31(b)(2)(iv) pursuant to the timing requirements in §1005.31(e)(1). For example, if a sender conducts a transaction via text message on a mobile telephone, the remittance transfer provider may call the sender and orally provide the required pre-payment disclosures. Alternatively, the provider may provide the required pre-payment disclosures via text message. Section 1005.31(a)(5) applies only to transactions conducted entirely by mobile telephone via mobile application or text message.

31(b) Disclosure Requirements

1. *Disclosures provided as applicable.* Disclosures required by §1005.31(b) need only be provided to the extent applicable. A remittance transfer provider may choose to omit an item of information required by §1005.31(b) if it is inapplicable to a particular transaction. Alternatively, for disclosures required by §1005.31(b)(1)(i) through (vii), a provider may disclose a term and state that an amount or item is ''not applicable,'' ''N/A,'' or ''None.'' For example, if fees or taxes are not imposed in connection with a particular transaction, the provider need not provide the disclosures about fees and taxes generally required by §1005.31(b)(1)(ii), the disclosures about covered third-party fees generally required by §1005.31(b)(1)(vi), or the disclaimers about non-covered third-party fees and taxes collected by a person other than the provider generally required by §1005.31(b)(1)(viii). Similarly, a Web site need not be disclosed if the provider does not maintain a Web site. A provider need not provide the exchange rate disclosure required by §1005.31(b)(1)(iv) if a recipient receives funds in the currency in which the remittance transfer is funded, or if funds are delivered into an account denominated in the currency in which the remittance transfer is funded. For example, if a sender in the United States sends funds from an account denominated in Euros to an account in France denominated in Euros, no exchange rate would need to be provided. Similarly, if a sender funds a remittance transfer in U.S. dollars and requests that a remittance transfer be delivered to the recipient in U.S. dollars, a provider need not disclose an exchange rate.

2. *Substantially similar terms, language, and notices.* Certain disclosures required by §1005.31(b) must be described using the terms set forth in §1005.31(b) or substantially similar terms. Terms may be more specific than those provided. For example, a remittance transfer provider sending funds may describe fees imposed by an agent at pick-up as ''Pick-up Fees'' in lieu of describing them as ''Other Fees.'' Foreign language disclosures required under §1005.31(g) must contain accurate translations of the terms, language, and notices required by §1005.31(b) or permitted by §1005.31(b)(1)(viii) and §1005.33(h)(3).

31(b)(1) Pre-Payment Disclosures

1. *Fees and taxes.* i. Taxes collected on the remittance transfer by the remittance transfer provider include taxes collected on the remittance transfer by a State or other governmental body. A provider need only disclose fees imposed or taxes collected on the remittance transfer by the provider in §1005.31(b)(1)(ii), as applicable. For example, if no transfer taxes are imposed on a remittance transfer, a provider would only disclose applicable transfer fees. *See* comment 31(b)–1. If both fees and taxes are imposed, the fees and taxes must be disclosed as separate, itemized disclosures. For example, a provider would disclose all transfer fees using the term ''Transfer Fees'' or a substantially similar term and would separately disclose all transfer taxes using the term ''Transfer Taxes'' or a substantially similar term.

ii. The fees and taxes required to be disclosed by §1005.31(b)(1)(ii) include all fees imposed and all taxes collected on the remittance transfer by the provider. For example, a provider must disclose any service fee, any fees imposed by an agent of the provider at the time of the transfer, and any State taxes collected on the remittance transfer at the time of the transfer. Fees imposed on the remittance transfer by the provider required to be disclosed under §1005.31(b)(1)(ii) include only those fees that are charged to the sender and are specifically related to the remittance transfer. *See also* comment 30(h)–1. In contrast, the fees required to be disclosed by §1005.31(b)(1)(vi) are any covered third-party fees as defined in §1005.30(h)(1).

iii. The term used to describe the fees imposed on the remittance transfer by the provider in §1005.31(b)(1)(ii) and the term used to describe covered third-party fees under §1005.31(b)(1)(vi) must differentiate between such fees. For example the terms used to describe fees disclosed under §1005.31(b)(1)(ii) and (vi) may not both be described solely as ''Fees.''

2. *Transfer amount.* Sections 1005.31(b)(1)(i) and (v) require two transfer amount disclosures. First, under §1005.31(b)(1)(i), a provider must disclose the transfer amount in the currency in which the remittance transfer is funded to show the calculation of the total amount of the transaction. Typically, the remittance transfer is funded in U.S. dollars, so the transfer amount would be expressed in U.S. dollars. However, if the remittance transfer is funded, for example, from a Euro-denominated account, the transfer amount would be expressed in Euros. Second, under §1005.31(b)(1)(v), a provider must disclose the transfer amount in the currency in which the funds will be made available to the designated recipient. For example, if the funds

will be picked up by the designated recipient in Japanese yen, the transfer amount would be expressed in Japanese yen. However, this second transfer amount need not be disclosed if covered third-party fees as described under §1005.31(b)(1)(vi) are not imposed on the remittance transfer. The terms used to describe each transfer amount should be the same.

3. *Exchange rate for calculation.* The exchange rate used to calculate the transfer amount in §1005.31(b)(1)(v), the covered third-party fees in §1005.31(b)(1)(vi), the amount received in §1005.31(b)(1)(vii), and the optional disclosures of non-covered third-party fees and other taxes permitted by §1005.31(b)(1)(viii) is the exchange rate in §1005.31(b)(1)(iv), including an estimated exchange rate to the extent permitted by §1005.32, prior to any rounding of the exchange rate. For example, if one U.S. dollar exchanges for 11.9483779 Mexican pesos, a provider must calculate these disclosures using this rate, even though the provider may disclose pursuant to §1005.31(b)(1)(iv) that the U.S. dollar exchanges for 11.9484 Mexican pesos. Similarly, if a provider estimates pursuant to §1005.32 that one U.S. dollar exchanges for 11.9483 Mexican pesos, a provider must calculate these disclosures using this rate, even though the provider may disclose pursuant to §1005.31(b)(1)(iv) that the U.S. dollar exchanges for 11.95 Mexican pesos (Estimated). If an exchange rate need not be rounded, a provider must use that exchange rate to calculate these disclosures. For example, if one U.S. dollar exchanges for exactly 11.9 Mexican pesos, a provider must calculate these disclosures using this exchange rate.

31(b)(1)(iv) Exchange Rate

1. *Applicable exchange rate.* If the designated recipient will receive funds in a currency other than the currency in which the remittance transfer is funded, a remittance transfer provider must disclose the exchange rate to be used by the provider for the remittance transfer. An exchange rate that is estimated must be disclosed pursuant to the requirements of §1005.32. A remittance transfer provider may not disclose, for example, that an exchange rate is ''unknown,'' ''floating,'' or ''to be determined.'' If a provider does not have specific knowledge regarding the currency in which the funds will be received, the provider may rely on a sender's representation as to the currency in which funds will be received for purposes of determining whether an exchange rate is applied to the transfer. For example, if a sender requests that a remittance transfer be deposited into an account in U.S. dollars, the provider need not disclose an exchange rate, even if the account is actually denominated in Mexican pesos and the funds are converted prior to deposit into the account. If a sender does not know the currency in which funds will be received, the provider may assume that the currency in which funds will be received is the currency in which the remittance transfer is funded.

2. *Rounding.* The exchange rate disclosed by the provider for the remittance transfer is required to be rounded. The provider may round to two, three, or four decimal places, at its option. For example, if one U.S. dollar exchanges for 11.9483779 Mexican pesos, a provider may disclose that the U.S. dollar exchanges for 11.9484 Mexican pesos. The provider may alternatively disclose, for example, that the U.S. dollar exchanges for 11.948 pesos or 11.95 pesos. On the other hand, if one U.S. dollar exchanges for exactly 11.9 Mexican pesos, the provider may disclose that ''US$1 = 11.9 MXN'' in lieu of, for example, ''US$1 = 11.90 MXN.'' The exchange rate disclosed for the remittance transfer must be rounded consistently for each currency. For example, a provider may not round to two decimal places for some transactions exchanged into Euros and round to four decimal places for other transactions exchanged into Euros.

3. *Exchange rate used.* The exchange rate used by the provider for the remittance transfer need not be set by that provider. For example, an exchange rate set by an intermediary institution and applied to the remittance transfer would be the exchange rate used for the remittance transfer and must be disclosed by the provider.

31(b)(1)(vi) Disclosure of Covered Third-Party Fees

1. *Fees disclosed in the currency in which the funds will be received.* Section 1005.31(b)(1)(vi) requires the disclosure of covered third-party fees in the currency in which the funds will be received by the designated recipient. A covered third-party fee described in §1005.31(b)(1)(vi) may be imposed in one currency, but the funds may be received by the designated recipient in another currency. In such cases, the remittance transfer provider must calculate the fee to be disclosed under §1005.31(b)(1)(vi) in the currency of receipt using the exchange rate in §1005.31(b)(1)(iv), including an estimated exchange rate to the extent permitted by §1005.32, prior to any rounding of the exchange rate. For example, an intermediary institution involved in sending an international wire transfer funded in U.S. dollars may impose a fee in U.S. dollars, but funds are ultimately deposited in the recipient's account in Euros. In this case, the provider would disclose the covered third-party fee to the sender expressed in Euros, calculated using the exchange rate disclosed under §1005.31(b)(1)(iv), prior to any rounding of the exchange rate. For purposes of §1005.31(b)(1)(v), (vi), and (vii), if a provider

does not have specific knowledge regarding the currency in which the funds will be received, the provider may rely on a sender's representation as to the currency in which funds will be received. For example, if a sender requests that a remittance transfer be deposited into an account in U.S. dollars, the provider may provide the disclosures required in §1005.31(b)(1)(v), (vi), and (vii) in U.S. dollars, even if the account is actually denominated in Mexican pesos and the funds are subsequently converted prior to deposit into the account. If a sender does not know the currency in which funds will be received, the provider may assume that the currency in which funds will be received is the currency in which the remittance transfer is funded.

31(b)(1)(vii) Amount Received

1. Amount received. The remittance transfer provider is required to disclose the amount that will be received by the designated recipient in the currency in which the funds will be received. The amount received must reflect the exchange rate, all fees imposed and all taxes collected on the remittance transfer by the remittance transfer provider, as well as any covered third-party fees required to be disclosed by §1005.31(b)(1)(vi). The disclosed amount received must be reduced by the amount of any fee or tax—except for a non-covered third-party fee or tax collected on the remittance transfer by a person other than the provider—that is imposed on the remittance transfer that affects the amount received even if that amount is imposed or itemized separately from the transaction amount.

31(b)(1)(viii) Statement When Additional Fees and Taxes May Apply

1. *Required disclaimer when non-covered third-party fees and taxes collected by a person other than the provider may apply.* If non-covered third-party fees or taxes collected by a person other than the provider apply to a particular remittance transfer or if a provider does not know if such fees or taxes may apply to a particular remittance transfer, §1005.31(b)(1)(viii) requires the provider to include the disclaimer with respect to such fees and taxes. Required disclosures under §1005.31(b)(1)(viii) may only be provided to the extent applicable. For example, if the designated recipient's institution is an agent of the provider and thus, non-covered third-party fees cannot apply to the transfer, the provider must disclose all fees imposed on the remittance transfer and may not provide the disclaimer regarding non-covered third-party fees. In this scenario, the provider may only provide the disclaimer regarding taxes collected on the remittance transfer by a person other than the provider, as applicable. *See* Model Form A–30(c).

2. *Optional disclosure of non-covered third-party fees and taxes collected by a person other than the provider.* When a remittance transfer provider knows the non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider that will apply to a particular transaction, §1005.31(b)(1)(viii) permits the provider to disclose the amount of such fees and taxes. Section 1005.32(b)(3)–1 additionally permits a provider to disclose an estimate of such fees and taxes, provided any estimates are based on reasonable source of information. *See* comment 32(b)(3). For example, a provider may know that the designated recipient's institution imposes an incoming wire fee for receiving a transfer. Alternatively, a provider may know that foreign taxes will be collected on the remittance transfer by a person other than the remittance transfer provider. In these examples, the provider may choose, at its option, to disclose the amounts of the relevant recipient institution fee and tax as part of the information disclosed pursuant to §1005.31(b)(1)(viii). The provider must not include that fee or tax in the amount disclosed pursuant to §1005.31(b)(1)(vi) or (b)(1)(vii). Fees and taxes disclosed under §1005.31(b)(1)(viii) must be disclosed in the currency in which the funds will be received. *See* comment 31(b)(1)(vi)–1. Estimates of any non-covered third-party fees and any taxes collected on the remittance transfer by a person other than the provider must be disclosed in accordance with §1005.32(b)(3).

31(b)(2) Receipt

1. *Date funds will be available.* A remittance transfer provider does not comply with the requirements of §1005.31(b)(2)(ii) if it provides a range of dates that the remittance transfer may be available or an estimate of the date on which funds will be available. If a provider does not know the exact date on which funds will be available, the provider may disclose the latest date on which the funds will be available. For example, if funds may be available on January 3, but are not certain to be available until January 10, then a provider complies with §1005.31(b)(2)(ii) if it discloses January 10 as the date funds will be available. However, a remittance transfer provider may also disclose that funds ''may be available sooner'' or use a substantially similar term to inform senders that funds may be available to the designated recipient on a date earlier than the date disclosed. For example, a provider may disclose ''January 10 (may be available sooner).''

2. *Agencies required to be disclosed.* A remittance transfer provider must only disclose information about a State agency that licenses or charters the remittance transfer provider with respect to the remittance

transfer as applicable. For example, if a financial institution is solely regulated by a Federal agency, and not licensed or chartered by a State agency, then the institution need not disclose information about a State agency. A remittance transfer provider must disclose information about the Consumer Financial Protection Bureau, whether or not the Consumer Financial Protection Bureau is the provider's primary Federal regulator.

3. *State agency that licenses or charters a provider.* A remittance transfer provider must only disclose information about one State agency that licenses or charters the remittance transfer provider with respect to the remittance transfer, even if other State agencies also regulate the remittance transfer provider. For example, a provider may disclose information about the State agency which granted its license. If a provider is licensed in multiple States, and the State agency that licenses the provider with respect to the remittance transfer is determined by a sender's location, a provider may make the determination as to the State in which the sender is located based on information that is provided by the sender and on any records associated with the sender. For example, if the State agency that licenses the provider with respect to an online remittance transfer is determined by a sender's location, a provider could rely on the sender's statement regarding the State in which the sender is located and disclose the State agency that licenses the provider in that State. A State-chartered bank must disclose information about the State agency that granted its charter, regardless of the location of the sender.

4. *Web site of the Consumer Financial Protection Bureau.* Section 1005.31(b)(2)(vi) requires a remittance transfer provider to disclose the name, toll-free telephone number(s), and Web site of the Consumer Financial Protection Bureau. Providers may satisfy this requirement by disclosing the Web site of the Consumer Financial Protection Bureau's homepage, *www.consumerfinance.gov*, as shown on Model Forms A–32, A–34, A–35, and A–39. Alternatively, providers may, but are not required to, disclose the Bureau's Web site as the address of a page on the Bureau's Web site that provides information for consumers about remittance transfers, currently, *consumerfinance.gov/sending-money*, as shown on Model Form A–31. In addition, providers making disclosures in a language other than English pursuant to §1005.31(g) may, but are not required to, disclose the Bureau's Web site as a page on the Bureau's Web site that provides information for consumers about remittance transfers in the relevant language, if such Web site exists. For example, a provider that is making disclosures in Spanish under §1005.31(g) may, but is not required to, disclose the Bureau's Web site on Spanish-language disclosures as the page on the Bureau's Web site that provides information regarding remittance transfers in Spanish, currently *consumerfinance.gov/envios*. This optional disclosure is shown on Model A–40. The Bureau will publish a list of any other foreign language Web sites that provide information regarding remittance transfers.

5. *Date of transfer on receipt.* Where applicable, §1005.31(b)(2)(vii) requires disclosure of the date of transfer for the remittance transfer that is the subject of a receipt required by §1005.31(b)(2), including a receipt that is provided in accordance with the timing requirements in §1005.36(a). For any subsequent preauthorized remittance transfer subject to §1005.36(d)(2)(ii), the future date of transfer must be provided on any receipt provided for the initial transfer in that series of preauthorized remittance transfers, or where permitted, or disclosed as permitted by §1005.31(a)(3) and (a)(5), in accordance with §1005.36(a)(1)(i).

6. *Transfer date disclosures.* The following example demonstrates how the information required by §1005.31(b)(2)(vii) and §1005.36(d)(1) should be disclosed on receipts: On July 1, a sender instructs the provider to send a preauthorized remittance transfer of US$100 each week to a designated recipient. The sender requests that first transfer in the series be sent on July 15. On the receipt, the remittance transfer provider discloses an estimated exchange rate to the sender pursuant to §1005.32(b)(2). In accordance with §1005.31(b)(2)(vii), the provider should disclose the date of transfer for that particular transaction (*i.e.*, July 15) on the receipt provided when payment is made for the transfer pursuant to the timing requirements in §1005.36(a)(1)(i). The second receipt, which §1005.36(a)(1)(ii) requires to be provided within one business day after the date of the transfer or, for transfers from the sender's account held by the provider, on the next regularly scheduled periodic statement or within 30 days after payment is made if a periodic statement is not provided, is also required to include the date of transfer. If the provider discloses on either receipt the cancellation period applicable to and dates of subsequent preauthorized remittance transfers in accordance with §1005.36(d)(2), the disclosure must be phrased and formatted in such a way that it is clear to the sender which cancellation period is applicable to any date of transfer on the receipt.

7. *Cancellation disclosure.* Remittance transfer providers that offer remittance transfers scheduled three or more business days before the date of the transfer, as well as remittance transfers scheduled fewer than three business days before the date of the transfer, may meet the cancellation disclosure requirements in §1005.31(b)(2)(iv) by describing the three-business-day and 30-minute cancellation periods on the same disclosure and

using a checkbox or other method to clearly designate the applicable cancellation period. The provider may use a number of methods to indicate which cancellation period applies to the transaction including, but not limited to, a statement to that effect, use of a checkbox, highlighting, circling, and the like. For transfers scheduled three business days before the date of the transfer, the cancellation disclosures provided pursuant to §1005.31(b)(2)(iv) should be phrased and formatted in such a way that it is clear to the sender which cancellation period is applicable to the date of transfer disclosed on the receipt.

31(b)(3) Combined Disclosure

1. *Proof of payment.* If a sender initiating a remittance transfer receives a combined disclosure provided under §1005.31(b)(3) and then completes the transaction, the remittance transfer provider must provide the sender with proof of payment. The proof of payment must be clear and conspicuous, provided in writing or electronically, and provided in a retainable form. The combined disclosure must be provided to the sender when the sender requests the remittance transfer, but prior to payment for the transfer, pursuant to §1005.31(e)(1), and the proof of payment must be provided when payment is made for the remittance transfer. The proof of payment for the transaction may be provided on the same piece of paper as the combined disclosure or on a separate piece of paper. For example, a provider may feed a combined disclosure through a computer printer when payment is made to add the date and time of the transaction, a confirmation code, and an indication that the transfer was paid in full. A provider may also provide this additional information to a sender on a separate piece of paper when payment is made. A remittance transfer provider does not comply with the requirements of §1005.31(b)(3) by providing a combined disclosure with no further indication that payment has been received.

2. *Confirmation of scheduling.* As discussed in comment 31(e)–2, payment is considered to be made when payment is authorized for purposes of various timing requirements in subpart B, including with regard to the timing requirement for provision of the proof of payment described in §1005.31(b)(3)(i). However, where a transfer (whether a one-time remittance transfer or the first in a series of preauthorized remittance transfers) is scheduled before the date of transfer and the provider does not intend to process payment until at or near the date of transfer, the provider may provide a confirmation of scheduling in lieu of the proof of payment required by §1005.31(b)(3)(i). No further proof of payment is required when payment is later processed.

31(c) Specific Format Requirements

31(c)(1) Grouping

1. *Grouping.* Information is grouped together for purposes of subpart B if multiple disclosures are in close proximity to one another and a sender can reasonably calculate the total amount of the transaction and the amount that will be received by the designated recipient. Model Forms A–30(a)–(d) through A–35 in Appendix A illustrate how information may be grouped to comply with the rule, but a remittance transfer provider may group the information in another manner. For example, a provider could provide the grouped information as a horizontal, rather than a vertical, calculation. A provider could also send multiple text messages sequentially to provide the full disclosure.

31(c)(4) Segregation

1. *Segregation.* Disclosures may be segregated from other information in a variety of ways. For example, the disclosures may appear on a separate sheet of paper or may appear on the front of a page where other information appears on the back of that page. The disclosures may be set off from other information on a notice by outlining them in a box or series of boxes, with bold print dividing lines or a different color background, or by using other means.

2. *Directly related.* For purposes of §1005.31(c)(4), the following is directly related information:

i. The date and time of the transaction;

ii. The sender's name and contact information;

iii. The location at which the designated recipient may pick up the funds;

iv. The confirmation or other identification code;

v. A company name and logo;

vi. An indication that a disclosure is or is not a receipt or other indicia of proof of payment;

vii. A designated area for signatures or initials;

viii. A statement that funds may be available sooner, as permitted by §1005.31(b)(2)(ii);

ix. Instructions regarding the retrieval of funds, such as the number of days the funds will be available to the recipient before they are returned to the sender; and

x. A statement that the provider makes money from foreign currency exchange.

xi. Disclosure of any non-covered third-party fees and any taxes collected by a person other than the provider pursuant to §1005.31(b)(1)(viii).

31(d) Estimates

1. *Terms.* A remittance transfer provider may provide estimates of the amounts required by §1005.31(b), to the extent permitted by §1005.32. An estimate must be described

using the term ''Estimated'' or a substantially similar term in close proximity to the term or terms described. For example, a remittance transfer provider could describe an estimated disclosure as ''Estimated Transfer Amount,'' ''Other Estimated Fees and Taxes,'' or ''Total to Recipient (Est.).''

31(e) Timing

1. *Request to send a remittance transfer.* Except as provided in §1005.36(a), pre-payment and combined disclosures are required to be provided to the sender when the sender requests the remittance transfer, but prior to payment for the transfer. Whether a consumer has requested a remittance transfer depends on the facts and circumstances. A sender that asks a provider to send a remittance transfer, and provides transaction-specific information to the provider in order to send funds to a designated recipient, has requested a remittance transfer. A sender that has sent an email, fax, mailed letter, or similar written or electronic communication has not requested a remittance transfer if the provider believes that it is impractical for the provider to treat that communication as a request and if the provider treats the communication as an inquiry and subsequently responds to that inquiry by calling the consumer on a telephone and orally gathering or confirming the information needed to process a request for a remittance transfer. *See* comment 31(a)(3)–2. Likewise, a consumer who solely inquires about that day's rates and fees to send to Mexico has not requested the provider to send a remittance transfer. Conversely, a sender who asks the provider at an agent location to send money to a recipient in Mexico and provides the sender and recipient information to the provider has requested a remittance transfer.

2. *When payment is made.* Except as provided in §1005.36(a), a receipt required by §1005.31(b)(2) must be provided to the sender when payment is made for the remittance transfer. For example, a remittance transfer provider could give the sender the disclosures after the sender pays for the remittance transfer, but before the sender leaves the counter. A provider could also give the sender the disclosures immediately before the sender pays for the transaction. For purposes of subpart B, payment is made, for example, when a sender provides cash to the remittance transfer provider or when payment is authorized.

3. *Telephone transfer from an account.* A sender may transfer funds from his or her account, as defined by §1005.2(b), that is held by the remittance transfer provider. For example, a financial institution may send an international wire transfer for a sender using funds from the sender's account with the institution. Except as provided in §1005.36(a), if the sender conducts such a transfer entirely by telephone, the institution may provide a receipt required by §1005.31(b)(2) on or with the sender's next regularly scheduled periodic statement for that account or within 30 days after payment is made for the remittance transfer if a periodic statement is not provided.

4. *Mobile application and text message transactions.* If a transaction is conducted entirely by telephone via mobile application or text message, a receipt required by §1005.31(b)(2) may be mailed or delivered to the sender pursuant to the timing requirements in §1005.31(e)(2). For example, if a sender conducts a transfer entirely by telephone via mobile application, a remittance transfer provider may mail or deliver the disclosures to a sender pursuant to the timing requirements in §1005.31(e)(2).

5. *Statement about cancellation rights.* The statement about the rights of the sender regarding cancellation required by §1005.31(b)(2)(iv) may, but need not, be disclosed pursuant to the timing requirements of §1005.31(e)(2) if a provider discloses this information pursuant to §1005.31(a)(3)(iii) or (a)(5)(iii). The statement about the rights of the sender regarding error resolution required by §1005.31(b)(2)(iv), however, must be disclosed pursuant to the timing requirements of §1005.31(e)(2).

31(f) Accurate When Payment Is Made

1. *No guarantee of disclosures provided before payment.* Except as provided in §1005.36(b), disclosures required by §1005.31(b) or permitted by §1005.31(b)(1)(viii) must be accurate when a sender makes payment for the remittance transfer. A remittance transfer provider is not required to guarantee the terms of the remittance transfer in the disclosures required or permitted by §1005.31(b) for any specific period of time. However, if any of the disclosures required by §1005.31(b) or permitted by §1005.31(b)(1)(viii) are not accurate when a sender makes payment for the remittance transfer, a provider must give new disclosures before accepting payment.

31(g) Foreign Language Disclosures

1. *Number of foreign languages used in written disclosure.* Section 1005.31(g)(1) does not limit the number of languages that may be used on a single document, but such disclosures must be clear and conspicuous pursuant to §1005.31(a)(1). Under §1005.31(g)(1), a remittance transfer provider may, but need not, provide the sender with a written or electronic disclosure that is in English and, if applicable, in each foreign language that the remittance transfer provider principally uses to advertise, solicit, or market either orally, in writing, or electronically, at the office in which a sender conducts a transaction or asserts an error, respectively. Alternatively, the remittance transfer provider

may provide the disclosure solely in English and, if applicable, the foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction or assert an error, provided such language is principally used by the remittance transfer provider to advertise, solicit, or market either orally, in writing, or electronically, at the office in which the sender conducts the transaction or asserts the error, respectively. If the remittance transfer provider chooses the alternative method, it may provide disclosures in a single document with both languages or in two separate documents with one document in English and the other document in the applicable foreign language. The following examples illustrate this concept.

i. A remittance transfer provider principally uses only Spanish and Vietnamese to advertise, solicit, or market remittance transfer services at a particular office. The remittance transfer provider may provide all senders with disclosures in English, Spanish, and Vietnamese, regardless of the language the sender uses with the remittance transfer provider to conduct the transaction or assert an error.

ii. Same facts as i. If a sender primarily uses Spanish with the remittance transfer provider to conduct a transaction or assert an error, the remittance transfer provider may provide a written or electronic disclosure in English and Spanish, whether in a single document or two separate documents. If the sender primarily uses English with the remittance transfer provider to conduct the transaction or assert an error, the remittance transfer provider may provide a written or electronic disclosure solely in English. If the sender primarily uses a foreign language with the remittance transfer provider to conduct the transaction or assert an error that the remittance transfer provider does not use to advertise, solicit, or market either orally, in writing, or electronically, at the office in which the sender conducts the transaction or asserts the error, respectively, the remittance transfer provider may provide a written or electronic disclosure solely in English.

2. *Primarily used.* The language primarily used by the sender with the remittance transfer provider to conduct the transaction is the primary language used by the sender with the remittance transfer provider to convey the information necessary to complete the transaction. Similarly, the language primarily used by the sender with the remittance transfer provider to assert the error is the primary language used by the sender with the remittance transfer provider to provide the information required by §1005.33(b) to assert an error. For example:

i. A sender initiates a conversation with a remittance transfer provider with a greeting in English and expresses interest in sending a remittance transfer to Mexico in English. If the remittance transfer provider thereafter communicates with the sender in Spanish and the sender conveys the other information needed to complete the transaction, including the designated recipient's information and the amount and funding source of the transfer, in Spanish, then Spanish is the language primarily used by the sender with the remittance transfer provider to conduct the transaction.

ii. A sender initiates a conversation with the remittance transfer provider with a greeting in English and states in English that there was a problem with a prior remittance transfer to Vietnam. If the remittance transfer provider thereafter communicates with the sender in Vietnamese and the sender uses Vietnamese to convey the information required by §1005.33(b) to assert an error, then Vietnamese is the language primarily used by the sender with the remittance transfer provider to assert the error.

iii. A sender accesses the Web site of a remittance transfer provider that may be used by senders to conduct remittance transfers or assert errors. The Web site is offered in English and French. If the sender uses the French version of the Web site to conduct the remittance transfer, then French is the language primarily used by the sender with the remittance transfer provider to conduct the transaction.

31(g)(1) General

1. *Principally used.* i. All relevant facts and circumstances determine whether a foreign language is principally used by the remittance transfer provider to advertise, solicit, or market under §1005.31(g)(1). Generally, whether a foreign language is considered to be principally used by the remittance transfer provider to advertise, solicit, or market is based on:

A. The frequency with which the foreign language is used in advertising, soliciting, or marketing of remittance transfer services at that office;

B. The prominence of the advertising, soliciting, or marketing of remittance transfer services in that foreign language at that office; and

C. The specific foreign language terms used in the advertising soliciting, or marketing of remittance transfer service at that office.

ii. For example, if a remittance transfer provider posts several prominent advertisements in a foreign language for remittance transfer services, including rate and fee information, on a consistent basis in an office, the provider is creating an expectation that a consumer could receive information on remittance transfer services in the foreign language used in the advertisements. The foreign language used in such advertisements would be considered to be principally used at

that office based on the frequency and prominence of the advertising. In contrast, an advertisement for remittance transfer services, including rate and fee information, that is featured prominently at an office and is entirely in English, except for a greeting in a foreign language, does not create an expectation that a consumer could receive information on remittance transfer services in the foreign language used for such greeting. The foreign language used in such an advertisement is not considered to be principally used at that office based on the incidental specific foreign language term used.

2. *Advertise, solicit, or market.* i. Any commercial message in a foreign language, appearing in any medium, that promotes directly or indirectly the availability of remittance transfer services constitutes advertising, soliciting, or marketing in such foreign language for purposes of §1005.31(g)(1). Examples illustrating when a foreign language is used to advertise, solicit, or market include:

A. Messages in a foreign language in a leaflet or promotional flyer at an office.

B. Announcements in a foreign language on a public address system at an office.

C. On-line messages in a foreign language, such as on the internet.

D. Printed material in a foreign language on any exterior or interior sign at an office.

E. Point-of-sale displays in a foreign language at an office.

F. Telephone solicitations in a foreign language.

ii. Examples illustrating use of a foreign language for purposes other than to advertise, solicit, or market include:

A. Communicating in a foreign language (whether by telephone, electronically, or otherwise) about remittance transfer services in response to a consumer-initiated inquiry.

B. Making disclosures in a foreign language that are required by Federal or other applicable law.

3. *Office.* An office includes any physical location, telephone number, or Web site of a remittance transfer provider where a sender may conduct a remittance transfer or assert an error for a remittance transfer. The location need not exclusively offer remittance transfer services. For example, if an agent of a remittance transfer provider is located in a grocery store, the grocery store is considered an office for purposes of §1005.31(g)(1). Because a consumer must be located in a State in order to be considered a ''sender'' under §1005.30(g), a Web site is not an office for purposes of §1005.31(g)(1), even if the Web site can be accessed by consumers that are located in the United States, unless a sender may conduct a remittance transfer on the Web site or may assert an error for a remittance transfer on the Web site.

4. *At the office.* Any advertisement, solicitation, or marketing is considered to be made at the office in which a sender conducts a transaction or asserts an error if such advertisement, solicitation, or marketing is posted, provided, or made: at a physical office of a remittance transfer provider; on a Web site of a remittance transfer provider that may be used by senders to conduct remittance transfers or assert errors; during a telephone call with a remittance transfer provider that may be used by senders to conduct remittance transfers or assert errors; or via mobile application or text message by a remittance transfer provider if the mobile application or text message may be used by senders to conduct remittance transfers or assert errors. An advertisement, solicitation, or marketing that is considered to be made at an office does not include general advertisements, solicitations, or marketing that are not intended to be made at a particular office. For example, if an advertisement for remittance transfers in Chinese appears in a Chinese newspaper that is being distributed at a grocery store in which the agent of a remittance transfer provider is located, such advertisement would not be considered to be made at that office. For disclosures provided pursuant to §1005.31, the relevant office is the office in which the sender conducts the transaction. For disclosures provided pursuant to §1005.33 for error resolution purposes, the relevant office is the office in which the sender first asserts the error, not the office where the transaction was conducted.

SECTION 1005.32—ESTIMATES

1. *Disclosures where estimates can be used.* Sections 1005.32(a) and (b)(1) permit estimates to be used in certain circumstances for disclosures described in §§1005.31(b)(1) through (3) and 1005.36(a)(1) and(2). To the extent permitted in §1005.32(a) and (b)(1), estimates may be used in the pre-payment disclosure described in §1005.31(b)(1), the receipt disclosure described in §1005.31(b)(2), the combined disclosure described in §1005.31(b)(3), and the pre-payment disclosures and receipt disclosures for both first and subsequent preauthorized remittance transfers described in §1005.36(a)(1) and (a)(2). Section 1005.32(b)(2) permits estimates to be used for certain information if the remittance transfer is scheduled by a sender five or more business days before the date of the transfer, for disclosures described in §1005.36(a)(1)(i) and (a)(2)(i).

32(a) Temporary Exception for Insured Institutions

32(a)(1) General

1. *Control.* For purposes of this section, an insured institution cannot determine exact

amounts ''for reasons beyond its control'' when a person other than the insured institution or with which the insured institution has no correspondent relationship sets the exchange rate required to be disclosed under §1005.31(b)(1)(iv) or imposes a covered third-party fee required to be disclosed under §1005.31(b)(1)(vi). For example, if an insured institution has a correspondent relationship with an intermediary financial institution in another country and that intermediary institution sets the exchange rate or imposes a fee for remittance transfers sent from the insured institution to the intermediary institution, then the insured institution must determine exact amounts for the disclosures required under §1005.31(b)(1)(iv) or (vi), because the determination of those amounts are not beyond the insured institution's control.

2. *Examples of scenarios that qualify for the temporary exception.* The following examples illustrate when an insured institution cannot determine an exact amount ''for reasons beyond its control'' and thus would qualify for the temporary exception.

i. *Exchange rate.* An insured institution cannot determine the exact exchange rate to disclose under §1005.31(b)(1)(iv) for an international wire transfer if the insured institution does not set the exchange rate, and the rate is set when the funds are deposited into the recipient's account by the designated recipient's institution with which the insured institution does not have a correspondent relationship. The insured institution will not know the exchange rate that the recipient institution will apply when the funds are deposited into the recipient's account.

ii. *Covered third-party fees.* An insured institution cannot determine the exact covered third-party fees to disclose under §1005.31(b)(1)(vi) if an intermediary institution with which the insured institution does not have a correspondent relationship, imposes a transfer or conversion fee.

3. *Examples of scenarios that do not qualify for the temporary exception.* The following examples illustrate when an insured institution can determine exact amounts and thus would not qualify for the temporary exception.

i. *Exchange rate.* An insured institution can determine the exact exchange rate required to be disclosed under §1005.31(b)(1)(iv) if it converts the funds into the local currency to be received by the designated recipient using an exchange rate that it sets. The determination of the exchange rate is in the insured institution's control even if there is no correspondent relationship with an intermediary institution in the transmittal route or the designated recipient's institution.

ii. *Covered third-party fees.* An insured institution can determine the exact covered third-party fees required to be disclosed under §1005.31(b)(1)(vi) if it has agreed upon the specific fees with an intermediary correspondent institution, and this correspondent institution is the only institution in the transmittal route to the designated recipient's institution.

32(b) Permanent Exceptions

32(b)(1) Permanent Exceptions for Transfers to Certain Countries

1. *Laws of the recipient country.* The laws of the recipient country do not permit a remittance transfer provider to determine exact amounts required to be disclosed when a law or regulation of the recipient country requires the person making funds directly available to the designated recipient to apply an exchange rate that is:

i. Set by the government of the recipient country after the remittance transfer provider sends the remittance transfer or

ii. Set when the designated recipient receives the funds.

2. *Example illustrating when exact amounts can and cannot be determined because of the laws of the recipient country.*

i. The laws of the recipient country do not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under §1005.31(b)(1)(iv) when, for example, the government of the recipient country, on a daily basis, sets the exchange rate that must, by law, apply to funds received and the funds are made available to the designated recipient in the local currency the day after the remittance transfer provider sends the remittance transfer.

ii. In contrast, the laws of the recipient country permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under §1005.31(b)(1)(iv) when, for example, the government of the recipient country ties the value of its currency to the U.S. dollar.

3. *Method by which transactions are made in the recipient country.* The method by which transactions are made in the recipient country does not permit a remittance transfer provider to determine exact amounts required to be disclosed when transactions are sent via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is a rate set by the recipient country's central bank or other governmental authority after the provider sends the remittance transfer.

4. *Example illustrating when exact amounts can and cannot be determined because of the method by which transactions are made in the recipient country.*

i. The method by which transactions are made in the recipient country does not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under §1005.31(b)(1)(iv) when the provider sends a remittance transfer via

international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is a rate set by the recipient country's central bank on the business day after the provider has sent the remittance transfer.

ii. In contrast, a remittance transfer provider would not qualify for the §1005.32(b)(1)(i)(B) methods exception if it sends a remittance transfer via international ACH on terms negotiated between the United States government and a private-sector entity or entities in the recipient country, under which the exchange rate is set by the institution acting as the entry point to the recipient country's payments system on the next business day. However, a remittance transfer provider sending a remittance transfer using such a method may qualify for the §1005.32(a) temporary exception.

iii. A remittance transfer provider would not qualify for the §1005.32(b)(1)(i)(B) methods exception if, for example, it sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is set by the recipient country's central bank or other governmental authority before the sender requests a transfer.

5. *Safe harbor list.* If a country is included on a safe harbor list published by the Bureau under §1005.32(b)(1)(ii), a remittance transfer provider may provide estimates of the amounts to be disclosed under §1005.31(b)(1)(iv) through (b)(1)(vii). If a country does not appear on the Bureau's list, a remittance transfer provider may provide estimates under §1005.32(b)(1)(i) if the provider determines that the recipient country does not legally permit or method by which transactions are conducted in that country does not permit the provider to determine exact disclosure amounts.

6. *Reliance on Bureau list of countries.* A remittance transfer provider may rely on the list of countries published by the Bureau to determine whether the laws of a recipient country do not permit the remittance transfer provider to determine exact amounts required to be disclosed under §1005.31(b)(1)(iv) through (vii). Thus, if a country is on the Bureau's list, the provider may give estimates under this section, unless a remittance transfer provider has information that a country on the Bureau's list legally permits the provider to determine exact disclosure amounts.

7. *Change in laws of recipient country.* i. If the laws of a recipient country change such that a remittance transfer provider can determine exact amounts, the remittance transfer provider must begin providing exact amounts for the required disclosures as soon as reasonably practicable if the provider has information that the country legally permits the provider to determine exact disclosure amounts.

ii. If the laws of a recipient country change such that a remittance transfer provider cannot determine exact disclosure amounts, the remittance transfer provider may provide estimates under §1005.32(b)(1)(i), even if that country does not appear on the list published by the Bureau.

32(b)(2) Permanent Exceptions for Transfers Scheduled Before the Date of Transfer

1. *Fixed amount of foreign currency.* The following is an example of when and how a remittance transfer provider may disclose estimates for remittance transfers scheduled five or more business days before the date of transfer where the provider agrees to the sender's request to fix the amount to be transferred in a currency in which the transfer will be received and not the currency in which it was funded. If on February 1, a sender schedules a 1000 Euro wire transfer to be sent from the sender's bank account denominated in U.S. dollars to a designated recipient on February 15, §1005.32(b)(2) allows the provider to estimate the amount that will be transferred to the designated recipient (*i.e.*, the amount described in §1005.31(b)(1)(i)), any fees imposed or taxes collected on the remittance transfer by the provider (if based on the amount transferred) (*i.e.*, the amount described in §1005.31(b)(1)(ii)), and the total amount of the transaction (*i.e.*, the amount described in §1005.31(b)(1)(iii)). The provider may also estimate any covered third-party fees if the exchange rate is also estimated and the estimated exchange rate affects the amount of fees (as allowed by §1005.32(b)(2)(ii)).

2. *Relationship to §1005.10(d).* To the extent §1005.10(d) requires, for an electronic fund transfer that is also a remittance transfer, notice when a preauthorized electronic fund transfer from the consumer's account will vary in amount from the previous transfer under the same authorization or from the preauthorized amount, that provision applies even if subpart B would not otherwise require notice before the date of transfer. However, insofar as §1005.10(d) does not specify the form of such notice, a notice sent pursuant to §1005.36(a)(2)(i) will satisfy §1005.10(d) as long as the timing requirements of §1005.10(d) are satisfied.

32(b)(3) Permanent Exception for Optional Disclosure of Non-Covered Third-Party Fees and Taxes Collected on the Remittance Transfer by a Person Other Than the Provider

1. *Reasonable sources of information.* Pursuant to §1005.32(b)(3) a remittance transfer provider may estimate applicable non-covered third-party fees and taxes collected on the remittance transfer by a person other than the provider using reasonable sources of

information. Reasonable sources of information may include, for example: information obtained from recent transfers to the same institution or the same country or region; fee schedules from the recipient institution; fee schedules from the recipient institution's competitors; surveys of recipient institution fees in the same country or region as the recipient institution; information provided or surveys of recipient institutions' regulators or taxing authorities; commercially or publicly available databases, services or sources; and information or resources developed by international nongovernmental organizations or intergovernmental organizations.

32(c) Bases for Estimates

32(c)(1) Exchange Rate

1. Most recent exchange rate for qualifying international ACH transfers. If the exchange rate for a remittance transfer sent via international ACH that qualifies for the §1005.32(b)(1)(i)(B) exception is set the following business day, the most recent exchange rate available for a transfer is the exchange rate set for the day that the disclosure is provided, *i.e.*, the current business day's exchange rate.

2. *Publicly available.* Examples of publicly available sources of information containing the most recent wholesale exchange rate for a currency include U.S. news services, such as Bloomberg, the Wall Street Journal, and the New York Times; a recipient country's national news services, and a recipient country's central bank or other government agency.

3. *Spread.* An estimate for disclosing the exchange rate based on the most recent publicly available wholesale exchange rate must also reflect any spread the remittance transfer provider typically applies to the wholesale exchange rate for remittance transfers for a particular currency.

4. *Most recent.* For the purposes of §1005.32(c)(1)(ii) and (iii), if the exchange rate with respect to a particular currency is published or provided multiple times throughout the day because the exchange rate fluctuates throughout the day, a remittance transfer provider may use any exchange rate available on that day to determine the most recent exchange rate.

32(c)(3) Covered Third-Party Fees

1. *Potential transmittal routes.* A remittance transfer from the sender's account at an insured institution to the designated recipient's institution may take several routes, depending on the correspondent relationships each institution in the transmittal route has with other institutions. In providing an estimate of the fees required to be disclosed under §1005.31(b)(1)(vi) pursuant to the §1005.32(a) temporary exception, an insured institution may rely upon the representations of the designated recipient's institution and the institutions that act as intermediaries in any one of the potential transmittal routes that it reasonably believes a requested remittance transfer may travel.

32(d) Bases for Estimates for Transfers Scheduled Before the Date of Transfer

1. *In general.* When providing an estimate pursuant to §1005.32(b)(2), §1005.32(d) requires that a remittance transfer provider's estimated exchange rate must be the exchange rate (or estimated exchange rate) that the remittance transfer provider would have used or did use that day in providing disclosures to a sender requesting such a remittance transfer to be made on the same day. If, for the same-day remittance transfer, the provider could utilize either of the other two exceptions permitting the provision of estimates in §1005.32(a) or (b)(1), the provider may provide estimates based on a methodology permitted under §1005.32(c). For example, if, on February 1, the sender schedules a remittance transfer to occur on February 10, the provider should disclose the exchange rate as if the sender was requesting the transfer be sent on February 1. However, if at the time payment is made for the requested transfer, the remittance transfer provider could not send any remittance transfer until the next day (for reasons such as the provider's deadline for the batching of transfers), the remittance transfer provider can use the rate (or estimated exchange rate) that the remittance transfer provider would have used or did use in providing disclosures that day with respect to a remittance transfer requested that day that could not be sent until the following day.

SECTION 1005.33—PROCEDURES FOR RESOLVING ERRORS

33(a) Definition of Error

1. *Incorrect amount of currency paid by sender.* Section 1005.33(a)(1)(i) covers circumstances in which a sender pays an amount that differs from the total amount of the transaction, including fees imposed in connection with the transfer, stated in the receipt or combined disclosure provided under §1005.31(b)(2) or (3). Such error may be asserted by a sender regardless of the form or method of payment provided, including when a debit, credit, or prepaid card is used to fund the transfer and an excess amount is paid. For example, if a remittance transfer provider incorrectly charged a sender's credit card account for US$150, and US$120 was sent, plus a transfer fee of US$10, the sender could assert an error with the remittance transfer provider for the incorrect charge under §1005.33(a)(1)(i).

2. *Incorrect amount of currency received—coverage.* Section 1005.33(a)(1)(iii) covers circumstances in which the designated recipient receives an amount of currency that differs from the amount of currency identified on the disclosures provided to the sender, except where the disclosure stated an estimate of the amount of currency to be received in accordance with §1005.32 and the difference results from application of the actual exchange rate, fees, and taxes, rather than any estimated amounts, or the failure was caused by circumstances outside the remittance transfer provider's control. A designated recipient may receive an amount of currency that differs from the amount of currency disclosed, for example, if an exchange rate other than the disclosed rate is applied to the remittance transfer, or if the provider fails to account for fees or taxes that may be imposed by the provider or a third party before the transfer is picked up by the designated recipient or deposited into the recipient's account in the foreign country. However, if the provider rounds the exchange rate used to calculate the amount received consistent with §1005.31(b)(1)(iv) and comment 31(b)(1)(iv)–2 for the disclosed rate, there is no error if the designated recipient receives an amount of currency that results from applying the exchange rate used, prior to any rounding of the exchange rate, to calculate fees, taxes, or the amount received rather than the disclosed rate. Section 1005.33(a)(1)(iii) also covers circumstances in which the remittance transfer provider transmits an amount that differs from the amount requested by the sender.

3. *Incorrect amount of currency received—examples.* For purposes of the following examples illustrating the error for an incorrect amount of currency received under §1005.33(a)(1)(iii), assume that none of the circumstances permitting an estimate under §1005.32 apply (unless otherwise stated).

i. A consumer requests to send funds to a relative in Mexico to be received in local currency. Upon receiving the sender's payment, the remittance transfer provider provides a receipt indicating that the amount of currency that will be received by the designated recipient will be 1180 Mexican pesos, after fees and taxes are applied. However, when the relative picks up the transfer in Mexico a day later, he only receives 1150 Mexican pesos because the exchange rate applied by the recipient agent in Mexico was lower than the exchange rate used by the provider, prior to any rounding of the exchange rate, to disclose the amount of currency to be received by the designated recipient on the receipt. Because the designated recipient has received less than the amount of currency disclosed on the receipt, an error has occurred.

ii. A consumer requests to send funds to a relative in Colombia to be received in local currency. The remittance transfer provider provides the sender a receipt stating an amount of currency that will be received by the designated recipient, which does not reflect the additional foreign taxes that will be collected in Colombia on the transfer but does include the statement required by §1005.31(b)(1)(viii). If the designated recipient will receive less than the amount of currency disclosed on the receipt due solely to the additional foreign taxes that the provider was not required to disclose, no error has occurred.

iii. Same facts as in ii., except that the receipt provided by the remittance transfer provider does not reflect additional fees that are imposed by the receiving agent in Colombia on the transfer. Because the designated recipient will receive less than the amount of currency disclosed in the receipt due to the additional covered third-party fees, an error has occurred.

iv. A consumer requests to send US$250 to a relative in India to a U.S. dollar-denominated account held by the relative at an Indian bank. Instead of the US$250 disclosed on the receipt as the amount to be sent, the remittance transfer provider sends US$200, resulting in a smaller deposit to the designated recipient's account than was disclosed as the amount to be received after fees and taxes. Because the designated recipient received less than the amount of currency that was disclosed, an error has occurred.

v. A consumer requests to send US$100 to a relative in a foreign country to be received in local currency. The remittance transfer provider provides the sender a receipt that discloses an estimated exchange rate, other taxes, and amount of currency that will be received due to the law in the foreign country requiring that the exchange rate be set by the foreign country's central bank. When the relative picks up the remittance transfer, the relative receives less currency than the estimated amount disclosed to the sender on the receipt due to application of the actual exchange rate, fees, and taxes, rather than any estimated amounts. Because §1005.32(b) permits the remittance transfer provider to disclose an estimate of the amount of currency to be received, no error has occurred unless the estimate was not based on an approach set forth under §1005.32(c).

vi. A sender requests that his bank send US$120 to a designated recipient's account at an institution in a foreign country. The foreign institution is not an agent of the provider. Only US$100 is deposited into the designated recipient's account because the recipient institution imposed a US$20 incoming wire fee and deducted the fee from the amount transferred. Because this fee is a non-covered third-party fee that the provider is not required to disclose under §1005.31(b)(1)(vi), no error has occurred if the

provider provided the disclosure required by §1005.31(b)(1)(viii).

4. *Incorrect amount of currency received—extraordinary circumstances.* Under §1005.33(a)(1)(iii)(B), a remittance transfer provider's failure to make available to a designated recipient the amount of currency disclosed pursuant to §1005.31(b)(1)(vii) and stated in the disclosure provided pursuant to §1005.31(b)(2) or (3) for the remittance transfer is not an error if such failure was caused by extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated. Examples of extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated under §1005.33(a)(1)(iii)(B) include circumstances such as war or civil unrest, natural disaster, garnishment or attachment of some of the funds after the transfer is sent, and government actions or restrictions that could not have been reasonably anticipated by the remittance transfer provider, such as the imposition of foreign currency controls or foreign taxes unknown at the time the receipt or combined disclosure is provided under §1005.31(b)(2) or (3).

5. *Failure to make funds available by disclosed date of availability—coverage.* Section 1005.33(a)(1)(iv) generally covers disputes about the failure to make funds available in connection with a remittance transfer to a designated recipient by the disclosed date of availability. If only a portion of the funds were made available by the disclosed date of availability, then §1005.33(a)(1)(iv) does not apply, but §1005.33(a)(1)(iii) may apply instead. The following are examples of errors for failure to make funds available by the disclosed date of availability (assuming that none of the exceptions in §1005.33(a)(1)(iv)(A), (B), or (C) apply).

i. Late or non-delivery of a remittance transfer;

ii. Delivery of funds to the wrong account;

iii. The fraudulent pick-up of a remittance transfer in a foreign country by a person other than the designated recipient;

iv. The recipient agent or institution's retention of the remittance transfer, instead of making the funds available to the designated recipient.

6. *Failure to make funds available by disclosed date of availability—extraordinary circumstances.* Under §1005.33(a)(1)(iv)(A), a remittance transfer provider's failure to deliver or transmit a remittance transfer by the disclosed date of availability is not an error if such failure was caused by extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated. Examples of extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated under §1005.33(a)(1)(iv)(A) include circumstances such as war or civil unrest, natural disaster, garnishment or attachment of funds after the transfer is sent, and government actions or restrictions that could not have been reasonably anticipated by the remittance transfer provider, such as the imposition of foreign currency controls.

7. *Failure to make funds available by disclosed date of availability—fraud and other screening procedures.* Under §1005.33(a)(1)(iv)(B), a remittance transfer provider's failure to deliver funds by the disclosed date of availability is not an error if such delay is related to the provider's or any third party's investigation necessary to address potentially suspicious, blocked or prohibited activity, and the provider did not and could not have reasonably foreseen the delay so as to enable it to timely disclose an accurate date of availability when providing the sender with a receipt or combined disclosure. For example, no error occurs if delivery of funds is delayed because, after the receipt is provided, the provider's fraud screening system flags a remittance transfer because the designated recipient has a name similar to the name of a blocked person under a sanctions program and further investigation is needed to determine that the designated recipient is not actually a blocked person. Similarly, no error occurs where, after disclosing a date of availability to the sender, a remittance transfer provider receives specific law enforcement information indicating that the characteristics of a remittance transfer match a pattern of fraudulent activity, and as a result, the provider deems it necessary to delay delivery of the funds to allow for further investigation. However, if a delay could have been reasonably foreseen, the exception in §1005.33(a)(1)(iv)(B) would not apply. For example, if a provider knows in time to make a disclosure that all remittance transfers to a certain geographic area must undergo screening procedures that routinely delay such transfers by two days, the provider's failure to include the additional two days in its disclosure of the date of availability constitutes an error if delivery of the funds is indeed delayed beyond the disclosed date of availability.

8. *Sender account number or recipient institution identifier error.* The exception in §1005.33(a)(1)(iv)(D) applies where a sender gives the remittance transfer provider an incorrect account number or recipient institution identifier and all five conditions in §1005.33(h) are satisfied. The exception does not apply, however, where the failure to make funds available is the result of a mistake by a provider or a third party or due to incorrect or insufficient information provided by the sender other than an incorrect account number or recipient institution identifier, such as an incorrect name of the recipient institution.

9. *Account number or recipient institution identifier*. For purposes of the exception in §1005.33(a)(1)(iv)(D), the terms account number and recipient institution identifier refer to alphanumerical account or institution identifiers other than names or addresses, such as account numbers, routing numbers, Canadian transit numbers, International Bank Account Numbers (IBANs), Business Identifier Codes (BICs)) and other similar account or institution identifiers used to route a transaction. In addition and for purposes of this exception, the term designated recipient's account in §1005.30(h)(2) refers to an asset account, regardless of whether it is a consumer asset account, established for any purpose and held by a bank, savings association, credit union, or equivalent institution. A designated recipient's account does not, however, include a credit card, prepaid card, or a virtual account held by an Internet-based or mobile telephone company that is not a bank, savings association, credit union or equivalent institution.

10. *Recipient-requested changes*. Under §1005.33(a)(2)(iii), a change requested by the designated recipient that the remittance transfer provider or others involved in the remittance transfer decide to accommodate is not considered an error. The exception under §1005.33(a)(2)(iii) is available only if the change is made solely because the designated recipient requested the change. For example, if a sender requests to send US$100 to a designated recipient at a designated location, but the designated recipient requests the amount in a different currency (either at the sender-designated location or another location requested by the recipient) and the remittance transfer provider accommodates the recipient's request, the change does not constitute an error.

11. *Change from disclosure made in reliance on sender information*. Under the commentary accompanying §1005.31, the remittance transfer provider may rely on the sender's representations in making certain disclosures. *See, e.g.*, comments 31(b)(1)(iv)–1 and 31(b)(1)(vi)–1. For example, suppose a sender requests U.S. dollars to be deposited into an account of the designated recipient and represents that the account is U.S. dollar-denominated. If the designated recipient's account is actually denominated in local currency and the recipient account-holding institution must convert the remittance transfer into local currency in order to deposit the funds and complete the transfer, the change in currency does not constitute an error pursuant to §1005.33(a)(2)(iv).

33(b) Notice of Error From Sender

1. *Person asserting or discovering error*. The error resolution procedures of this section apply only when a notice of error is received from the sender, and not when a notice of error is received from the designated recipient or when the remittance transfer provider itself discovers and corrects an error.

2. *Content of error notice*. The notice of error is effective so long as the remittance transfer provider is able to identify the elements in §1005.33(b)(1)(ii). For example, the sender could provide the confirmation number or code that would be used by the designated recipient to pick up the transfer, or other identification number or code supplied by the remittance transfer provider in connection with the transfer, if such number or code is sufficient for the remittance transfer provider to identify the sender (and contact information), designated recipient, and the transfer in question. For an account-based remittance transfer, the notice of error is effective even if it does not contain the sender's account number, so long as the remittance transfer provider is able to identify the account and the transfer in question.

3. *Address on notice of error*. A remittance transfer provider may request, or a sender may provide, the sender's or designated recipient's email address, as applicable, instead of a physical address, on a notice of error.

4. *Effect of late notice*. A remittance transfer provider is not required to comply with the requirements of this section for any notice of error from a sender that is received by the provider more than 180 days from the disclosed date of availability of the remittance transfer to which the notice of error applies or, if applicable, more than 60 days after a provider sent documentation, additional information, or clarification requested by the sender, provided such date is later than 180 days after the disclosed date of availability.

5. *Notice of error provided to agent*. A notice of error provided by a sender to an agent of the remittance transfer provider is deemed to be received by the provider under §1005.33(b)(1)(i) when received by the agent.

6. *Consumer notice of error resolution rights*. Section 1005.31 requires a remittance transfer provider to include an abbreviated notice of the consumer's error resolution rights on the receipt or combined notice provided under §1005.31(b)(2) or (3). In addition, the remittance transfer provider must make available to a sender upon request, a notice providing a full description of the sender's error resolution rights, using language set forth in Appendix A of this part (Model Form A–36) or substantially similar language.

33(c) Time Limits and Extent of Investigation

1. *Notice to sender of finding of error*. If the remittance transfer provider determines during its investigation that an error occurred as described by the sender, the remittance provider may inform the sender of its findings either orally or in writing. However, if the provider determines that no error or a

different error occurred, the provider must provide a written explanation of its findings under §1005.33(d)(1).

2. *Incorrect or insufficient information provided for transfer.* The remedy in §1005.33(c)(2)(iii) applies if a remittance transfer provider's failure to make funds in connection with a remittance transfer available to a designated recipient by the disclosed date of availability occurred because the sender provided incorrect or insufficient information in connection with the transfer, such as by erroneously identifying the designated recipient's address or by providing insufficient information such that the entity distributing the funds cannot identify the correct designated recipient. A sender is not considered to have provided incorrect or insufficient information for purposes of §1005.33(c)(2)(iii) if the provider discloses the incorrect location where the transfer may be picked up, gives the wrong confirmation number/code for the transfer, or otherwise miscommunicates information necessary for the designated recipient to pick-up the transfer. The remedies in §1005.33(c)(2)(iii) do not apply if the sender provided an incorrect account number or recipient institution identifier and the provider has met the requirements of §1005.33(h) because under §1005.33(a)(1)(iv)(D) no error would have occurred. *See* §1005.33(a)(1)(iv)(D) and comment 33(a)–7.

3. *Designation of requested remedy.* Under §1005.33(c)(2)(ii), the sender may generally choose to obtain a refund of funds that were not properly transmitted or delivered to the designated recipient or, request redelivery of the amount appropriate to correct the error at no additional cost unless the error is determined to have occurred because the sender provided incorrect or insufficient information. Upon receiving the sender's request, the remittance transfer provider shall correct the error within one business day, or as soon as reasonably practicable, applying the same exchange rate, fees, and taxes stated in the disclosure provided under §1005.31(b)(2) or (3), if the sender requests delivery of the amount appropriate to correct the error and the error did not occur because the sender provided incorrect or insufficient information. The provider may also request that the sender indicate the preferred remedy at the time the sender provides notice of the error although if provider does so, it should indicate that the if the sender chooses a resend at the time, the remedy may be unavailable if the error occurred because the sender provided incorrect or insufficient information. However, if the sender does not indicate the desired remedy at the time of providing notice of error, the remittance transfer provider must notify the sender of any available remedies in the report provided under §1005.33(c)(1) or (d)(1) if the provider determines an error occurred.

4. *Default remedy.* Unless the sender provided incorrect or insufficient information and §1005.33(c)(2)(iii) applies, the remittance transfer provider may set a default remedy that the provider will provide if the sender does not designate a remedy within a reasonable time after the sender receives the report provided under §1005.33(c)(1). A provider that permits a sender to designate a remedy within 10 days after the provider has sent the report provided under §1005.33(c)(1) or (d)(1) before imposing the default remedy is deemed to have provided the sender with a reasonable time to designate a remedy. In the case a default remedy is provided, the provider must correct the error within one business day, or as soon as reasonably practicable, after the reasonable time for the sender to designate the remedy has passed, consistent with §1005.33(c)(2).

5. *Amount appropriate to resolve the error.* For purposes of the remedies set forth in §1005.33(c)(2)(i)(A), (c)(2)(i)(B), (c)(2)(ii)(A)(*1*), and (c)(2)(i)(A)(*2*) the amount appropriate to resolve the error is the specific amount of transferred funds that should have been received if the remittance transfer had been effected without error. The amount appropriate to resolve the error does not include consequential damages. For example, when the amount that was disclosed pursuant to §1005.31(b)(1)(vii) was received by the designated recipient before the provider must determine the appropriate remedy for an error under §1005.33(a)(1)(iv), no additional amounts are required to resolve the error after the remittance transfer provider refunds the appropriate fees and taxes paid by the sender pursuant to §1005.33(c)(2)(ii)(B) or (c)(2)(iii), as applicable.

6. *Form of refund.* For a refund provided under §1005.33(c)(2)(i)(A), (c)(2)(ii)(A)(*1*), (c)(2)(ii)(B), or (c)(2)(iii), a remittance transfer provider may generally, at its discretion, issue a refund either in cash or in the same form of payment that was initially provided by the sender for the remittance transfer. For example, if the sender originally provided a credit card as payment for the transfer, the remittance transfer provider may issue a credit to the sender's credit card account in the appropriate amount. However, if a sender initially provided cash for the remittance transfer, a provider may issue a refund by check. For example, if the sender originally provided cash as payment for the transfer, the provider may mail a check to the sender in the amount of the payment.

7. *Remedies for incorrect amount paid.* If an error under §1005.33(a)(1)(i) occurred, the sender may request the remittance transfer provider refund the amount necessary to resolve the error under §1005.33(c)(2)(i)(A) or that the remittance transfer provider make the amount necessary to resolve the error available to the designated recipient at no additional cost under §1005.33(c)(2)(i)(B).

8. *Correction of an error if funds not available by disclosed date.* If the remittance transfer provider determines an error of failure to make funds available by the disclosed date occurred under §1005.33(a)(1)(iv), it must correct the error in accordance with §1005.33(c)(2)(ii)(A), as applicable, and refund any fees imposed for the transfer (unless the sender provided incorrect or insufficient information to the remittance transfer provider in connection with the remittance transfer), whether the fee was imposed by the provider or a third party involved in sending the transfer, such as an intermediary bank involved in sending a wire transfer or the institution from which the funds are picked up in accordance with §1005.33(c)(2)(ii)(B).

9. *Charges for error resolution.* If an error occurred, whether as alleged or in a different amount or manner, the remittance transfer provider may not impose a charge related to any aspect of the error resolution process (including charges for documentation or investigation).

10. *Correction without investigation.* A remittance transfer provider may correct an error, without investigation, in the amount or manner alleged by the sender, or otherwise determined, to be in error, but must comply with all other applicable requirements of §1005.33.

11. *Procedure for sending a new remittance transfer after a sender provides incorrect or insufficient information.* Section 1005.33(c)(2)(iii) generally requires a remittance transfer provider to refund the transfer amount to the sender even if the sender's previously designated remedy was a resend or if the provider's default remedy in other circumstances is a resend. However, if before the refund is processed, the sender receives notice pursuant to §1005.33(c)(1) or (d)(1) that an error occurred because the sender provided incorrect or insufficient information and then requests that the provider send the remittance transfer again, and the provider agrees to that request, §1005.33(c)(2)(iii) requires that the request be treated as a new remittance transfer and the provider must provide new disclosures in accordance with §1005.31 and all other applicable provisions of subpart B. However, §1005.33(c)(2)(iii) does not obligate the provider to agree to a sender's request to send a new remittance transfer.

12. *Determining amount of refund.* Section 1005.33(c)(2)(iii) permits the provider to deduct from the amount refunded, or applied towards a new transfer, any fees or taxes actually deducted from the transfer amount by a person other than the provider as part of the first unsuccessful remittance transfer attempt or that were deducted in the course of returning the transfer amount to the provider following a failed delivery. However, a provider may not deduct those fees and taxes that will ultimately be refunded to the provider. When the provider deducts fees or taxes from the amount refunded pursuant to §1005.33(c)(2)(iii), the provider must inform the sender of the deduction as part of the notice required by either §1005.33(c)(1) or (d)(1) and the reason for the deduction. The following examples illustrate these concepts.

i. A sender instructs a remittance transfer provider to send US$100 to a designated recipient in local currency, for which the provider charges a transfer fee of US$10 (and thus the sender pays the provider $110). The provider's correspondent imposes a fee of US$15 that it deducts from the amount of the transfer. The sender provides incorrect or insufficient information that results in non-delivery of the remittance transfer as requested. Once the provider determines that an error occurred because the sender provided incorrect or insufficient information, the provider must provide the report required by §1005.33(c)(1) or (d)(1) and inform the sender, pursuant to §1005.33(c)(1) or (d)(1), that it will refund US$95 to the sender within three business days, unless the sender chooses to apply the US$95 towards a new remittance transfer and the provider agrees. Of the $95 that is refunded to the sender, $10 reflects the refund of the provider's transfer fee, and $85 reflects the refund of the amount of funds provided by the sender in connection with the transfer which was not properly transmitted. The provider is not required to refund the US$15 fee imposed by the correspondent (unless the $15 will be refunded to the provider by the correspondent).

ii. A sender instructs a remittance transfer provider to send US$100 to a designated recipient in a foreign country, for which the provider charges a transfer fee of US$10 (and thus the sender pays the provider US$110) and an intermediary institution charges a lifting fee of US$5, such that the designated recipient is expected to receive only US$95, as indicated in the receipt. If an error occurs because the sender provides incorrect or insufficient information that results in non-delivery of the remittance transfer by the date of availability stated in the disclosure provided to the sender for the remittance transfer under §1005.31(b)(2) or (3), the provider is required to refund, or reapply if requested and the provider agrees, $105 unless the intermediary institution refunds to the provider the US$5 fee. If the sender requests to have the transfer amount applied to a new remittance transfer pursuant to §1005.33(c)(2)(iii) and provides the corrected or additional information, and the remittance transfer provider agrees to a resend remedy, the remittance transfer provider may charge the sender another transfer fee of US$10 to send the remittance transfer again with the corrected or additional information necessary to complete the transfer.

Insofar as the resend is an entirely new remittance transfer, the provider must provide a prepayment disclosure and receipt or combined disclosure in accordance with, among other provisions, the timing requirements of §1005.31(f) and the cancellation provision of §1005.34(a).

iii. In connection with a remittance transfer, a provider imposes a $15 tax that it then remits to a State taxing authority. An error occurs because the sender provided incorrect or insufficient information that resulted in non-delivery of the transfer to the designated recipient. The provider may deduct $15 from the amount it refunds to the sender pursuant to §1005.33(c)(2)(iii) unless the relevant tax law will result in the $15 tax being refunded to the provider by the State taxing authority because the transfer was not completed.

33(d) Procedures if Remittance Transfer Provider Determines No Error or Different Error Occurred

1. *Error different from that alleged.* When a remittance transfer provider determines that an error occurred in a manner or amount different from that described by the sender, it must comply with the requirements of both §1005.33(c) and (d), as applicable. The provider may give the notice of correction and the explanation separately or in a combined form.

33(e) Reassertion of Error

1. *Withdrawal of error; right to reassert.* The remittance transfer provider has no further error resolution responsibilities if the sender voluntarily withdraws the notice alleging an error. A sender who has withdrawn an allegation of error has the right to reassert the allegation unless the remittance transfer provider had already complied with all of the error resolution requirements before the allegation was withdrawn. The sender must do so, however, within the original 180-day period from the disclosed date of availability or, if applicable, the 60-day period for a notice of error asserted pursuant to §1005.33(b)(2).

33(f) Relation to Other Laws

1. *Concurrent error obligations.* A financial institution that is also the remittance transfer provider may have error obligations under both §§1005.11 and 1005.33. For example, if a sender asserts an error under §1005.11 with a remittance transfer provider that holds the sender's account, and the error is not also an error under §1005.33 (such as the omission of an EFT on a periodic statement), then the error-resolution provisions of §1005.11 exclusively apply to the error. However, if a sender asserts an error under §1005.33 with a remittance transfer provider that holds the sender's account, and the error is also an error under §1005.11 (such as when the amount the sender requested to be deducted from the sender's account and sent for the remittance transfer differs from the amount that was actually deducted from the account and sent), then the error-resolution provisions of §1005.33 exclusively apply to the error.

2. *Holder in due course.* Nothing in this section limits a sender's rights to assert claims and defenses against a card issuer concerning property or services purchased with a credit card under Regulation Z, 12 CFR 1026.12(c)(1), as applicable.

3. *Assertion of same error with multiple parties.* If a sender receives credit to correct an error of an incorrect amount paid in connection with a remittance transfer from either the remittance transfer provider or account-holding institution (or creditor), and subsequently asserts the same error with another party, that party has no further responsibilities to investigate the error if the error has been corrected. For example, assume that a sender initially asserts an error with a remittance transfer provider with respect to a remittance transfer alleging that US$130 was debited from his checking account, but the sender only requested a remittance transfer for US$100, plus a US$10 transfer fee. If the remittance transfer provider refunds US$20 to the sender to correct the error, and the sender subsequently asserts the same error with his account-holding institution, the account-holding institution has no error resolution responsibilities under Regulation E because the error has been fully corrected. In addition, nothing in this section prevents an account-holding institution or creditor from reversing amounts it has previously credited to correct an error if a sender receives more than one credit to correct the same error. For example, assume that a sender concurrently asserts an error with his or her account-holding institution and remittance transfer provider for the same error, and the sender receives credit from the account-holding institution for the error within 45 days of the notice of error. If the remittance transfer provider subsequently provides a credit of the same amount to the sender for the same error, the account-holding institution may reverse the amounts it had previously credited to the consumer's account, even after the 45-day error resolution period under §1005.11.

33(g) Error Resolution Standards and Recordkeeping Requirements

1. *Record retention requirements.* As noted in §1005.31(g)(2), remittance transfer providers are subject to the record retention requirements under §1005.13. Therefore, remittance transfer providers must retain documentation, including documentation related to error investigations, for a period of not less

than two years from the date a notice of error was submitted to the provider or action was required to be taken by the provider. A remittance transfer provider need not maintain records of individual disclosures that it has provided to each sender; it need only retain evidence demonstrating that its procedures reasonably ensure the sender's receipt of required disclosures and documentation.

33(h) Incorrect Account Number Supplied

1. *Reasonable methods of verification.* When a sender provides an incorrect recipient institution identifier, §1005.33(h)(2) limits the exception in §1005.33(a)(1)(iv)(D) to situations where the provider used reasonably available means to verify that the recipient institution identifier provided by the sender did correspond to the recipient institution name provided by the sender. Reasonably available means may include accessing a directory of Business Identifier Codes and verifying that the code provided by the sender matches the provided institution name, and, if possible, the specific branch or location provided by the sender. Providers may also rely on other commercially available databases or directories to check other recipient institution identifiers. If reasonable verification means fail to identify that the recipient institution identifier is incorrect, the exception in §1005.33(a)(1)(iv)(D) will apply, assuming that the provider can satisfy the other conditions in §1005.33(h). Similarly, if no reasonably available means exist to verify the accuracy of the recipient institution identifier, §1005.33(h)(2) would be satisfied and thus the exception in §1005.33(a)(1)(iv)(D) also will apply, again assuming the provider can satisfy the other conditions in §1005.33(h). However, where a provider does not employ reasonably available means to verify a recipient institution identifier, §1005.33(h)(2) is not satisfied and the exception in §1005.33(a)(1)(iv)(D) will not apply.

2. *Reasonable efforts.* Section 1005.33(h)(5) requires a remittance transfer provider to use reasonable efforts to recover the amount that was to be received by the designated recipient. Whether a provider has used reasonable efforts does not depend on whether the provider is ultimately successful in recovering the amount that was to be received by the designated recipient. Under §1005.33(h)(5), if the remittance transfer provider is requested to provide documentation or other supporting information in order for the pertinent institution or authority to obtain the proper authorization for the return of the incorrectly credited amount, reasonable efforts to recover the amount include timely providing any such documentation to the extent that it is available and permissible under law. The following are examples of reasonable efforts:

i. The remittance transfer provider promptly calls or otherwise contacts the institution that received the transfer, either directly or indirectly through any correspondent(s) or other intermediaries or service providers used for the particular transfer, to request that the amount that was to be received by the designated recipient be returned, and if required by law or contract, by requesting that the recipient institution obtain a debit authorization from the holder of the incorrectly credited account.

ii. The remittance transfer provider promptly uses a messaging service through a funds transfer system to contact institution that received the transfer, either directly or indirectly through any correspondent(s) or other intermediaries or service providers used for the particular transfer, to request that the amount that was to be received by the designated recipient be returned, in accordance with the messaging service's rules and protocol, and if required by law or contract, by requesting that the recipient institution obtain a debit authorization from the holder of the incorrectly credited account.

3. *Promptness of Reasonable Efforts.* Section 1005.33(h)(5) requires that a remittance transfer provider act promptly in using reasonable efforts to recover the amount that was to be received by the designated recipient. Whether a provider acts promptly to use reasonable efforts depends on the facts and circumstances. For example, if, before the date of availability disclosed pursuant to §1005.31(b)(2)(ii), the sender informs the provider that the sender provided a mistaken account number, the provider will have acted promptly if it attempts to contact the recipient's institution before the date of availability.

SECTION 1005.34—PROCEDURES FOR CANCELLATION AND REFUND OF REMITTANCE TRANSFERS

34(a) Sender Right of Cancellation and Refund

1. *Content of cancellation request.* A request to cancel a remittance transfer is valid so long as the remittance transfer provider is able to identify the remittance transfer in question. For example, the sender could provide the confirmation number or code that would be used by the designated recipient to pick up the transfer or other identification number or code supplied by the remittance transfer provider in connection with the transfer, if such number or code is sufficient for the remittance transfer provider to identify the transfer. A remittance transfer provider may also request, or the sender may provide, the sender's email address instead of a physical address, so long as the remittance transfer provider is able to identify the transfer to which the request to cancel applies.

2. *Notice of cancellation right.* Section 1005.31 requires a remittance transfer provider to include an abbreviated notice of the sender's right to cancel a remittance transfer on the receipt or combined disclosure given under §1005.31(b)(2) or (3). In addition, the remittance transfer provider must make available to a sender upon request, a notice providing a full description of the right to cancel a remittance transfer using language that is set forth in Model Form A–36 of Appendix A to this part or substantially similar language.

3. *Thirty-minute cancellation right.* A remittance transfer provider must comply with the cancellation and refund requirements of §1005.34 if the cancellation request is received by the provider no later than 30 minutes after the sender makes payment. The provider may, at its option, provide a longer time period for cancellation. A provider must provide the 30-minute cancellation right regardless of the provider's normal business hours. For example, if an agent closes less than 30 minutes after the sender makes payment, the provider could opt to take cancellation requests through the telephone number disclosed on the receipt. The provider could also set a cutoff time after which the provider will not accept requests to send a remittance transfer. For example, a financial institution that closes at 5:00 p.m. could stop accepting payment for remittance transfers after 4:30 p.m.

4. *Cancellation request provided to agent.* A cancellation request provided by a sender to an agent of the remittance transfer provider is deemed to be received by the provider under §1005.34(a) when received by the agent.

5. *Payment made.* For purposes of subpart B, payment is made, for example, when a sender provides cash to the remittance transfer provider or when payment is authorized.

34(b) Time Limits and Refund Requirements

1. *Form of refund.* At its discretion, a remittance transfer provider generally may issue a refund either in cash or in the same form of payment that was initially provided by the sender for the remittance transfer. For example, if the sender originally provided a credit card as payment for the transfer, the remittance transfer provider may issue a credit to the sender's credit card account in the amount of the payment. However, if a sender initially provided cash for the remittance transfer, a provider may issue a refund by check. For example, if the sender originally provided cash as payment for the transfer, the provider may mail a check to the sender in the amount of the payment.

2. *Fees and taxes refunded.* If a sender provides a timely request to cancel a remittance transfer, a remittance transfer provider must refund all funds provided by the sender in connection with the remittance transfer, including any fees and, to the extent not prohibited by law, taxes that have been imposed for the transfer, whether the fee or tax was assessed by the provider or a third party, such as an intermediary institution, the agent or bank in the recipient country, or a State or other governmental body.

SECTION 1005.35—ACTS OF AGENTS

1. *General.* Remittance transfer providers must comply with the requirements of subpart B, including, but not limited to, providing the disclosures set forth in §1005.31 and providing any remedies as set forth in §1005.33, even if an agent or other person performs functions for the remittance transfer provider, and regardless of whether the provider has an agreement with a third party that transfers or otherwise makes funds available to a designated recipient.

SECTION 1005.36—TRANSFERS SCHEDULED IN ADVANCE

1. *Applicability of subpart B.* The requirements set forth in subpart B apply to remittance transfers subject to §1005.36, to the extent that §1005.36 does not modify those requirements. For example, the foreign language disclosure requirements in §1005.31(g) and related commentary continue to apply to disclosures provided in accordance with §1005.36(a)(2).

SECTION 1005.36—TRANSFERS SCHEDULED BEFORE THE DATE OF TRANSFER

36(a) Timing

36(a)(2) Subsequent Preauthorized Remittance Transfers

1. *Changes in Disclosures.* When a sender schedules a series of preauthorized remittance transfers, the provider is generally not required to provide a pre-payment disclosure prior to the date of each subsequent transfer. However, §1005.36(a)(1)(i) requires the provider to provide a pre-payment disclosure and receipt for the first in the series of preauthorized remittance transfers in accordance with the timing requirements set forth in §1005.31(e). While certain information in those disclosures is expressly permitted to be estimated (see §1005.32(b)(2)), other information is not permitted to be estimated, or is limited in how it may be estimated. When any of the information on the most recent receipt provided pursuant to §1005.36(a)(1)(i) or (a)(2)(i), other than the temporal disclosures required by §1005.31(b)(2)(ii) and (b)(2)(vii), is no longer accurate with respect to a subsequent preauthorized remittance transfer for reasons other than as permitted by §1005.32, the provider must provide, within a reasonable time prior to the scheduled date of the next preauthorized remittance transfer, a receipt that complies with §1005.31(b)(2) and which

discloses, among the other disclosures required by §1005.31(b)(2), the changed terms. For example, if the provider discloses in the pre-payment disclosure for the first in the series of preauthorized remittance transfers that its fee for each remittance transfer is $20 and, after six preauthorized remittance transfers, the provider increases its fee to $30 (to the extent permitted by contract law), the provider must provide the sender a receipt that complies with §§1005.31(b)(2) and 1005.36(b)(2) within a reasonable time prior to the seventh transfer. Barring a further change, this receipt will apply to transfers after the seventh transfer. Or, if, after the sixth transfer, a tax collected by the provider increases from 1.5% of the amount that will be transferred to the designated recipient to 2.0% of the amount that will be transferred to the designated recipient, the provider must provide the sender a receipt that complies with §§1005.31(b)(2) and 1005.36(b)(2) within a reasonable time prior to the seventh transfer. In contrast, §1005.36(a)(2)(i) does not require an updated receipt where an exchange rate, estimated as permitted by §1005.32(b)(2), changes.

2. *Clearly and conspicuously.* In order to indicate clearly and conspicuously that the provider's fee has changed as required by §1005.36(a)(2)(i), the provider could, for example, state on the receipt: ''Transfer Fees (UPDATED) * * * $30.'' To the extent that other figures on the receipt must be revised because of the new fee, the receipt should also indicate that those figures are updated.

3. *Reasonable time.* If a disclosure required by §1005.36(a)(2)(i) or (d)(1) is mailed, the disclosure would be considered to be received by the sender five business days after it is posted in the mail. If hand delivered or provided electronically, the receipt would be considered to be received by the sender at the time of delivery. Thus, if the provider mails a disclosure required by §1005.36(a)(2)(i) or (d)(1) not later than ten business days before the scheduled date of the transfer, or hand or electronically delivers a disclosure not later than five business days before the scheduled date of the transfer, the provider would be deemed to have provided the disclosure within a reasonable time prior to the scheduled date of the subsequent preauthorized remittance transfer.

36(b) Accuracy

1. *Use of estimates.* In providing the disclosures described in §1005.36(a)(1)(i) or (a)(2)(i), remittance transfer providers may use estimates to the extent permitted by any of the exceptions in §1005.32. When estimates are permitted, however, they must be disclosed in accordance with §1005.31(d).

2. *Subsequent preauthorized remittance transfers.* For a subsequent transfer in a series of preauthorized remittance transfers, the receipt provided pursuant to §1005.36(a)(1)(i), except for the temporal disclosures in that receipt required by §1005.31(b)(2)(ii) (Date Available) and (b)(2)(vii) (Transfer Date), applies to each subsequent preauthorized remittance transfer unless and until it is superseded by a receipt provided pursuant to §1005.36(a)(2)(i). For each subsequent preauthorized remittance transfer, only the most recent receipt provided pursuant to §1005.36(a)(1)(i) or (a)(2)(i) must be accurate as of the date each subsequent transfer is made.

3. *Receipts.* A receipt required by §1005.36(a)(1)(ii) or (a)(2)(ii) must accurately reflect the details of the transfer to which it pertains and may not contain estimates pursuant to §1005.32(b)(2). However, the remittance transfer provider may continue to disclose estimates to the extent permitted by §1005.32(a) or (b)(1). In providing receipts pursuant to §1005.36(a)(1)(ii) or (a)(2)(ii), §1005.36(b)(2) and (3) do not allow a remittance transfer provider to change figures previously disclosed on a receipt provided pursuant to §1005.36(a)(1)(i) or (a)(2)(i), unless a figure was an estimate or based on an estimate disclosed pursuant to §1005.32. Thus, for example, if a provider disclosed its fee as $10 in a receipt provided pursuant to §1005.36(a)(1)(i) and that receipt contained an estimate of the exchange rate pursuant to §1005.32(b)(2), the second receipt provided pursuant to §1005.36(a)(1)(ii) must also disclose the fee as $10.

36(c) Cancellation

1. *Scheduled remittance transfer.* Section 1005.36(c) applies when a remittance transfer is scheduled by the sender at least three business days before the date of the transfer, whether the sender schedules a preauthorized remittance transfer or a one-time transfer. A remittance transfer is scheduled if it will require no further action by the sender to send the transfer after the sender requests the transfer. For example, a remittance transfer is scheduled at least three business days before the date of the transfer, and §1005.36(c) applies, where a sender on March 1 requests a remittance transfer provider to send a wire transfer to pay a bill in a foreign country on March 15, if it will require no further action by the sender to send the transfer after the sender requests the transfer. A remittance transfer is not scheduled, and §1005.36(c) does not apply, where a transfer occurs more than three days after the date the sender requests the transfer solely due to the provider's processing time. The following are examples of when a sender has not scheduled a remittance transfer at least three business days before the date of the remittance transfer, such that the cancellation rule in §1005.34 applies.

i. A sender on March 1 requests a remittance transfer provider to send a wire transfer to pay a bill in a foreign country on March 3.

ii. A sender on March 1 requests that a remittance transfer provider send a remittance transfer on March 15, but the provider requires the sender to confirm the request on March 14 in order to send the transfer.

iii. A sender on March 1 requests that a remittance transfer provider send an ACH transfer, and that transfer is sent on March 2, but due to the time required for processing, funds will not be deducted from the sender's account until March 5.

2. *Cancelled preauthorized remittance transfers.* For preauthorized remittance transfers, the provider must assume the request to cancel applies to all future preauthorized remittance transfers, unless the sender specifically indicates that it should apply only to the next scheduled remittance transfer.

3. *Concurrent cancellation obligations.* A financial institution that is also a remittance transfer provider may have both stop payment obligations under §1005.10 and cancellation obligations under §1005.36. If a sender cancels a remittance transfer under §1005.36 with a remittance transfer provider that holds the sender's account, and the transfer is a preauthorized transfer under §1005.10, then the cancellation provisions of §1005.36 exclusively apply.

36(d) Date of Transfer for Subsequent Preauthorized Remittance Transfers

1. *General.* Section 1005.36(d)(2)(i) permits remittance transfer providers some flexibility in determining how and when the disclosures required by §1005.36(d)(1) may be provided to senders. The disclosure described in §1005.36(d)(1) may be provided as a separate disclosure, or on or with any other disclosure required by this subpart B related to the same series of preauthorized remittance transfers, provided that the disclosure and timing requirements in §1005.36(d)(2) and other applicable provisions in subpart B are satisfied. For example, the required disclosures may be made on or with a receipt provided pursuant to §1005.36(a)(1)(i); a receipt provided pursuant to §1005.36(a)(2); or in a separate disclosure created by the provider. Thus, for example, a remittance transfer provider complies with §1005.36(d)(1) for a period of one year if it provides in the receipt provided to the sender when payment is made for the initial preauthorized remittance transfer, a schedule or summary of the dates of transfer of all the subsequent preauthorized remittance transfers in the series scheduled to occur over the next 12 months (and the applicable cancellation requirements and contact information).

2. *Delivery of disclosure.* Section 1005.36(d)(2)(i) requires that the sender receive disclosure of the date of transfer, applicable cancellation requirements, and the provider's contact information no more than 12 months, and no less than 5 business days prior to the date of transfer of the subsequent preauthorized remittance transfer. For purposes of determining when a disclosure required by §1005.36(d)(1) is received by the sender, refer to comment 36(a)(2)–3.

3. *Disclosure of the date of transfer.* The date of transfer of a subsequent preauthorized remittance transfer may be disclosed as a specific date (*e.g.*, July 19, 2013) or by using a method that clearly permits identification of the date of the transfer, such as periodic intervals (*e.g.*, the third Monday of every month, or the 15th of every month). If the future dates of transfer are disclosed as occurring periodically and there is a break in the sequence, or the date of transfer does not otherwise conform to the described period, *e.g.*, if a holiday or weekend causes the provider to deviate from the normal schedule, the remittance transfer provider should disclose the specific date of transfer for the affected transfer.

4. *Accuracy requirements.* Section 1005.36(d)(4) sets forth accuracy requirements for disclosures required for subsequent preauthorized remittance transfers under §1005.36(d)(1). If any of the information provided in these disclosures change, the provider must provide an updated disclosure with the revised information that is accurate as of when the transfer is made, pursuant to §1005.36(d)(2).

APPENDIX A—MODEL DISCLOSURE CLAUSES AND FORMS

1. *Review of forms.* The Bureau will not review or approve disclosure forms or statements for financial institutions. However, the Bureau has issued model clauses for institutions to use in designing their disclosures. If an institution uses these clauses accurately to reflect its service, the institution is protected from liability for failure to make disclosures in proper form.

2. *Use of forms.* The appendix contains model disclosure clauses for optional use by financial institutions and remittance transfer providers to facilitate compliance with the disclosure requirements of §§1005.5(b)(2) and (3), 1005.6(a), 1005.7, 1005.8(b), 1005.14(b)(1)(ii), 1005.15(d)(1) and (2), 1005.18(c)(1) and (2), 1005.31, 1005.32 and 1005.36. The use of appropriate clauses in making disclosures will protect a financial institution and a remittance transfer provider from liability under sections 916 and 917 of the act provided the clauses accurately reflect the institution's EFT services and the provider's remittance transfer services, respectively.

3. *Altering the clauses.* Financial institutions may use clauses of their own design in conjunction with the Bureau's model clauses. The inapplicable words or portions

of phrases in parentheses should be deleted. The catchlines are not part of the clauses and need not be used. Financial institutions may make alterations, substitutions, or additions in the clauses to reflect the services offered, such as technical changes (including the substitution of a trade name for the word ''card,'' deletion of inapplicable services, or substitution of lesser liability limits). Several of the model clauses include references to a telephone number and address. Where two or more of these clauses are used in a disclosure, the telephone number and address may be referenced and need not be repeated.

4. *Model forms for remittance transfers.* The Bureau will not review or approve disclosure forms for remittance transfer providers. However, this appendix contains 15 model forms for use in connection with remittance transfers. These model forms are intended to demonstrate several formats a remittance transfer provider may use to comply with the requirements of §1005.31(b). Model Forms A–30 through A–32 demonstrate how a provider could provide the required disclosures for a remittance transfer exchanged into local currency. Model Forms A–30(a), (b), (c), and (d) demonstrate four options regarding model language related to the required disclaimer, where applicable, of non-covered third-party fees and taxes on the remittance transfer collected by a person other than the provider under §1005.31(b)(1)(viii). Model forms 30(b) through (d) also include language that may be used if a provider elects to estimate either these non-covered third-party fees or taxes collected by a person other than the provider as part of the disclaimer. Model Forms A–33 through A–35 demonstrate how a provider could provide the required disclosures for dollar-to-dollar remittance transfers. These forms also demonstrate disclosure of the required content, in accordance with the grouping and proximity requirements of §1005.31(c)(1) and (2), in both a register receipt format and an 8.5 inch by 11 inch format. Model Form A–36 provides long form model error resolution and cancellation disclosures required by §1005.31(b)(4), and Model Form A–37 provides short form model error resolution and cancellation disclosures required by §1005.31(b)(2)(iv) and (vi). Model Forms A–38 through A–41 provide language for Spanish language disclosures.

i. The model forms contain information that is not required by subpart B, including a confirmation code, the sender's name and contact information, and the optional disclosure of the estimated amount of these non-covered third-party fees and taxes collected by a person other than the provider as part of the disclaimer. Additional information not required by subpart B may be presented on the model forms as permitted by §1005.31(b)(1)(viii) and (c)(4). Any additional information must be presented consistent with a remittance transfer provider's obligation to provide required disclosures in a clear and conspicuous manner.

ii. Use of the model forms is optional. A remittance transfer provider may change the forms by rearranging the format or by making modifications to the language of the forms, in each case without modifying the substance of the disclosures. Any rearrangement or modification of the format of the model forms must be consistent with the form, grouping, proximity, and other requirements of §1005.31(a) and (c). Providers making revisions that do not comply with this section will lose the benefit of the safe harbor for appropriate use of Model Forms A–30 to A–41.

iii. Permissible changes to the language and format of the model forms include, for example:

A. Substituting the information contained in the model forms that is intended to demonstrate how to complete the information in the model forms—such as names, addresses, and Web sites; dates; numbers; and State-specific contact information—with information applicable to the remittance transfer. In addition, if the applicable non-covered third-party fees are imposed by an institution other than a bank, a provider could modify the disclaimer accordingly.

B. Eliminating disclosures that are not applicable to the transfer, as described under §1005.31(b). For example, if only covered third-party fees are imposed, a provider would not use a disclaimer related to additional fees that may apply because all applicable fees are covered and included in the disclosure as required under §1005.31(b)(1)(vi).

C. Correcting or updating telephone numbers, mailing addresses, or Web site addresses that may change over time.

D. Providing the disclosures on a paper size that is different from a register receipt and 8.5 inch by 11 inch formats.

E. Adding a term substantially similar to ''estimated'' in close proximity to the specified terms in §1005.31(b)(1) and (2), as required under §1005.31(d).

F. Providing the disclosures in a foreign language, or multiple foreign languages, subject to the requirements of §1005.31(g).

G. Substituting cancellation language to reflect the right to a cancellation made pursuant to the requirements of §1005.36(c).

iv. Changes to the model forms that are not permissible include, for example, adding information that is not segregated from the required disclosures, other than as permitted by §1005.31(c)(4).

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PART 1006—FAIR DEBT COLLECTION PRACTICES ACT (REGULATION F)

Subpart A—Procedures for State Application for Exemption From the Provisions of the Act

Sec.
1006.1 Purpose and definitions.
1006.2 Application.
1006.3 Supporting documents.
1006.4 Criteria for determination.
1006.5 Public notice of filing.
1006.6 Exemption from requirements.
1006.7 Adverse determination.
1006.8 Revocation of exemption.

Subpart B [Reserved]

AUTHORITY: 12 U.S.C. 5512, 5581; 15 U.S.C. 1692o.

SOURCE: 76 FR 78124, Dec. 16, 2011, unless otherwise noted.

Subpart A—Procedures for State Application for Exemption From the Provisions of the Act

§ 1006.1 Purpose and definitions.

(a) *Purpose.* This part, known as Regulation F, is issued by the Bureau of Consumer Financial Protection (Bureau). This subpart establishes procedures and criteria whereby states may apply to the Bureau for exemption of a class of debt collection practices within the applying state from the provisions of the Fair Debt Collection Practices Act (the Act) as provided in section 817 of the Act, 15 U.S.C. 1692o.

(b) *Definitions.* For purposes of this subpart:

Class of debt collection practices includes one or more such classes of debt collection practices.

State law includes any regulations that implement state law and formal interpretations thereof by a court of competent jurisdiction or duly authorized agency of that state.

§ 1006.2 Application.

Any state may apply to the Bureau pursuant to the terms of this part for a determination that, under the laws of that state, any class of debt collection practices within that state is subject to requirements that are substantially similar to, or provide greater protection for consumers than, those imposed under sections 803 through 812 of the Act, and that there is adequate provision for state enforcement of such requirements. The application shall be in writing, addressed to the Bureau, signed by the Governor, Attorney General or state official having primary enforcement or responsibility under the state law which is applicable to the class of debt collection practices, and shall be supported by the documents specified in this subpart.

§ 1006.3 Supporting documents.

The application shall be accompanied by the following, which may be submitted in paper or electronic form:

(a) A copy of the full text of the state law that is claimed to contain requirements substantially similar to those imposed under sections 803 through 812 of the Act, or to provide greater protection to consumers than sections 803 through 812 of the Act, regarding the class of debt collection practices within that state.

(b) A comparison of each provision of sections 803 through 812 of the Act with the corresponding provision of the state law, together with reasons supporting the claim that the corresponding provisions of the state law are substantially similar to or provide greater protection to consumers than provisions of sections 803 through 812 of the Act and an explanation as to why any differences between the state and Federal law are not inconsistent with the provisions of sections 803 through 812 of the Act and do not result in a diminution in the protection otherwise afforded consumers; and a statement that no other state laws (including administrative or judicial interpretations) are related to, or would have an effect upon, the state law that is being considered by the Bureau in making its determination.

(c) A copy of the full text of the state law that provides for enforcement of the state law referred to in paragraph (a) of this section.

(d) A comparison of the provisions of the state law that provides for enforcement with the provisions of section 814 of the Act, together with reasons supporting the claim that such state law

provides for administrative enforcement of the state law referred to in paragraph (a) of this section that is substantially similar to, or more extensive than, the enforcement provided under section 814 of the Act.

(e) A statement identifying the office designated or to be designated to administer the state law referred to in paragraph (a) of this section, together with complete information regarding the fiscal arrangements for administrative enforcement (including the amount of funds available or to be provided), the number and qualifications of personnel engaged or to be engaged in enforcement, and a description of the procedures under which such state law is to be administratively enforced. The statement should also include reasons to support the claim that there is adequate provision for enforcement of such state law.

§ 1006.4 Criteria for determination.

The Bureau will consider the criteria set forth below, and any other relevant information, in determining whether the law of a state is substantially similar to, or provides greater protection to consumers than, the provisions of sections 803 through 812 of the Act regarding the class of debt collection practices within that state, and whether there is adequate provision for state enforcement of such law. In making that determination, the Bureau primarily will consider each provision of the state law in comparison with each corresponding provision in sections 803 through 812 of the Act, and not the state law as a whole in comparison with the Act as a whole.

(a)(1) In order for provisions of state law to be substantially similar to, or provide greater protection to consumers than the provisions of sections 803 through 812 of the Act, the provisions of state law at least shall provide that:

(i) Definitions and rules of construction, as applicable, import the same meaning and have the same application as those prescribed by sections 803 through 812 of the Act.

(ii) Debt collectors provide all of the applicable notifications required by the provisions of sections 803 through 812 of the Act, with the content and in the terminology, form, and time periods prescribed by this part pursuant to sections 803 through 812; however, required references to state law may be substituted for the references to Federal law required in this part. Notification requirements under state law in additional circumstances or with additional detail that do not frustrate any of the purposes of the Act may be determined by the Bureau to be consistent with sections 803 through 812 of the Act;

(iii) Debt collectors take all affirmative actions and abide by obligations substantially similar to, or more extensive than, those prescribed by sections 803 through 812 of the Act under substantially similar or more stringent conditions and within the same or more stringent time periods as are prescribed in sections 803 through 812 of the Act;

(iv) Debt collectors abide by the same or more stringent prohibitions as are prescribed by sections 803 through 812 of the Act;

(v) Obligations or responsibilities imposed on consumers are no more costly, lengthy, or burdensome relative to consumers exercising any of the rights or gaining the benefits of the protections provided in the state law than corresponding obligations or responsibilities imposed on consumers in sections 803 through 812 of the Act.

(vi) Consumers' rights and protections are substantially similar to, or more favorable than, those provided by sections 803 through 812 of the Act under conditions or within time periods that are substantially similar to, or more favorable to consumers than, those prescribed by sections 803 through 812 of the Act.

(2) Paragraph (a)(1) of this section is not to be construed as indicating that the Bureau would consider adversely any additional requirements of state law that are not inconsistent with the purpose of the Act or the requirements imposed under sections 803 through 812 of the Act.

(b) In determining whether provisions for enforcement of the state law referred to in § 1006.3(a) of this part are adequate, consideration will be given to the extent to which, under state law, provision is made for administrative

enforcement, including necessary facilities, personnel, and funding.

§ 1006.5 Public notice of filing.

In connection with any application that has been filed in accordance with the requirements of §§ 1006.2 and 1006.3 of this part and following initial review of the application, a notice of such filing shall be published by the Bureau in the FEDERAL REGISTER, and a copy of such application shall be made available for examination by interested persons during business hours at the Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006. A period of time shall be allowed from the date of such publication for interested parties to submit written comments to the Bureau regarding that application.

§ 1006.6 Exemption from requirements.

If the Bureau determines on the basis of the information before it that, under the law of a state, a class of debt collection practices is subject to requirements substantially similar to, or that provide greater protection to consumers than, those imposed under sections 803 through 812 and section 814 of the Act, and that there is adequate provision for state enforcement, the Bureau will exempt the class of debt collection practices in that state from the requirements of sections 803 through 812 and section 814 of the Act in the following manner and subject to the following conditions:

(a) Notice of the exemption shall be published in the FEDERAL REGISTER, and the Bureau shall furnish a copy of such notice to the state official who made application for such exemption, to each Federal authority responsible for administrative enforcement of the requirements of sections 803 through 812 of the Act, and to the Attorney General of the United States. Any exemption granted shall be effective 90 days after the date of publication of such notice in the FEDERAL REGISTER.

(b) The appropriate official of any state that receives an exemption shall inform the Bureau in writing within 30 days of any change in the state laws referred to in § 1006.3(a) and (c) of this part. The report of any such change shall contain copies of the full text of that change, together with statements setting forth the information and opinions regarding that change that are specified in § 1006.3(b) and (d). The appropriate official of any state that has received such an exemption also shall file with the Bureau from time to time such reports as the Bureau may require.

(c) The Bureau shall inform the appropriate official of any state that receives such an exemption of any subsequent amendments of the Act or this part that might necessitate the amendment of state law for the exemption to continue.

(d) No exemption shall extend to the civil liability provisions of section 813 of the Act. After an exemption is granted, the requirements of the applicable state law shall constitute the requirements of sections 803 through 812 of the Act, except to the extent such state law imposes requirements not imposed by the Act or this part.

§ 1006.7 Adverse determination.

(a) If, after publication of a notice in the FEDERAL REGISTER as provided under § 1006.5 of this part, the Bureau finds on the basis of the information before it that it cannot make a favorable determination in connection with the application, the Bureau shall notify the appropriate state official of the facts upon which such findings are based and shall afford that state authority a reasonable opportunity to demonstrate or achieve compliance.

(b) If, after having afforded the state authority such opportunity to demonstrate or achieve compliance, the Bureau finds on the basis of the information before it that it still cannot make a favorable determination in connection with the application, the Bureau shall publish in the FEDERAL REGISTER a notice of its determination regarding the application and shall furnish a copy of such notice to the state official who made application for such exemption.

§ 1006.8 Revocation of exemption.

(a) The Bureau reserves the right to revoke any exemption granted under the provisions of this part, if at any time it determines that the state law does not, in fact, impose requirements

that are substantially similar to, or that provide greater protection to applicants than, those imposed under sections 803 through 812 of the Act or that there is not, in fact, adequate provision for state enforcement.

(b) Before revoking any such exemption, the Bureau shall notify the appropriate state official of the facts or conduct that, in the Bureau's opinion, warrant such revocation, and shall afford that state such opportunity as the Bureau deems appropriate in the circumstances to demonstrate or achieve compliance.

(c) If, after having been afforded the opportunity to demonstrate or achieve compliance, the Bureau determines that the state has not done so, notice of the Bureau's intention to revoke such exemption shall be published in the FEDERAL REGISTER. A period of time shall be allowed from the date of such publication for interested persons to submit written comments to the Bureau regarding the intention to revoke.

(d) If such exemption is revoked, notice of such revocation shall be published by the Bureau in the FEDERAL REGISTER, and a copy of such notice shall be furnished to the appropriate state official, to the Federal authorities responsible for enforcement of the requirements of the Act, and to the Attorney General of the United States. The revocation shall become effective, and the class of debt collection practices affected within that state shall become subject to the requirements of sections 803 through 812 of the Act, 90 days after the date of publication of the notice in the FEDERAL REGISTER.

Subpart B [Reserved]

PART 1007—S.A.F.E. MORTGAGE LICENSING ACT—FEDERAL REGISTRATION OF RESIDENTIAL MORTGAGE LOAN ORIGINATORS (REGULATION G)

Sec.

1007.101 Authority, purpose, and scope of this part.
1007.102 Definitions applicable to this part.
1007.103 Registration of mortgage loan originators.
1007.104 Policies and procedures.
1007.105 Use of Unique Identifier.
APPENDIX A TO PART 1007—EXAMPLES OF MORTGAGE LOAN ORIGINATOR ACTIVITIES

AUTHORITY: 12 U.S.C. 5101–5116; 15 U.S.C. 1604(a), 1639b; Pub. L. 111–203, 124 Stat. 1376.

SOURCE: 76 FR 78487, Dec. 19, 2011, unless otherwise noted.

§ 1007.101 Authority, purpose, and scope.

(a) *Authority*. This part, known as Regulation G, is issued by the Bureau of Consumer Financial Protection pursuant to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, title V of the Housing and Economic Recovery Act of 2008 (S.A.F.E. Act) (Pub. L. 110–289, 122 Stat. 2654, 12 U.S.C. 5101 *et seq.*,) 12 U.S.C. 5512, 5581, 15 U.S.C. 1604(a), 1639b.

(b) *Purpose*. This part implements the S.A.F.E. Act's Federal registration requirement for mortgage loan originators. The S.A.F.E. Act provides that the objectives of this registration include aggregating and improving the flow of information to and between regulators; providing increased accountability and tracking of mortgage loan originators; enhancing consumer protections; supporting anti-fraud measures; and providing consumers with easily accessible information at no charge regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators.

(c) *Scope*—(1) *In general*. This part applies to:

(i) National banks, Federal branches and agencies of foreign banks, their operating subsidiaries (collectively referred to in this part as national banks), and their employees who act as mortgage loan originators;

(ii) Member banks of the Federal Reserve System; their respective subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act, as amended (12 U.S.C. 1844(c)(5)); branches and agencies of foreign banks; commercial lending companies owned or controlled by foreign banks (collectively referred to in this part as member banks); and their employees who act as mortgage loan originators;

(iii) Insured state nonmember banks (including state-licensed insured

branches of foreign banks), their subsidiaries (except brokers, dealers, persons providing insurance, investment companies, and investment advisers) (collectively referred to in this part as insured state nonmember banks), and employees of such banks or subsidiaries who act as mortgage loan originators;

(iv) Savings associations, their operating subsidiaries (collectively referred to in this part as savings associations), and their employees who act as mortgage loan originators;

(v) Farm Credit System lending institutions that actually originate residential mortgage loans pursuant to sections 1.9(3), 1.11 or 2.4(a) and (b) of the Farm Credit Act of 1971 (collectively referred to in this part as Farm Credit System institutions), and their employees who act as mortgage loan originators; and

(vi) Any federally insured credit union and its employees, including volunteers, who act as mortgage loan originators. This part also applies to non-federally insured credit unions and their employees, including volunteers, who act as mortgage loan originators, subject to the conditions in paragraph (c)(3) of this section.

(2) *De minimis exception.* (i) This part and the requirements of 12 U.S.C. 5103(a)(1)(A) and (2) of the S.A.F.E. Act do not apply to any employee of a national bank, member bank, insured state nonmember bank, savings association, Farm Credit System institution, or credit union who has never been registered or licensed through the Registry as a mortgage loan originator if during the past 12 months the employee acted as a mortgage loan originator for 5 or fewer residential mortgage loans.

(ii) Prior to engaging in mortgage loan origination activity that exceeds the exception limit in paragraph (c)(2)(i) of this section, an employee must register with the Registry pursuant to this part.

(iii) *Evasion.* National banks, member banks, insured state nonmember banks, savings associations, Farm Credit System institutions, and credit unions are prohibited from engaging in any act or practice to evade the limits of the *de minimis* exception set forth in paragraph (c)(2)(i) of this section.

(3) *For non-federally insured credit unions.* A non-federally insured credit union in a state identified on the National Credit Union Administration's Web site (NCUA.gov) as one where the appropriate state supervisory authority has executed a Memorandum of Understanding (MOU) with the National Credit Union Administration may register under this rule provided that any Nationwide Mortgage Licensing System and Registry listing of the non-federally insured credit union and its employees contains a clear and conspicuous statement that the non-federally insured credit union is not insured by the National Credit Union Share Insurance Fund, and the state supervisory authority where the non-federally insured credit union is located maintains an agreement with the National Credit Union Administration for this registration process and oversight. If the state supervisory authority where the non-federally insured credit union is located fails to maintain such an agreement, the non-federally insured credit union and its employees in that state may not register or maintain registration under the Federal system. They instead must use the appropriate state licensing and registration system, or if the state does not have such a system, the licensing and registration system established by the Bureau for mortgage loan originators and their employees.

§ 1007.102 Definitions.

For purposes of this part, the following definitions apply:

Administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the residential mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

Annual renewal period means November 1 through December 31 of each year.

Bureau means the Bureau of Consumer Financial Protection.

Covered financial institution means any national bank, member bank, insured state nonmember bank, savings association, Farm Credit System institution, or federally insured credit union as any such term is defined in § 1007.101(c)(1). Covered financial institution also includes a non-federally insured credit union that registers subject to the conditions of § 1007.101(c)(3).

Mortgage loan originator means

(1) An individual who:

(i) Takes a residential mortgage loan application; and

(ii) Offers or negotiates terms of a residential mortgage loan for compensation or gain.

(2)(i) The term *mortgage loan originator* does not include:

(A) An individual who performs purely administrative or clerical tasks on behalf of an individual who is described as a mortgage loan originator in this section;

(B) An individual who only performs real estate brokerage activities (as defined in 12 U.S.C. 5102(4)(D)) and is licensed or registered as a real estate broker in accordance with applicable state law, unless the individual is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, and meets the definition of mortgage loan originator in this section; or

(C) An individual or entity solely involved in extensions of credit related to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).

(ii) Examples of activities that would, and would not, result in an employee meeting the definition of mortgage loan originator are provided in appendix A to this part.

Nationwide Mortgage Licensing System and Registry or *Registry* means the system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the state licensing and registration of state-licensed mortgage loan originators and the registration of mortgage loan originators pursuant to 12 U.S.C. 5107.

Registered mortgage loan originator or *registrant* means any individual who:

(1) Meets the definition of mortgage loan originator and is an employee of a covered financial institution; and

(2) Is registered pursuant to this part with, and maintains a unique identifier through, the Registry.

Residential mortgage loan means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act, 15 U.S.C. 1602(v)) or residential real estate upon which is constructed or intended to be constructed a dwelling, and includes refinancings, reverse mortgages, home equity lines of credit and other first and additional lien loans that meet the qualifications listed in this definition. This definition does not amend or supersede 12 CFR 613.3030(c) with respect to Farm Credit System institutions.

Unique identifier means a number or other identifier that:

(1) Permanently identifies a registered mortgage loan originator;

(2) Is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Bureau to facilitate:

(i) Electronic tracking of mortgage loan originators; and

(ii) Uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against mortgage loan originators; and

(3) Must not be used for purposes other than those set forth under the S.A.F.E. Act.

§ 1007.103 Registration of mortgage loan originators.

(a) *Registration requirement*—(1) *Employee registration*. Each employee of a covered financial institution who acts as a mortgage loan originator must register with the Registry, obtain a unique identifier, and maintain this registration in accordance with the requirements of this part. Any such employee who is not in compliance with the registration and unique identifier requirements set forth in this part is in violation of the S.A.F.E. Act and this part.

(2) *Covered financial institution requirement*—(i) *In general.* A covered financial institution that employs one or more individuals who act as a residential mortgage loan originator must require each such employee to register with the Registry, maintain this registration, and obtain a unique identifier in accordance with the requirements of this part.

(ii) *Prohibition.* A covered financial institution must not permit an employee who is subject to the registration requirements of this part to act as a mortgage loan originator for the covered financial institution unless such employee is registered with the Registry pursuant to this part.

(3) [Reserved]

(4) *Employees previously registered or licensed through the Registry*—(i) *In general.* If an employee of a covered financial institution was registered or licensed through, and obtained a unique identifier from, the Registry and has maintained this registration or license before the employee becomes subject to this part at the current covered financial institution, then the registration requirements of the S.A.F.E. Act and this part are deemed to be met, provided that:

(A) The employment information in paragraphs (d)(1)(i)(C) and (d)(1)(ii) of this section is updated and the requirements of paragraph (d)(2) of this section are met;

(B) New fingerprints of the employee are submitted to the Registry for a background check, as required by paragraph (d)(1)(ix) of this section, unless the employee has fingerprints on file with the Registry that are less than 3 years old;

(C) The covered financial institution information required in paragraphs (e)(1)(i) (to the extent the covered financial institution has not previously met these requirements) and (e)(2)(i) of this section is submitted to the Registry; and

(D) The registration is maintained pursuant to paragraphs (b) and (e)(1)(ii) of this section, as of the date that the employee becomes subject to this part.

(ii) *Rule for certain acquisitions, mergers, or reorganizations.* When registered or licensed mortgage loan originators become covered financial institution employees as a result of an acquisition, consolidation, merger, or reorganization, only the requirements of paragraphs (a)(4)(i)(A), (C), and (D) of this section must be met, and these requirements must be met within 60 days from the effective date of the acquisition, merger, or reorganization.

(b) *Maintaining registration.* (1) A mortgage loan originator who is registered with the Registry pursuant to paragraph (a) of this section must:

(i) Except as provided in paragraph (b)(3) of this section, renew the registration during the annual renewal period, confirming the responses set forth in paragraphs (d)(1)(i) through (viii) of this section remain accurate and complete, and updating this information, as appropriate; and

(ii) Update the registration within 30 days of any of the following events:

(A) A change in the name of the registrant;

(B) The registrant ceases to be an employee of the covered financial institution; or

(C) The information required under paragraphs (d)(1)(iii) through (viii) of this section becomes inaccurate, incomplete, or out-of-date.

(2) A registered mortgage loan originator must maintain his or her registration, unless the individual is no longer engaged in the activity of a mortgage loan originator.

(3) The annual registration renewal requirement set forth in paragraph (b)(1) of this section does not apply to a registered mortgage loan originator who has completed his or her registration with the Registry pursuant to paragraph (a)(1) of this section less than 6 months prior to the end of the annual renewal period.

(c) *Effective dates*—(1) *Registration.* A registration pursuant to paragraph (a)(1) of this section is effective on the date the Registry transmits notification to the registrant that the registrant is registered.

(2) *Renewals or updates.* A renewal or update pursuant to paragraph (b) of this section is effective on the date the Registry transmits notification to the registrant that the registration has been renewed or updated.

(d) *Required employee information*—(1) *In general*. For purposes of the registration required by this section, a covered financial institution must require each employee who is a mortgage loan originator to submit to the Registry, or must submit on behalf of the employee, the following categories of information, to the extent this information is collected by the Registry:

(i) Identifying information, including the employee's:

(A) Name and any other names used;

(B) Home address and contact information;

(C) Principal business location address and business contact information;

(D) Social security number;

(E) Gender; and

(F) Date and place of birth;

(ii) Financial services-related employment history for the 10 years prior to the date of registration or renewal, including the date the employee became an employee of the covered financial institution;

(iii) Convictions of any criminal offense involving dishonesty, breach of trust, or money laundering against the employee or organizations controlled by the employee, or agreements to enter into a pretrial diversion or similar program in connection with the prosecution for such offense(s);

(iv) Civil judicial actions against the employee in connection with financial services-related activities, dismissals with settlements, or judicial findings that the employee violated financial services-related statutes or regulations, except for actions dismissed without a settlement agreement;

(v) Actions or orders by a state or Federal regulatory agency or foreign financial regulatory authority that:

(A) Found the employee to have made a false statement or omission or been dishonest, unfair or unethical; to have been involved in a violation of a financial services-related regulation or statute; or to have been a cause of a financial services-related business having its authorization to do business denied, suspended, revoked, or restricted;

(B) Are entered against the employee in connection with a financial services-related activity;

(C) Denied, suspended, or revoked the employee's registration or license to engage in a financial services-related activity; disciplined the employee or otherwise by order prevented the employee from associating with a financial services-related business or restricted the employee's activities; or

(D) Barred the employee from association with an entity or its officers regulated by the agency or authority or from engaging in a financial services-related business;

(vi) Final orders issued by a state or Federal regulatory agency or foreign financial regulatory authority based on violations of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct;

(vii) Revocation or suspension of the employee's authorization to act as an attorney, accountant, or state or Federal contractor;

(viii) Customer-initiated financial services-related arbitration or civil action against the employee that required action, including settlements, or which resulted in a judgment; and

(ix) Fingerprints of the employee, in digital form if practicable, and any appropriate identifying information for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information in connection with a state and national criminal history background check; however, fingerprints provided to the Registry that are less than 3 years old may be used to satisfy this requirement.

(2) *Employee authorizations and attestation*. An employee registering as a mortgage loan originator or renewing or updating his or her registration under this part, and not the employing covered financial institution or other employees of the covered financial institution, must:

(i) Authorize the Registry and the employing institution to obtain information related to sanctions or findings in any administrative, civil, or criminal action, to which the employee is a party, made by any governmental jurisdiction;

(ii) Attest to the correctness of all information required by paragraph (d) of this section, whether submitted by

the employee or on behalf of the employee by the employing covered financial institution; and

(iii) Authorize the Registry to make available to the public information required by paragraphs (d)(1)(i)(A) and (C), and (d)(1)(ii) through (viii) of this section.

(3) *Submission of information.* A covered financial institution may identify one or more employees of the covered financial institution who may submit the information required by paragraph (d)(1) of this section to the Registry on behalf of the covered financial institution's employees provided that this individual, and any employee delegated such authority, does not act as a mortgage loan originator, consistent with paragraph (e)(1)(i)(F) of this section. In addition, a covered financial institution may submit to the Registry some or all of the information required by paragraphs (d)(1) and (e)(2) of this section for multiple employees in bulk through batch processing in a format to be specified by the Registry, to the extent such batch processing is made available by the Registry.

(e) *Required covered financial institution information.* A covered financial institution must submit the following categories of information to the Registry:

(1) *Covered financial institution record.* (i) In connection with the registration of one or more mortgage loan originators:

(A) Name, main office address, and business contact information;

(B) Internal Revenue Service Employer Tax Identification Number (EIN);

(C) Research Statistics Supervision and Discount (RSSD) number, as issued by the Board of Governors of the Federal Reserve System;

(D) Identification of its primary Federal regulator;

(E) Name(s) and contact information of the individual(s) with authority to act as the covered financial institution's primary point of contact for the Registry;

(F) Name(s) and contact information of the individual(s) with authority to enter the information required by paragraphs (d)(1) and (e) of this section to the Registry and who may delegate this authority to other individuals. For the purpose of providing information required by paragraph (e) of this section, this individual and their delegates must not act as mortgage loan originators unless the covered financial institution has 10 or fewer full time or equivalent employees and is not a subsidiary; and

(G) If a subsidiary of a national bank, member bank, savings association, or insured state nonmember bank, indication that it is a subsidiary and the RSSD number of the parent institution; if an operating subsidiary of an agricultural credit association, indication that it is a subsidiary, and the RSSD number of the parent agricultural credit association.

(ii) *Attestation.* The individual(s) identified in paragraphs (e)(1)(i)(E) and (F) of this section must comply with Registry protocols to verify their identity and must attest that they have the authority to enter data on behalf of the covered financial institution, that the information provided to the Registry pursuant to this paragraph (e) is correct, and that the covered financial institution will keep the information required by this paragraph (e) current and will file accurate supplementary information on a timely basis.

(iii) A covered financial institution must update the information required by this paragraph (e) of this section within 30 days of the date that this information becomes inaccurate.

(iv) A covered financial institution must renew the information required by paragraph (e) of this section on an annual basis.

(2) *Employee information.* In connection with the registration of each employee who acts as a mortgage loan originator:

(i) After the information required by paragraph (d) of this section has been submitted to the Registry, confirmation that it employs the registrant; and

(ii) Within 30 days of the date the registrant ceases to be an employee of the covered financial institution, notification that it no longer employs the registrant and the date the registrant ceased being an employee.

§ 1007.104 Policies and procedures.

A covered financial institution that employs one or more mortgage loan originators must adopt and follow written policies and procedures designed to assure compliance with this part. These policies and procedures must be appropriate to the nature, size, complexity, and scope of the mortgage lending activities of the covered financial institution, and apply only to those employees acting within the scope of their employment at the covered financial institution. At a minimum, these policies and procedures must:

(a) Establish a process for identifying which employees of the covered financial institution are required to be registered mortgage loan originators;

(b) Require that all employees of the covered financial institution who are mortgage loan originators be informed of the registration requirements of the S.A.F.E. Act and this part and be instructed on how to comply with such requirements and procedures;

(c) Establish procedures to comply with the unique identifier requirements in § 1007.105;

(d) Establish reasonable procedures for confirming the adequacy and accuracy of employee registrations, including updates and renewals, by comparisons with its own records;

(e) Establish reasonable procedures and tracking systems for monitoring compliance with registration and renewal requirements and procedures;

(f) Provide for independent testing for compliance with this part to be conducted at least annually by covered financial institution personnel or by an outside party;

(g) Provide for appropriate action in the case of any employee who fails to comply with the registration requirements of the S.A.F.E. Act, this part, or the covered financial institution's related policies and procedures, including prohibiting such employees from acting as mortgage loan originators or other appropriate disciplinary actions;

(h) Establish a process for reviewing employee criminal history background reports received pursuant to this part, taking appropriate action consistent with applicable Federal law, including section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829), section 206 of the Federal Credit Union Act (12 U.S.C. 1786(i)), and section 5.65(d) of the Farm Credit Act of 1971, as amended (12 U.S.C. 2277a–14(d)), and implementing regulations with respect to these reports, and maintaining records of these reports and actions taken with respect to applicable employees; and

(i) Establish procedures designed to ensure that any third party with which the covered financial institution has arrangements related to mortgage loan origination has policies and procedures to comply with the S.A.F.E. Act, including appropriate licensing and/or registration of individuals acting as mortgage loan originators.

§ 1007.105 Use of unique identifier.

(a) The covered financial institution shall make the unique identifier(s) of its registered mortgage loan originator(s) available to consumers in a manner and method practicable to the institution.

(b) A registered mortgage loan originator shall provide his or her unique identifier to a consumer:

(1) Upon request;

(2) Before acting as a mortgage loan originator; and

(3) Through the originator's initial written communication with a consumer, if any, whether on paper or electronically.

APPENDIX A TO PART 1007—EXAMPLES OF MORTGAGE LOAN ORIGINATOR ACTIVITIES

This appendix provides examples to aid in the understanding of activities that would cause an employee of a covered financial institution to fall within or outside the definition of mortgage loan originator. The examples in this appendix are not all-inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under this part. For purposes of the examples below, the term ''loan'' refers to a residential mortgage loan.

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

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

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

(ii) Is not responsible for verifying information;

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

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

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

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

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

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

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

(v) In response to an inquiry regarding a prequalified offer that a consumer has received from a covered financial institution, collecting only basic identifying information about the consumer and forwarding the consumer to a mortgage loan originator; or

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

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

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

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

(A) Further verification of information is necessary;

(B) The offer is conditional;

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

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

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

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

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

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

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

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

(v) Providing a consumer with information unrelated to loan terms, such as the best days of the month for scheduling loan closings at the covered financial institution;

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

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

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

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

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

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

PART 1008—S.A.F.E. MORTGAGE LICENSING ACT—STATE COMPLIANCE AND BUREAU REGISTRATION SYSTEM (REGULATION H)

Sec.

1008.1 Purpose.
1008.3 Confidentiality of information.

Subpart A—General

1008.20 Scope of this subpart.
1008.23 Definitions.

Subpart B—Determination of State Compliance With the S.A.F.E. Act

1008.101 Scope of this subpart.
1008.103 Individuals required to be licensed by states.
1008.105 Minimum loan originator license requirements.
1008.107 Minimum annual license renewal requirements.
1008.109 Effective date of state requirements imposed on individuals.
1008.111 Other minimum requirements for state licensing systems.
1008.113 Performance standards.
1008.115 Determination of noncompliance.

Subpart C—Bureau's Loan Originator Licensing System and Bureau's Nationwide Mortgage Licensing and Registry System

1008.201 Scope of this subpart.
1008.203 Bureau's establishment of loan originator licensing system.
1008.205 Bureau's establishment of nationwide mortgage licensing system and registry.

Subpart D—Minimum Requirements for Administration of the NMLSR

1008.301 Scope of this subpart.
1008.303 Financial reporting.
1008.305 Data security.
1008.307 Fees.
1008.309 Absence of liability for good-faith administration.

Subpart E—Enforcement of Bureau Licensing System

1008.401 Bureau's authority to examine loan originator records.
1008.403–1008.405 [Reserved]
APPENDIX A TO PART 1008—EXAMPLES OF MORTGAGE LOAN ORIGINATOR ACTIVITIES
APPENDIX B TO PART 1008—ENGAGING IN THE BUSINESS OF A LOAN ORIGINATOR: COMMERCIAL CONTEXT AND HABITUALNESS
APPENDIX C TO PART 1008—INDEPENDENT CONTRACTORS AND LOAN PROCESSOR AND UNDERWRITER ACTIVITIES THAT REQUIRE A STATE MORTGAGE LOAN ORIGINATOR LICENSE
APPENDIX D TO PART 1008—ATTORNEYS: CIRCUMSTANCES THAT REQUIRE A STATE MORTGAGE LOAN ORIGINATOR LICENSE

AUTHORITY: 12 U.S.C. 5101–5116; Pub. L. 111–203, 124 Stat. 1376.

SOURCE: 76 FR 78487, Dec. 19, 2011, unless otherwise noted.

§ 1008.1 Purpose.

(a) *Authority.* This part, known as Regulation H, is issued by the Bureau of Consumer Financial Protection to implement the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, title V of the Housing and Economic Recovery Act of 2008 (S.A.F.E. Act) (Pub. L. 110–289, 122 Stat. 2654, 12 U.S.C. 5101 *et seq.*).

(b) *Purpose.* The purpose of this part is to enhance consumer protection and reduce fraud by directing states to adopt minimum uniform standards for the licensing and registration of residential mortgage loan originators and to participate in a nationwide mortgage licensing system and registry database of residential mortgage loan originators. Under the S.A.F.E. Act, if the Bureau determines that a state's loan origination licensing system does not meet the minimum requirements of the S.A.F.E. Act, the Bureau is charged with establishing and implementing a system for all loan originators in that state. Additionally, if at any time the Bureau determines that the nationwide mortgage licensing system and registry is failing to meet the S.A.F.E. Act's requirements, the Bureau is charged with establishing and maintaining a licensing and registry database for loan originators.

(c) *Organization.* The regulation is divided into subparts and appendices as follows:

(1) Subpart A establishes the definitions applicable to this part.

(2) Subpart B provides the minimum standards that a state must meet in licensing loan originators, including

standards for whom a state must require to be licensed, and sets forth the Bureau's procedure for determining a state's compliance with the minimum standards.

(3) Subpart C provides the requirements that the Bureau will apply in any state that the Bureau determines has not established a licensing and registration system in compliance with the minimum standards of the S.A.F.E. Act.

(4) Subpart D provides minimum requirements for the administration of the Nationwide Mortgage Licensing System and Registry.

(5) Subpart E clarifies the Bureau's enforcement authority in states in which it operates a state licensing system.

(6) Appendices A through D set forth examples to aid in the understanding and application of the regulations.

§ 1008.3 Confidentiality of information.

(a) Except as otherwise provided in this part, any requirement under Federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry or a system established by the Director under this part, and any privilege arising under Federal or state law (including the rules of any Federal or state court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all state and Federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal and state laws.

(b) Information or material that is subject to a privilege or confidentiality under paragraph (a) of this section shall not be subject to:

(1) Disclosure under any Federal or state law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective state; or

(2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry or by the Director with respect to such information or material, the person to whom such information or material pertains, waives, in whole or in part, in the discretion of such person, that privilege.

(c) Any state law, including any state open record law, relating to the disclosure of confidential supervisory information or any information or material described in paragraph (a) of this section that is inconsistent with paragraph (a), shall be superseded by the requirements of such provision to the extent that state law provides less confidentiality or a weaker privilege.

(d) This section shall not apply with respect to the information or material relating to the employment history of, and any publicly adjudicated disciplinary and enforcement action against, any loan originator that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

Subpart A—General

§ 1008.20 Scope of this subpart.

This subpart provides the definitions applicable to this part, and other general requirements applicable to this part.

§ 1008.23 Definitions.

Terms that are defined in the S.A.F.E. Act and used in this part have the same meaning as in the S.A.F.E. Act, unless otherwise provided in this section.

Administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

American Association of Residential Mortgage Regulators (AARMR) is the national association of executives and employees of the various states who are charged with the responsibility for administration and regulation of residential mortgage lending, servicing, and brokering, and dedicated to the goals described at *www.aarmr.org*.

Application means a request, in any form, for an offer (or a response to a solicitation of an offer) of residential mortgage loan terms, and the information about the borrower or prospective borrower that is customary or necessary in a decision on whether to make such an offer.

Bureau means the Bureau of Consumer Financial Protection.

Clerical or support duties:

(1) Include:

(i) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms; and

(2) Does not include:

(i) Taking a residential mortgage loan application; or

(ii) Offering or negotiating terms of a residential mortgage loan.

Conference of State Bank Supervisors (CSBS) is the national organization composed of state bank supervisors dedicated to maintaining the state banking system and state regulation of financial services in accordance with the CSBS statement of principles described at *www.csbs.org*.

Director means the Director of the Bureau of Consumer Financial Protection.

Employee means an individual:

(1) Whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and

(2) Whose compensation for Federal income tax purposes is reported, or required to be reported, on a W–2 form issued by the controlling person.

Farm Credit Administration means the independent Federal agency, authorized by the Farm Credit Act of 1971, that examines and regulates the Farm Credit System.

For compensation or gain. See § 1008.103(c)(2)(ii).

Independent contractor means an individual who performs his or her duties other than at the direction of and subject to the supervision and instruction of an individual who is licensed and registered in accordance with § 1008.103(a), or is not required to be licensed, in accordance with § 1008.103(e)(5), (6), or (7).

Loan originator. See § 1008.103.

Loan processor or underwriter, for purposes of this part, means an individual who, with respect to the origination of a residential mortgage loan, performs clerical or support duties at the direction of and subject to the supervision and instruction of:

(1) A state-licensed loan originator; or

(2) A registered loan originator.

Nationwide Mortgage Licensing System and Registry or NMLSR means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of loan originators and the registration of registered loan originators or any system established by the Director, as provided in subpart D of this part.

Nontraditional mortgage product means any mortgage product other than a 30-year fixed-rate mortgage.

Origination of a residential mortgage loan, for purposes of the definition of loan processor or underwriter, means all residential mortgage loan-related activities from the taking of a residential mortgage loan application through the completion of all required loan closing documents and funding of the residential mortgage loan.

Real estate brokerage activities mean any activity that involves offering or providing real estate brokerage services to the public including—

(1) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(2) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(3) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(4) Engaging in any activity for which a person engaged in the activity is required to be registered as a real estate agent or real estate broker under any applicable law; and

(5) Offering to engage in any activity, or act in any capacity, described in paragraphs (1), (2), (3), or (4) of this definition.

Residential mortgage loan means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(w) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

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

Unique identifier means a number or other identifier that:

(1) Permanently identifies a loan originator;

(2) Is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Bureau to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and

(3) Shall not be used for purposes other than those set forth under the S.A.F.E. Act.

Subpart B—Determination of State Compliance With the S.A.F.E. Act

§ 1008.101 Scope of this subpart.

This subpart describes the minimum standards of the S.A.F.E. Act that apply to a state's licensing and registering of loan originators. This subpart also provides the procedures that the Bureau follows to determine that a state does not have in place a system for licensing and registering mortgage loan originators that complies with the minimum standards. Upon making such a determination, the Bureau will impose the requirements and exercise the enforcement authorities described in subparts C and E of this part.

§ 1008.103 Individuals required to be licensed by states.

(a) Except as provided in paragraph (e) of this section, in order to operate a S.A.F.E.-compliant program, a state must prohibit an individual from engaging in the business of a loan originator with respect to any dwelling or residential real estate in the state, unless the individual first:

(1) Registers as a loan originator through and obtains a unique identifier from the NMLSR, and

(2) Obtains and maintains a valid loan originator license from the state.

(b) An individual engages in the business of a loan originator if the individual, in a commercial context and habitually or repeatedly:

(1)(i) Takes a residential mortgage loan application; and

(ii) Offers or negotiates terms of a residential mortgage loan for compensation or gain; or

(2) Represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such individual can or will perform the activities described in paragraph (b)(1) of this section.

(c)(1) An individual ''takes a residential mortgage loan application'' if the individual receives a residential mortgage loan application for the purpose of facilitating a decision whether to extend an offer of residential mortgage loan terms to a borrower or prospective borrower (or to accept the terms offered by a borrower or prospective borrower in response to a solicitation), whether the application is received directly or indirectly from the borrower or prospective borrower.

(2) An individual ''offers or negotiates terms of a residential mortgage loan for compensation or gain'' if the individual:

(i)(A) Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms;

(B) Communicates directly or indirectly with a borrower, or prospective

borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms; or

(C) Recommends, refers, or steers a borrower or prospective borrower to a particular lender or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the borrower or prospective borrower; and

(ii) Receives or expects to receive payment of money or anything of value in connection with the activities described in paragraph (c)(2)(i) of this section or as a result of any residential mortgage loan terms entered into as a result of such activities.

(d)(1) Except as provided in paragraph (e) of this section, a state must prohibit an individual who is an independent contractor from engaging in residential mortgage loan origination activities as a loan processor or underwriter with respect to any dwelling or residential real estate in the state, unless the individual first:

(i) Registers as a loan originator through and obtains a unique identifier from the NMLSR, and

(ii) Obtains and maintains a valid loan originator license from the state.

(2) An individual ''engage[s] in residential mortgage loan origination activities as a loan processor or underwriter'' if, with respect to a residential mortgage loan application, the individual performs clerical or support duties.

(e) A state is not required to impose the prohibitions required under paragraphs (a) and (d) of this section on the following individuals:

(1) An individual who performs only real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the individual is compensated directly or indirectly by a lender, mortgage broker, or other loan originator or by an agent of such lender, mortgage broker, or other loan originator;

(2) An individual who is involved only in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D);

(3) An individual who performs only clerical or support duties and:

(i) Who does so at the direction of and subject to the supervision and instruction of an individual who:

(A) Is licensed and registered in accordance with paragraph (a) of this section, or

(B) Is not required to be licensed in accordance with paragraph (e)(5); or

(ii) Who performs such duties solely with respect to transactions for which the individual who acts as a loan originator is not required to be licensed, in accordance with paragraph (e)(2), (6), or (7) of this section;

(4) An individual who performs only purely administrative or clerical tasks on behalf of a loan originator;

(5) An individual who is lawfully registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry, and who is an employee of a covered financial institution, as that term is defined in 12 CFR part 1007.

(6)(i) An individual who is an employee of a Federal, state, or local government agency or housing finance agency and who acts as a loan originator only pursuant to his or her official duties as an employee of the Federal, state, or local government agency or housing finance agency.

(ii) For purposes of this paragraph (e)(6), the term *employee* has the meaning provided in paragraph (1) of the definition of employee in §1008.23 and excludes the meaning provided in paragraph (2) of the definition.

(iii) For purposes of this paragraph (e)(6), the term *housing finance agency* means any authority:

(A) That is chartered by a state to help meet the affordable housing needs of the residents of the state;

(B) That is supervised directly or indirectly by the state government;

(C) That is subject to audit and review by the state in which it operates; and

(D) Whose activities make it eligible to be a member of the National Council of State Housing Agencies.

(7)(i) An employee of a bona fide nonprofit organization who acts as a loan originator only with respect to his or her work duties to the bona fide nonprofit organization, and who acts as a loan originator only with respect to

residential mortgage loans with terms that are favorable to the borrower.

(ii) For an organization to be considered a bona fide nonprofit organization under this paragraph, a state supervisory authority that opts not to require licensing of the employee must determine, under criteria and pursuant to processes established by the state, that the organization:

(A) Has the status of a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986;

(B) Promotes affordable housing or provides homeownership education, or similar services;

(C) Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;

(D) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;

(E) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients;

(F) Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs; and

(G) Meets other standards that the state determines are appropriate.

(iii) A state must periodically examine the books and activities of an organization it determines is a bona fide nonprofit organization and revoke its status as a bona fide nonprofit organization if it does not continue to meet the criteria under paragraph (e)(7)(ii) of this section;

(iv) For residential mortgage loans to have terms that are favorable to the borrower, a state must determine that the terms are consistent with loan origination in a public or charitable context, rather than a commercial context.

(f) A state must require an individual licensed in accordance with paragraphs (a) or (d) of this section to renew the loan originator license no less often than annually.

§ 1008.105 Minimum loan originator license requirements.

For an individual to be eligible for a loan originator license required under § 1008.103(a) and (d), a state must require and find, at a minimum, that an individual:

(a) Has never had a loan originator license revoked in any governmental jurisdiction, except that a formally vacated revocation shall not be deemed a revocation;

(b)(1) Has never been convicted of, or pled guilty or *nolo contendere* to, a felony in a domestic, foreign, or military court:

(i) During the 7-year period preceding the date of the application for licensing; or

(ii) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.

(2) For purposes of this paragraph (b):

(i) Expunged convictions and pardoned convictions do not, in themselves, affect the eligibility of the individual; and

(ii) Whether a particular crime is classified as a felony is determined by the law of the jurisdiction in which an individual is convicted.

(c) Has demonstrated financial responsibility, character, and general fitness, such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, and efficiently, under reasonable standards established by the individual state.

(d) Completed at least 20 hours of pre-licensing education that has been reviewed and approved by the Nationwide Mortgage Licensing System and Registry. The pre-licensing education completed by the individual must include at least:

(1) 3 hours of Federal law and regulations;

(2) 3 hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; and

(3) 2 hours of training on lending standards for the nontraditional mortgage product marketplace.

(e)(1) Achieved a test score of not less than 75 percent correct answers on a

written test developed by the NMLSR in accordance with 12 U.S.C. 5105(d).

(2) To satisfy the requirement under paragraph (e)(1) of this section, an individual may take a test three consecutive times, with each retest occurring at least 30 days after the preceding test. If an individual fails three consecutive tests, the individual must wait at least 6 months before taking the test again.

(3) If a formerly state-licensed loan originator fails to maintain a valid license for 5 years or longer, not taking into account any time during which such individual is a registered loan originator, the individual must retake the test and achieve a test score of not less than 75 percent correct answers.

(f) Be covered by either a net worth or surety bond requirement, or pays into a state fund, as required by the state loan originator supervisory authority.

(g) Has submitted to the NMLSR fingerprints for submission to the Federal Bureau of Investigation and to any government agency for a state and national criminal history background check; and

(h) Has submitted to the NMLSR personal history and experience, which must include authorization for the NMLSR to obtain:

(1) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction; and

(2) An independent credit report.

§ 1008.107 Minimum annual license renewal requirements.

(a) For an individual to be eligible to renew a loan originator license as required under § 1008.103(f), a state must require the individual:

(1) To continue to meet the minimum standards for license issuance provided in § 1008.105; and

(2) To satisfy annual continuing education requirements, which must include at least 8 hours of education approved by the NMLSR. The 8 hours of annual continuing education must include at least:

(i) 3 hours of Federal law and regulations;

(ii) 2 hours of ethics (including instruction on fraud, consumer protection, and fair lending issues); and

(iii) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) A state must provide that a state-licensed loan originator may only receive credit for a continuing education course in the year in which the course is taken, and that a state-licensed loan originator may not apply credits for education courses taken in one year to meet the continuing education requirements of subsequent years. A state must provide that an individual may not meet the annual requirements for continuing education by taking an approved course more than one time in the same year or in successive years.

(c) An individual who is an instructor of an approved continuing education course may receive credit for the individual's own annual continuing education requirement at the rate of 2 hours credit for every one hour taught.

§ 1008.109 Effective date of state requirements imposed on individuals.

(a) Except as provided in paragraphs (b) and (c) of this section, a state must provide that the effective date for requirements it imposes in accordance with §§ 1008.103, 1008.105, and 1008.107 is no later than August 29, 2011.

(b) For an individual who was permitted to perform residential mortgage loan originations under state legislation or regulations enacted or promulgated prior to the state's enactment or promulgation of a licensing system that complies with this subpart, a state may delay the effective date for requirements it imposes in accordance with §§ 1008.103, 1008.105, and 1008.107 to no later than August 29, 2011. For purposes of this paragraph (b), an individual was permitted to perform residential mortgage loan originations only if prior state law required the individual to be licensed, authorized, registered, or otherwise granted a form of affirmative and revocable government permission for individuals as a condition of performing residential mortgage loan originations.

(c) The Bureau may approve a later effective date only upon a state's demonstration that substantial numbers of loan originators (or of a class of loan originators) who require a state license face unusual hardship, through no fault

of their own or of the state government, in complying with the standards required by the S.A.F.E. Act and in obtaining state licenses within one year.

§ 1008.111 Other minimum requirements for state licensing systems.

(a) *General.* A state must maintain a loan originator licensing, supervisory, and oversight authority (supervisory authority) that provides effective supervision and enforcement, in accordance with the minimum standards provided in this section and in § 1008.113.

(b) *Authorities.* A supervisory authority must have the legal authority and mechanisms:

(1) To examine any books, papers, records, or other data of any loan originator operating in the state;

(2) To summon any loan originator operating in the state, or any person having possession, custody, or care of the reports and records relating to such a loan originator, to appear before the supervisory authority at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for compliance with the requirements of the S.A.F.E. Act;

(3) To administer oaths and affirmations and examine and take and preserve testimony under oath as to any matter in respect to the affairs of any such loan originator;

(4) To enter an order requiring any individual or person that is, was, or would be a cause of a violation of the S.A.F.E. Act as implemented by the state, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same requirement;

(5) To suspend, terminate, and refuse renewal of a loan originator license for violation of state or Federal law; and

(6) To impose civil money penalties for individuals acting as loan originators, or representing themselves to the public as loan originators, in the state without a valid license or registration.

(c) A supervisory authority must have established processes in place to verify that individuals subject to the requirement described in § 1008.103(a)(1) and (d)(1) are registered with the NMLSR.

(d) The supervisory authority must be required under state law to regularly report violations of such law, as well as enforcement actions and other relevant information, to the NMLSR.

(e) The supervisory authority must have a process in place for challenging information contained in the NMLSR.

(f) The supervisory authority must require a loan originator to ensure that all residential mortgage loans that close as a result of the loan originator engaging in activities described in § 1008.103(b)(1) are included in reports of condition submitted to the NMLSR. Such reports of condition shall be in such form, shall contain such information, and shall be submitted with such frequency and by such dates as the NMLSR may reasonably require.

§ 1008.113 Performance standards.

(a) For the Bureau to determine that a state is providing effective supervision and enforcement, a supervisory authority must meet the following performance standards:

(1) The supervisory authority must participate in the NMLSR;

(2) The supervisory authority must approve or deny loan originator license applications and must renew or refuse to renew existing loan originator licenses for violations of state or Federal law;

(3) The supervisory authority must discipline loan originator licensees with appropriate enforcement actions, such as license suspensions or revocations, cease-and-desist orders, civil money penalties, and consumer refunds for violations of state or Federal law;

(4) The supervisory authority must examine or investigate loan originator licensees in a systematic manner based on identified risk factors or on a periodic schedule.

(b) A supervisory authority that is accredited under the Conference of State Bank Supervisors-American Association of Residential Mortgage Regulators Mortgage Accreditation Program will be presumed by the Bureau to be compliant with the requirements of this section.

§ 1008.115 Determination of noncompliance.

(a) *Evidence of compliance.* Any time a state enacts legislation that affects its compliance with the S.A.F.E. Act, it must notify the Bureau. Upon request from the Bureau, a state must provide evidence that it is in compliance with the requirements of the S.A.F.E. Act and this part, including citations to applicable state law and regulations; descriptions of processes followed by the state's supervisory authority; and data concerning examination, investigation, and enforcement actions.

(b) *Initial determination of noncompliance.* If the Bureau makes an initial determination that a state is not in compliance with the S.A.F.E. Act, the Bureau will notify the state and will publish, in the FEDERAL REGISTER, a notice providing the Bureau's initial determination and presenting the opportunity for public comment for a period of no less than 30 days. This public comment period will allow the residents of the state and other interested members of the public to comment on the Bureau's initial determination.

(c) *Final determination of noncompliance.* In making a final determination of noncompliance, the Bureau will review additional information that may be offered by a state and the comments submitted during the public comment period described in paragraph (b) of this section. If the Bureau makes a final determination that a state does not have in place by law or regulation a system that complies with the minimum requirements of the S.A.F.E. Act, as described in this part, the Bureau will publish that final determination in the FEDERAL REGISTER.

(d) *Good-faith effort to comply.* If the Bureau makes the final determination described in paragraph (c) of this section, but the Bureau finds that the state is making a good-faith effort to meet the requirements of 12 U.S.C. 5104, 5105, 5107(d), and this subpart, the Bureau may grant the state a period of not more than 24 months to comply with these requirements. If an extension is granted to the state in accordance with this paragraph (d), then the Bureau will provide an additional initial and final determination process before it determines that the state is not in compliance and is subject to subparts C and E of this part.

(e) *Effective date of subparts C and E.* The provisions of subparts C and E of this part will become effective with respect to a state for which a final determination of noncompliance has been made upon:

(1) The effective date of the Bureau's final determination with respect to the state, pursuant to paragraph (c) of this section, unless an extension had been granted to the state in accordance with paragraph (d) of this section; or

(2) If an extension had been granted to the state in accordance with paragraph (d) of this section, the effective date of the Bureau's subsequent final determination with respect to the state following the expiration of the period of time granted pursuant to paragraph (d) of this section.

Subpart C—The Bureau's Loan Originator Licensing System and Nationwide Mortgage Licensing and Registry System

§ 1008.201 Scope of this subpart.

The S.A.F.E. Act provides the Bureau with ''backup authority'' to establish a loan originator licensing system for any state that is determined by the Bureau not to be in compliance with the minimum standards of the S.A.F.E. Act. The provisions of this subpart become applicable to individuals in a state as provided in § 1008.115(e). The S.A.F.E. Act also authorizes the Bureau to establish and maintain a nationwide mortgage licensing system and registry if the Bureau determines that the NMLSR is failing to meet the purposes and requirements of the S.A.F.E. Act for a comprehensive licensing, supervisory, and tracking system for loan originators.

§ 1008.203 The Bureau's establishment of loan originator licensing system.

If the Bureau determines, in accordance with § 1008.115(e), that a state has not established a licensing and registration system in compliance with the minimum standards of the S.A.F.E. Act, the Bureau shall apply to individuals in that state the minimum standards of the S.A.F.E. Act, as specified in

subpart B, which provides the minimum requirements that a state must meet to be in compliance with the S.A.F.E. Act, and as may be further specified in this part.

§ 1008.205 The Bureau's establishment of nationwide mortgage licensing system and registry.

If the Bureau determines that the NMLSR established by CSBS and AARMR does not meet the minimum requirements of subpart D of this part, the Bureau will establish and maintain a nationwide mortgage licensing system and registry.

Subpart D—Minimum Requirements for Administration of the NMLSR

§ 1008.301 Scope of this subpart.

This subpart establishes minimum requirements that apply to administration of the NMLSR by the Conference of State Bank Supervisors or by the Bureau. The NMLSR must accomplish the following objectives:

(a) Provide uniform license applications and reporting requirements for state-licensed loan originators.

(b) Provide a comprehensive licensing and supervisory database.

(c) Aggregate and improve the flow of information to and between regulators.

(d) Provide increased accountability and tracking of loan originators.

(e) Streamline the licensing process and reduce the regulatory burden.

(f) Enhance consumer protections and support anti-fraud measures.

(g) Provide consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.

(h) Establish a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer.

(i) Facilitate responsible behavior in the mortgage marketplace and provide comprehensive training and examination requirements related to mortgage lending.

(j) Facilitate the collection and disbursement of consumer complaints on behalf of state and Federal mortgage regulators.

§ 1008.303 Financial reporting.

To the extent that CSBS maintains the NMLSR, CSBS must annually provide to the Bureau, and the Bureau will annually collect and make available to the public, NMLSR financial statements, audited in accordance with Generally Accepted Accounting Principles (GAAP) promulgated by the Federal Accounting Standards Advisory Board, and other data. These financial statements and other data shall include, but not be limited to, the level and categories of funds received in relation to the NMLSR and how such funds are spent, including the aggregate total of funds paid for system development and improvements, the aggregate total of salaries and bonuses paid, the aggregate total of other administrative costs, and detail on other money spent, including money and interest paid to reimburse system investors or lenders, and a report of each state's activity with respect to the NMLSR, including the number of licensees, the state's financial commitment to the system, and the fees collected by the state through the NMLSR.

§ 1008.305 Data security.

(a) To the extent that CSBS, AARMR, or their successors maintain the NMLSR, CSBS, AARMR, and their successors, as applicable, must complete a background check on their employees, contractors, or other persons who have access to loan originators' Social Security Numbers, fingerprints, or any credit reports collected by the system.

(b) To the extent that CSBS, AARMR, or their successors maintain the NMLSR, CSBS, AARMR, and their successors as applicable, must keep and adhere to an appropriate information security and privacy policy. If the NMLSR forms a reasonable belief that a security breach has occurred, it shall notify affected parties, as soon as practicable, including the Bureau, any loan originator or registrant whose data may have been compromised, and the

employer of the loan originator or registrant, if such employer is also licensed through the system.

§ 1008.307 Fees.

CSBS, AARMR, or the Bureau, as applicable, may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry. Fees shall not be charged to consumers for access to such system and registry. If the Bureau determines to charge fees, the fees to be charged shall be issued by notice with the opportunity for comment prior to any fees being charged.

§ 1008.309 Absence of liability for good-faith administration.

The Bureau or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Bureau under 12 U.S.C. 5108 and in accordance with subpart C, or any officer or employee of the Bureau or the Bureau's designee, shall not be subject to any civil action or proceeding for monetary damages by reason of the good-faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.

Subpart E—Enforcement of the Bureau's Licensing System

§ 1008.401 The Bureau's authority to examine loan originator records.

(a) *Summons authority*. The Bureau may:

(1) Examine any books, papers, records, or other data of any loan originator operating in any state which is subject to a licensing system established by the Bureau under subpart C of this part; and

(2) Summon any loan originator referred to in paragraph (a)(1) of this section or any person having possession, custody, or care of the reports and records relating to such loan originator, to appear before the Bureau at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for compliance with the requirements of the S.A.F.E. Act.

(b) *Examination authority*—(1) *In general*. If the Bureau establishes a licensing system under 12 U.S.C. 5107 and in accordance with subpart C of this part for any state, the Bureau shall appoint examiners for the purposes of ensuring the appropriate administration of the Bureau's licensing system.

(2) *Power to examine*. Any examiner appointed under paragraph (b)(1) of this section shall have power, on behalf of the Bureau, to make any examination of any loan originator operating in any state which is subject to a licensing system established by the Bureau under 12 U.S.C. 5107 and in accordance with subpart C of this part, whenever the Bureau determines that an examination of any loan originator is necessary to determine the compliance by the originator with minimum requirements of the S.A.F.E. Act.

(3) *Report of examination*. Each Bureau examiner appointed under paragraph (b)(1) of this section shall make a full and detailed report to the Bureau of examination of any loan originator examined under this section.

(4) *Administration of oaths and affirmations; evidence*. In connection with examinations of loan originators operating in any state which is subject to a licensing system established by the Bureau under 12 U.S.C. 5107, and in accordance with subpart C of this part, or with other types of investigations to determine compliance with applicable law and regulations, the Bureau and the examiners appointed by the Bureau may administer oaths and affirmations and examine and take and preserve testimony under oath as to any matter in respect to the affairs of any such loan originator.

(5) *Assessments*. The cost of conducting any examination of any loan originator operating in any state which is subject to a licensing system established by the Bureau under 12 U.S.C 5107 and in accordance with subpart C of this part shall be assessed by the Bureau against the loan originator to

meet the Director's expenses in carrying out such examination.

§§ 1008.403—1008.405 [Reserved]

APPENDIX A TO PART 1008—EXAMPLES OF MORTGAGE LOAN ORIGINATOR ACTIVITIES

This appendix provides examples to aid in the understanding of activities that would cause an individual to fall within or outside the definition of a mortgage loan originator under part 1008. The examples in this appendix are not all-inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise. For purposes of the examples below, the term ''loan'' refers to a residential mortgage loan as defined in §1008.23 of this part.

(a) *Taking a Loan Application.* Taking a residential mortgage loan application within the meaning of §1008.103(c)(1) means receipt by an individual, for the purpose of facilitating a decision whether to extend an offer of loan terms to a borrower or prospective borrower, of an application as defined in §1008.23 (a request in any form for an offer, or a response to a solicitation of an offer, of residential mortgage loan terms, and the information about the borrower or prospective borrower that is customary or necessary in a decision whether to make such an offer).

(1) The following are examples to illustrate when an individual takes, or does not take, a loan application:

(i) An individual ''takes a residential mortgage loan application'' even if the individual:

(A) Has received the borrower or prospective borrower's request or information indirectly. Section 1008.103(c)(1) provides that an individual takes an application, whether he or she receives it ''directly or indirectly'' from the borrower or prospective borrower. This means that an individual who offers or negotiates residential mortgage loan terms for compensation or gain cannot avoid licensing requirements simply by having another person physically receive the application from the prospective borrower and then pass the application to the individual;

(B) Is not responsible for verifying information. The fact that an individual who takes application information from a borrower or prospective borrower is not responsible for verifying that information—for example, the individual is a mortgage broker who collects and sends that information to a lender—does not mean that the individual is not taking an application;

(C) Only inputs the information into an online application or other automated system; or

(D) Is not involved in approval of the loan, including determining whether the consumer qualifies for the loan. Similar to an individual who is not responsible for verification, an individual can still ''take a residential mortgage loan application'' even if he or she is not ultimately responsible for approving the loan. A mortgage broker, for example, can take a residential mortgage loan application even though it is passed on to a lender for a decision on whether the borrower qualifies for the loan and for the ultimate loan approval.

(ii) An individual does not take a loan application merely because the individual performs any of the following actions:

(A) Receives a loan application through the mail and forwards it, without review, to loan approval personnel. The Bureau interprets the term ''takes a residential mortgage loan application'' to exclude an individual whose only role with respect to the application is physically handling a completed application form or transmitting a completed form to a lender on behalf of a borrower or prospective borrower. This interpretation is consistent with the definition of ''loan originator'' in section 1503(3) of the S.A.F.E. Act.

(B) Assists a borrower or prospective borrower who is filling out an application by explaining the contents of the application and where particular borrower information is to be provided on the application;

(C) Generally describes for a borrower or prospective borrower the loan application process without a discussion of particular loan products; or

(D) In response to an inquiry regarding a prequalified offer that a borrower or prospective borrower has received from a lender, collects only basic identifying information about the borrower or prospective borrower on behalf of that lender.

(b) *Offering or Negotiating Terms of a Loan.* The following examples are designed to illustrate when an individual offers or negotiates terms of a loan within the meaning of §1008.103(c)(2) and, conversely, what does not constitute offering or negotiating terms of a loan:

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

(i) Presenting for consideration by a borrower or prospective borrower particular loan terms, whether verbally, in writing, or otherwise, even if:

(A) Further verification of information is necessary;

(B) The offer is conditional;

(C) Other individuals must complete the loan process;

(D) The individual lacks authority to negotiate the interest rate or other loan terms; or

(E) The individual lacks authority to bind the person that is the source of the prospective financing.

(ii) Communicating directly or indirectly with a borrower or prospective borrower for

the purpose of reaching a mutual understanding about prospective residential mortgage loan terms, including responding to a borrower or prospective borrower's request for a different rate or different fees on a pending loan application by presenting to the borrower or prospective borrower a revised loan offer, even if a mutual understanding is not subsequently achieved.

(2) Offering or negotiating terms of a loan does not include any of the following activities:

(i) Providing general explanations or descriptions in response to consumer queries, such as explaining loan terminology (*e.g.*, debt-to-income ratio) or lending policies (*e.g.*, the loan-to-value ratio policy of the lender), or describing product-related services;

(ii) Arranging the loan closing or other aspects of the loan process, including by communicating with a borrower or prospective borrower about those arrangements, provided that any communication that includes a discussion about loan terms only verifies terms already agreed to by the borrower or prospective borrower;

(iii) Providing a borrower or prospective borrower with information unrelated to loan terms, such as the best days of the month for scheduling loan closings at the bank;

(iv) Making an underwriting decision about whether the borrower or prospective borrower qualifies for a loan;

(v) Explaining or describing the steps that a borrower or prospective borrower would need to take in order to obtain a loan offer, including providing general guidance about qualifications or criteria that would need to be met that is not specific to that borrower or prospective borrower's circumstances;

(vi) Communicating on behalf of a mortgage loan originator that a written offer has been sent to a borrower or prospective borrower without providing any details of that offer; or

(vii) Offering or negotiating loan terms solely through a third-party licensed loan originator, so long as the nonlicensed individual does not represent to the public that he or she can or will perform covered activities and does not communicate with the borrower or potential borrower. For example:

(A) A seller who provides financing to a purchaser of a dwelling owned by that seller in which the offer and negotiation of loan terms with the borrower or prospective borrower is conducted exclusively by a third-party licensed loan originator;

(B) An individual who works solely for a lender, when the individual offers loan terms exclusively to third-party licensed loan originators and not to borrowers or potential borrowers.

(c) *For Compensation or Gain.* (1) An individual acts ''for compensation or gain'' within the meaning of §1008.103(c)(2)(ii) if the individual receives or expects to receive in connection with the individual's activities anything of value, including, but not limited to, payment of a salary, bonus, or commission. The concept ''anything of value'' is interpreted broadly and is not limited only to payments that are contingent upon the closing of a loan.

(2) An individual does not act ''for compensation or gain'' if the individual acts as a volunteer without receiving or expecting to receive anything of value in connection with the individual's activities.

APPENDIX B TO PART 1008—ENGAGING IN THE BUSINESS OF A LOAN ORIGINATOR: COMMERCIAL CONTEXT AND HABITUALNESS

An individual who acts (or holds himself or herself out as acting) as a loan originator in a commercial context and with some degree of habitualness or repetition is considered to be ''engage[d] in the business of a loan originator[.]'' An individual who acts as a loan originator does so in a commercial context if the individual acts for the purpose of obtaining anything of value for himself or herself, or for an entity or individual for which the individual acts, rather than exclusively for public, charitable, or family purposes. The habitualness or repetition of the origination activities that is needed to ''engage in the business of a loan originator'' may be met either if the individual who acts as a loan originator does so with a degree of habitualness or repetition, or if the source of the prospective financing provides mortgage financing or performs other origination activities with a degree of habitualness or repetition. This appendix provides examples to aid in the understanding of activities that would not constitute engaging in the business of a loan originator, such that an individual is not required to obtain and maintain a state mortgage loan originator license. The examples in this appendix are not all-inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under part 1008. For purposes of the examples below, the term ''loan'' refers to a ''residential mortgage loan'' as defined in §1008.23 of this part.

(a) *Not Engaged in the Business of a Mortgage Loan Originator.* The following examples illustrate when an individual generally does not ''engage in the business of a loan originator'':

(1) An individual who acts as a loan originator in providing financing for the sale of that individual's own residence, provided that the individual does not act as a loan originator or provide financing for such sales so frequently and under such circumstances that it constitutes a habitual and commercial activity.

(2) An individual who acts as a loan originator in providing financing for the sale of a property owned by that individual, provided that such individual does not engage in such activity with habitualness.

(3) A parent who acts as a loan originator in providing loan financing to his or her child.

(4) An employee of a government entity who acts as a loan originator only pursuant to his or her official duties as an employee of that government entity, if all applicable conditions in §1008.103(e)(6) of this part are met.

(5) If all applicable conditions in §1008.103(e)(7) of this part are met, an employee of a nonprofit organization that has been determined to be a bona fide nonprofit organization by the state supervisory authority, when the employee acts as a loan originator pursuant to his or her duties as an employee of that organization.

(6) An individual who does not act as a loan originator habitually or repeatedly, provided that the source of prospective financing does not provide mortgage financing or perform other loan origination activities habitually or repeatedly.

APPENDIX C TO PART 1008—INDEPENDENT CONTRACTORS AND LOAN PROCESSOR AND UNDERWRITER ACTIVITIES THAT REQUIRE A STATE MORTGAGE LOAN ORIGINATOR LICENSE

The examples below are designed to aid in the understanding of loan processing or underwriting activities for which an individual is required to obtain a S.A.F.E. Act-compliant mortgage loan originator license. The examples in this appendix are not all-inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under part 1008. For purposes of the examples below, the term ''loan'' refers to a residential mortgage loan as defined in §1008.23 of this part.

(a) An individual who is a loan processor or underwriter who must obtain and maintain a state loan originator license includes:

(1) Any individual who engages in the business of a loan originator, as defined in §1008.103 of this part;

(2) Any individual who performs clerical or support duties and who is an independent contractor, as those terms are defined in §1008.23;

(3) Any individual who collects, receives, distributes, or analyzes information in connection with the making of a credit decision and who is an independent contractor, as that term is defined in §1008.23; and

(4) Any individual who communicates with a consumer to obtain information necessary for making a credit decision and who is an independent contractor, as that term is defined in §1008.23.

(b) A state is not required to impose S.A.F.E. Act licensing requirements on any individual loan processor or underwriter who, for example:

(1) Performs only clerical or support duties (i.e., the loan processor's or underwriter's activities do not include, e.g., offering or negotiating loan rates or terms, or counseling borrowers or prospective borrowers about loan rates or terms), and who performs those clerical or support duties at the direction of and subject to the supervision and instruction of an individual who either: Is licensed and registered in accordance with §1008.103(a) (state licensing of loan originators); or is not required to be licensed because he or she is excluded from the licensing requirement pursuant to §1008.103(e)(2) (time-share exclusion), (e)(5)(federally registered loan originator), (e)(6) (government employees exclusion), or (e)(7) (nonprofit exclusion).

(2) Performs only clerical or support duties as an employee of a mortgage lender or mortgage brokerage firm, and who performs those duties at the direction of and subject to the supervision and instruction of an individual who is employed by the same employer and who is licensed in accordance with §1008.103(a) (state licensing of loan originators).

(3) Is an employee of a loan processing or underwriting company that provides loan processing or underwriting services to one or more mortgage lenders or mortgage brokerage firms under a contract between the loan processing or underwriting company and the mortgage lenders or mortgage brokerage firms, provided the employee performs only clerical or support duties and performs those duties only at the direction of and subject to the supervision and instruction of a licensed loan originator employee of the same loan processing and underwriting company.

(4) Is an individual who does not otherwise perform the activities of a loan originator and is *not* involved in the receipt, collection, distribution, or analysis of information common for the processing or underwriting of a residential mortgage loan, nor is in communication with the consumer to obtain such information.

(c) In order to conclude that an individual who performs clerical or support duties is doing so at the direction of and subject to the supervision and instruction of a loan originator who is licensed or registered in accordance with §1008.103 (or, as applicable, an individual who is excluded from the licensing and registration requirements under §1008.103(e)(2), (e)(6), or (e)(7)), there must be an actual nexus between the licensed or registered loan originator's (or excluded individual's) direction, supervision, and instruction and the loan processor or underwriter's activities. This actual nexus must be more

than a nominal relationship on an organizational chart. For example, there is an actual nexus when:

(1) The supervisory licensed or registered loan originator assigns, authorizes, and monitors the loan processor or underwriter employee's performance of clerical and support duties.

(2) The supervisory licensed or registered loan originator exercises traditional supervisory responsibilities, including, but not limited to, the training, mentoring, and evaluation of the loan processor or underwriter employee.

APPENDIX D TO PART 1008—ATTORNEYS: CIRCUMSTANCES THAT REQUIRE A STATE MORTGAGE LOAN ORIGINATOR LICENSE

This appendix D clarifies the circumstances in which the S.A.F.E. Act requires a licensed attorney who engages in loan origination activities to obtain a state loan originator license and registration. This special category recognizes limited, heavily regulated activities that meet strict criteria that are different from the criteria for specific exemptions from the S.A.F.E. Act requirements and the exclusions set forth in the regulations and illustrated in other appendices of part 1008.

(a) *S.A.F.E. Act-compliant licensing required.* An individual who is a licensed attorney is required to be licensed if the individual is engaged in the business of a loan originator as defined in §1008.103 and such loan origination activities are not all of the following:

(1) Considered by the state's court of last resort (or other state governing body responsible for regulating the practice of law) to be part of the authorized practice of law within the state;

(2) Carried out within an attorney-client relationship; and

(3) Accomplished by the attorney in compliance with all applicable laws, rules, ethics, and standards.

(b) *S.A.F.E. Act-compliant licensing not required.* A licensed attorney performing activities that come within the definition of a loan originator is not required to be licensed, provided that such activities are:

(1) Considered by the state's court of last resort (or other state governing body responsible for regulating the practice of law) to be part of the authorized practice of law within the state;

(2) Carried out within an attorney-client relationship; and

(3) Accomplished by the attorney in compliance with all applicable laws, rules, ethics, and standards.

PART 1009—DISCLOSURE REQUIREMENTS FOR DEPOSITORY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE (REGULATION I)

Sec.

1009.1 Scope.
1009.2 Definitions.
1009.3 Disclosures in periodic statements and account records.
1009.4 Disclosures in advertising and on the premises.
1009.5 Disclosure acknowledgment.
1009.6 Exception for certain depository institutions.
1009.7 Enforcement.

AUTHORITY: 12 U.S.C. 1831t, 5512, 5581.

SOURCE: 76 FR 78129, Dec. 16, 2011, unless otherwise noted.

§ 1009.1 Scope.

This part, known as Regulation I, is issued by the Bureau of Consumer Financial Protection. This part applies to all depository institutions lacking Federal deposit insurance. It requires the disclosure of certain insurance-related information in periodic statements, account records, locations where deposits are normally received, and advertising. This part also requires such depository institutions to obtain a written acknowledgment from depositors regarding the institution's lack of Federal deposit insurance.

§ 1009.2 Definitions.

For purposes of this part:

Depository institution means any bank or savings association as defined under 12 U.S.C. 1813, or any credit union organized and operated according to the laws of any state, the District of Columbia, the several territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, which laws provide for the organization of credit unions similar in principle and objectives to Federal credit unions.

Lacking Federal deposit insurance means the depository institution is neither an insured depository institution as defined in 12 U.S.C. 1813(c)(2), nor an insured credit union as defined in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752.

Standard maximum deposit insurance amount means the maximum amount of deposit insurance as determined under section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)).

§ 1009.3 Disclosures in periodic statements and account records.

Depository institutions lacking Federal deposit insurance must include a notice disclosing clearly and conspicuously that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money, in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or share certificate. For example, a notice would comply with the requirement if it conspicuously stated: ''[Institution's name] is not federally insured. If it fails, the Federal Government does not guarantee that you will get your money back.'' The disclosures required by this section must be clear and conspicuous and presented in a simple and easy to understand format, type size, and manner.

§ 1009.4 Disclosures in advertising and on the premises.

(a) *Required disclosures.* Each depository institution lacking Federal deposit insurance must include a clear and conspicuous notice disclosing that the institution is not federally insured:

(1) At each station or window where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main internet page; and

(2) In all advertisements except as provided in paragraph (c) of this section.

(b) *Format and type size.* The disclosures required by this section must be clear and conspicuous and presented in a simple and easy to understand format, type size, and manner.

(c) *Exceptions.* The following need not include a notice that the institution is not federally insured:

(1) Any sign, document, or other item that contains the name of the depository institution, its logo, or its contact information, but only if the sign, document, or item does not include any information about the institution's products or services or information otherwise promoting the institution; and

(2) Small utilitarian items that do not mention deposit products or insurance, if inclusion of the notice would be impractical.

§ 1009.5 Disclosure acknowledgment.

(a) *New depositors obtained other than through a conversion or merger.* With respect to any depositor who was not a depositor at the depository institution on or before October 13, 2006, and who is not a depositor as described in paragraph (b) of this section, a depository institution lacking Federal deposit insurance may receive a deposit for the account of such depositor only if the institution has obtained the depositor's signed written acknowledgement that:

(1) The institution is not federally insured; and

(2) If the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor's money.

(b) *New depositors obtained through a conversion or merger.* With respect to a depositor at a federally insured depository institution that converts to, or merges into, a depository institution lacking Federal insurance after October 13, 2006, a depository institution lacking Federal deposit insurance may receive a deposit for the account of such depositor only if:

(1) The institution has obtained the depositor's signed written acknowledgement described in paragraph (a) of this section; or

(2) The institution makes an attempt, sent by mail no later than 45 days after the effective date of the conversion or merger, to obtain the acknowledgment. In making such an attempt, the institution must transmit to each depositor who has not signed and returned a written acknowledgement described in paragraph (a) of this section:

(i) A conspicuous card containing the information described in paragraphs (a)(1) and (2) of this section, and a line for the signature of the depositor; and

(ii) Accompanying materials requesting the depositor to sign the card, and

return the signed card to the institution.

(c) *Depositors obtained on or before October 13, 2006.* (1) Any depository institution lacking Federal deposit insurance may receive any deposit after October 13, 2006, for the account of a depositor who was a depositor on or before that date only if:

(i) The depositor has signed a written acknowledgement described in paragraph (a) of this section; or

(ii) The institution has transmitted to the depositor:

(A) A conspicuous card containing the information described in paragraphs (a)(1) and (2) of this section, and a line for the signature of the depositor; and

(B) Accompanying materials requesting that the depositor sign the card, and return the signed card to the institution.

(2) An institution described in paragraph (c)(1) of this section must have made the transmission described in paragraph (c)(1)(ii) of this section via mail not later than three months after October 13, 2006. The institution must have made a second identical transmission via mail not less than 30 days, and not more than three months, after the first transmission to the depositor in accordance with paragraph (c)(1)(ii) of this section, if the institution has not, by the date of such mailing, received from the depositor a card referred to in paragraph (c)(1)(i) of this section which has been signed by the depositor.

(d) *Format and type size.* The disclosures required by this section must be clear and conspicuous and presented in a simple and easy to understand format, type size, and manner.

§ 1009.6 Exception for certain depository institutions.

The requirements of this part do not apply to any depository institution lacking Federal deposit insurance and located within the United States that does not receive initial deposits of less than an amount equal to the standard maximum deposit insurance amount from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

§ 1009.7 Enforcement.

Compliance with the requirements of this part shall be enforced under the Consumer Financial Protection Act of 2010, Public Law 111–203, title X, 124 Stat. 1955, by the Bureau of Consumer Financial Protection, subject to subtitle B of the Consumer Financial Protection Act of 2010, and under the Federal Trade Commission Act, 15 U.S.C. 41 *et seq*, by the Federal Trade Commission.

PART 1010—LAND REGISTRATION (REGULATION J)

Subpart A—General Requirements

Sec.

1010.1 Definitions.
1010.2 [Reserved]
1010.3 General applicability.
1010.4 Exemptions—general.
1010.5 Statutory exemptions.
1010.6 One hundred lot exemption.
1010.7 Twelve lot exemption.
1010.8 Scattered site subdivisions.
1010.9 Twenty acre lots.
1010.10 Single-family residence exemption.
1010.11 Manufactured home exemption.
1010.12 Intrastate exemption.
1010.13 Metropolitan Statistical Area (MSA) exemption.
1010.14 Regulatory exemptions.
1010.15 Regulatory exemption—multiple site subdivision—determination required.
1010.16 Regulatory exemption—determination required.
1010.17 Advisory opinion.
1010.18 No action letter.
1010.19 [Reserved]
1010.20 Requirements for registering a subdivision—Statement of Record—filing and form.
1010.21 Effective dates.
1010.22 Statement of record—initial or consolidated.
1010.23 Amendment—filing and form.
1010.24–1010.28 [Reserved]
1010.29 Use of property report—misstatements, omissions or representation of Bureau approval prohibited.
1010.35 Payment of fees.
1010.45 Suspensions.

Subpart B—Reporting Requirements

1010.100 Statement of Record—format.
1010.101 [Reserved]
1010.102 General instructions for completing the Statement of Record.

1010.103 Developer obligated improvements.
1010.104 [Reserved]
1010.105 Cover page.
1010.106 Table of contents.
1010.107 Risks of buying land.
1010.108 General information.
1010.109 Title to the property and land use.
1010.110 Roads.
1010.111 Utilities.
1010.112 Financial information.
1010.113 Local services.
1010.114 Recreational facilities.
1010.115 Subdivision characteristics and climate.
1010.116 Additional information.
1010.117 Cost sheet, signature of Senior Executive Officer
1010.118 Receipt, agent certification and cancellation page.
1010.200 Instructions for Statement of Record, Additional Information and Documentation.
1010.201–1010.207 [Reserved]
1010.208 General information.
1010.209 Title and land use.
1010.210 Roads.
1010.211 Utilities.
1010.212 Financial information.
1010.214 Recreational facilities.
1010.215 Subdivision characteristics and climate.
1010.216 Additional information.
1010.219 Affirmation.
1010.310 Annual report of activity.

Subpart C—Certification of Substantially Equivalent State Law

1010.500 General.
1010.503 Notice of certification.
1010.504 Cooperation among certified states and between certified states and the Director.
1010.505 Withdrawal of state certification.
1010.506 State/Federal filing requirements.
1010.507 Effect of suspension or withdrawal of certification granted under §1010.501(a): Full disclosure requirement.
1010.508 Effect of suspension of certification granted under §1010.501(b): Sufficient protection requirement.
1010.552 Previously accepted state filings.
1010.556 Previously accepted state filings—amendments and consolidations.
1010.558 Previously accepted state filings—notice of revocation rights on property report cover page.
1010.559 Previously accepted state filings—notice of revocation rights in contracts and agreements.

APPENDIX A TO PART 1010: STANDARD AND MODEL FORMS AND CLAUSES

AUTHORITY: 12 U.S.C. 5512, 5581; 15 U.S.C. 1718.

SOURCE: 76 FR 79489, Dec. 21, 2011, unless otherwise noted.

Subpart A—General Requirements

§ 1010.1 Definitions.

(a) *Statutory terms.* All terms are used in accordance with their statutory meaning in 15 U.S.C. 1702, unless otherwise defined in paragraph (b) of this section or elsewhere in this part.

(b) *Other terms.* As used in this part:

Act means the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701.

Advisory opinion means the formal written opinion of the Director as to jurisdiction in a particular case or the applicability of an exemption under §§1010.5 through 1010.15, based on facts submitted to the Director.

Available for use means that in addition to being constructed, the subject facility is fully operative and supplied with any materials and staff necessary for its intended purpose.

Beneficial property restrictions means restrictions that are enforceable by the lot owners and are designed to control the use of the lot and to preserve or enhance the environment and the aesthetic and economic value of the subdivision.

Date of filing means the date a Statement of Record, amendment, or consolidation, accompanied by the applicable fee, is received by the Director.

Good faith estimate means an estimate based on documentary evidence. In the case of cost estimates, the documentation may be obtained from the suppliers of the services. In the case of estimates of completion dates, the documentation may be actual contracts let, engineering schedules, or other evidence of commitments to complete the amenities.

ILSRP means the Interstate Land Sales Registration Program.

Lot means any portion, piece, division, unit, or undivided interest in land located in any state or foreign country, if the interest includes the right to the exclusive use of a specific portion of the land.

Owner means the person or entity who holds the fee title to the land and has the power to convey that title to others.

Parent corporation means that entity which ultimately controls the subsidiary, even though the control may

arise through any series or chain of other subsidiaries or entities.

Principal means any person or entity holding at least a 10 percent financial or ownership interest in the developer or owner, directly or through any series or chain of subsidiaries or other entities.

Rules means all rules adopted pursuant to the Act, including the general requirements published in this part.

Sale means any obligation or arrangement for consideration to purchase or lease a lot directly or indirectly. The terms ''sale'' or ''seller'' include in their meanings the terms ''lease'' and ''lessor''.

Senior Executive Officer means the individual of highest rank responsible for the day-to-day operations of the developer and who has the authority to bind or commit the developing entity to contractual obligations.

Site means a group of contiguous lots, whether such lots are actually divided or proposed to be divided. Lots are considered to be contiguous even though contiguity may be interrupted by a road, park, small body of water, recreational facility, or any similar object.

Start of construction means breaking ground for building a facility, followed by diligent action to complete the facility.

§ 1010.2 [Reserved]

§ 1010.3 General applicability.

Except in the case of an exempt transaction, a developer may not sell or lease lots in a subdivision, making use of any means or instruments of transportation or communication in interstate commerce, or of the mails, unless a Statement of Record is in effect in accordance with the provisions of this part. In non-exempt transactions, the developer must give each purchaser a printed Property Report, meeting the requirements of this part, in advance of the purchaser's signing of any contract or agreement for sale or lease. Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq*. and have been assigned OMB Control No. 3170–0012.

§ 1010.4 Exemptions—general.

(a) The exemptions available under §§ 1010.5 through 1010.16 are not applicable when the method of sale, lease or other disposition of land or an interest in land is adopted for the purpose of evasion of the Act.

(b) With the exception of the sales or leases which are exempt under § 1010.5, the anti-fraud provisions of the Act (15 U.S.C. 1703(a)(2)) apply to exempt transactions. The anti-fraud provisions make it unlawful for a developer or agent to employ any device, scheme, or artifice to:

(1) Defraud;

(2) To obtain money or property by means of any untrue statement of a material fact, or

(3) To omit to state a material fact necessary in order to make the statements made not misleading, with respect to any information pertinent to the lot or subdivision; or

(4) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser.

(c) The anti-fraud provisions of the Act require that certain representations be included in the contract in transactions which are not exempt under § 1010.5. Specifically, the Act requires that if a developer or agent represents that roads, sewers, water, gas or electric service or recreational amenities will be provided or completed by the developer, the contract must stipulate that the services or amenities will be provided or completed. See § 1011.15(f).

(d) Eligibility for exemptions available under §§ 1010.5 through 1010.14 is self-determining. With the exception of the exemptions available under §§ 1010.15 and 1010.16, a developer is not required to file notice with or obtain the approval of the Director in order to take advantage of an exemption. If a developer elects to take advantage of an exemption, the developer is responsible for maintaining records to demonstrate that the requirements of the exemption have been met.

(e) A developer may present evidence, or otherwise discuss, in an informal hearing before the Office of Nonbank Supervision, the Bureau's position on

the jurisdiction or non-exempt status of a particular subdivision.

§ 1010.5 Statutory exemptions.

A listing of the statutory exemptions is contained in 15 U.S.C. 1703. In accordance with 15 U.S.C. 1703(a)(2), if the sale involves a condominium or multiunit construction, a presale clause conditioning the sale of a unit on a certain percentage of sales of other units is permissible if it is legally binding on the parties and is for a period not to exceed 180 days. However, the 180-day provision cannot extend the 2-year period for performance. The permissible 180 days is calculated from the date the first purchaser signs a sales contract in the project or, if a phased project, from the date the first purchaser signs the first sales contract in each phase.

§ 1010.6 One hundred lot exemption.

The sale of lots in a subdivision is exempt from the registration requirements of the Act if, since April 28, 1969, the subdivision has contained fewer than 100 lots, exclusive of lots which are exempt from jurisdiction under §1010.5. In the sale of lots in the subdivision that are not exempt under §1010.5, the developer must comply with the Act's anti-fraud provisions, set forth in §1010.4(b) and (c).

§ 1010.7 Twelve lot exemption.

(a) The sale of lots is exempt from the registration requirements of the Act if, beginning with the first sale after June 20, 1980, no more than twelve lots in the subdivision are sold in the subsequent twelve-month period. Thereafter, the sale of the first twelve lots is exempt from the registration requirements if no more than twelve lots were sold in each previous twelve month period which began with the anniversary date of the first sale after June 20, 1980.

(b) A developer may apply to the Director to establish a different twelve month period for use in determining eligibility for the exemption and the Director may allow the change if it is for good cause and consistent with the purpose of this section.

(c) In determining eligibility for this exemption, all lots sold or leased in the subdivision after June 20, 1980, are counted, whether or not the transactions are otherwise exempt. Sales or leases made prior to June 21, 1980, are not considered in determining eligibility for the exemption.

(d) The sale must also comply with the anti-fraud provisions of §1010.4(b) and (c) of this part.

§ 1010.8 Scattered site subdivisions.

(a) The sale of lots in a subdivision consisting of noncontiguous parts is exempt from the registration requirements of the Act if:

(1) Each noncontiguous part of the subdivision contains twenty or fewer lots; and

(2) Each purchaser or purchaser's spouse makes a personal, on-the-lot inspection of the lot purchased prior to signing a contract.

(b) For purposes of this exemption, interruptions such as roads, parks, small bodies of water or recreational facilities do not serve to break the contiguity of parts of a subdivision.

(c) The sale must also comply with the anti-fraud provisions of §1010.4(b) and (c) of this part.

§ 1010.9 Twenty acre lots.

(a) The sale of lots in a subdivision is exempt from the registration requirements of the Act if, since April 28, 1969, each lot in the subdivision has contained at least twenty acres. In determining eligibility for the exemption, easements for ingress and egress or public utilities are considered part of the total acreage of the lot if the purchaser retains ownership of the property affected by the easement.

(b) The sale must also comply with the anti-fraud provisions of §1010.4(b) and (c) of this part.

§ 1010.10 Single-family residence exemption.

(a) *General.* The sale of a lot which meets the requirements specified under paragraphs (b) and (c) of this section is exempt from the registration requirements of the Act.

(b) *Subdivision requirements.* (1) The subdivision must meet all local codes and standards.

(2) In the promotion of the subdivision there must be no offers, by direct mail or telephone solicitation, of gifts,

trips, dinners or use of similar promotional techniques to induce prospective purchasers to visit the subdivision or to purchase a lot.

(c) *Lot requirements.* (1) The lot must be located within a municipality or county where a unit of local government or the state specifies minimum standards in the following areas for the development of subdivision lots taking place within its boundaries:

(i) Lot dimensions.

(ii) Plat approval and recordation.

(iii) Roads and access.

(iv) Drainage.

(v) Flooding.

(vi) Water supply.

(vii) Sewage disposal.

(2) Each lot sold under the exemption must be either zoned for single-family residences or, in the absence of a zoning ordinance, limited exclusively by enforceable covenants or restrictions to single-family residences. Manufactured homes, townhouses, and residences for one-to-four family use are considered single-family residences for purposes of this exemption provision.

(3) The lot must be situated on a paved street or highway which has been built to standards established by the state or the unit of local government in which the subdivision is located. If the roads are to be public roads they must be acceptable to the unit of local government that will be responsible for maintenance. If the street or highway is not complete, the developer must post a bond or other surety acceptable to the municipality or county in the full amount of the cost of completing the street or highway to assure completion to local standards. For purposes of this exemption, *paved* means concrete or pavement with a bituminous surface that is impervious to water, protects the base and is durable under the traffic load and maintenance contemplated.

(4) The unit of local government or a homeowners association must have accepted or be obligated to accept the responsibility for maintaining the street or highway upon which the lot is situated. In any case in which a homeowners association has accepted or is obligated to accept maintenance responsibility, the developer must, prior to signing of a contract or agreement to purchase, provide the purchaser with a good faith written estimate of the cost of carrying out the responsibility over the first ten years of ownership.

(5) At the time of closing, potable water, sanitary sewage disposal, and electricity must be extended to the lot or the unit of local government must be obligated to install the facilities within 180 days following closing. For subdivisions which will not have a central water or sewage disposal system, there must be assurances that an adequate potable water supply is available year-round and that the lot is approved for the installation of a septic tank.

(6) The contract of sale must require delivery within 180 days after the signing of the sales contract of a warranty deed, which at the time of delivery is free from monetary liens and encumbrances. If a warranty deed is not commonly used in the jurisdiction where the lot is located, a deed or grant which warrants that the seller has not conveyed the lot to another person may be delivered in lieu of a warranty deed. The deed or grant used must warrant that the lot is free from encumbrances made by the seller or any other person claiming by, through, or under the seller.

(7) At the time of closing, a title insurance binder or title opinion reflecting the condition of title must be in existence and issued or presented to the purchaser showing that, subject only to exceptions which are approved in writing by the purchaser at the time of closing, marketable title to the lot is vested in the seller.

(8) The purchaser or purchaser's spouse must make a personal, on-the-lot inspection of the lot purchased prior to signing a contract or agreement to purchase.

(d) The sale must also comply with the anti-fraud provisions of §1010.4(b) and (c) of this part.

§ 1010.11 Manufactured home exemption.

(a) The sale of a lot is exempt from the registration requirements of the Act when the following eligibility requirements are met:

(1) The lot is sold as a homesite by one party and a manufactured home is

sold by another party and the contracts of sale:

(i) Obligate the sellers to perform, contingent upon the other seller carrying out its obligations so that a completed manufactured home will be erected on a completed homesite within two years after the date the purchaser signed the contract to purchase the lot;

(ii) Provide that all funds received by the sellers are to be deposited in escrow accounts independent of the sellers until the transactions are completed;

(iii) Provide that funds received by the sellers will be released to the buyer upon demand if the lot on which the manufactured home has been erected is not conveyed within two years; and

(iv) Contain no provisions which restrict the purchaser's remedy of bringing suit for specific performance.

(2) The homesite is developed in conformance with all local codes and standards, if any, for manufactured home subdivisions.

(3) At the time of closing:

(i) Potable water and sanitary sewage disposal are available to the homesite and electricity has been extended to the lot line;

(ii) The homesite is accessible by roads;

(iii) The purchaser receives marketable title to the lot; and

(iv) Other common facilities represented in any manner by the developer or agent to be provided are completed or there are letters of credit, cash escrows or surety bonds in the form acceptable to the local government in an amount equal to 100 percent of the estimated cost of completion. Corporate bonds are not acceptable for purposes of the exemption.

(4) For purposes of this section, a manufactured home is a unit receiving a label in conformance with U.S. Department of Housing and Urban Development (HUD) regulations implementing the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401).

(b) The sale must also comply with the anti-fraud provisions of §1010.4(b) and (c) of this part.

§1010.12 Intrastate exemption.

(a) *Eligibility requirements.* The sale of a lot is exempt from the registration requirements of the Act if the following requirements are met:

(1) The sale of lots in the subdivision after December 20, 1979, is restricted solely to residents of the state in which the subdivision is located unless the sale is exempt under §1010.5, §1010.11, or §1010.13.

(2) The purchaser or purchaser's spouse makes a personal on-the-lot inspection of the lot to be purchased before signing a contract.

(3) Each contract:

(i) Specifies the developer's and purchaser's responsibilities for providing and maintaining roads, water and sewer facilities and any existing or promised amenities;

(ii) Contains a good faith estimate of the year in which the roads, water and sewer facilities and promised amenities will be completed; and

(iii) Contains a non-waivable provision giving the purchaser the opportunity to revoke the contract until at least midnight of the seventh calendar day following the date the purchaser signed the contract. If the purchaser is entitled to a longer revocation period by operation of state law, that period becomes the Federal revocation period and the contract must reflect the requirements of the longer period.

(4) The lot being sold is free and clear of all liens, encumbrances and adverse claims except the following:

(i) Mortgages or deeds of trust which contain release provisions for the individual lot purchased if:

(A) The contract of sale obligates the developer to deliver, within 180 days, a warranty deed (or its equivalent under local law), which at the time of delivery is free from any monetary liens or encumbrances; and

(B) The purchaser's payments are deposited in an escrow account independent of the developer until a deed is delivered.

(ii) Liens which are subordinate to the leasehold interest and do not affect the lessee's right to use or enjoy the lot.

(iii) Property reservations which are for the purpose of bringing public services to the land being developed, such as easements for water and sewer lines.

(iv) Taxes or assessments which constitute liens before they are due and payable if imposed by a state or other public body having authority to assess and tax property or by a property owners' association.

(v) Beneficial property restrictions that are mutually enforceable by the lot owners in the subdivision. Restrictions, whether separately recorded or incorporated into individual deeds, must be applied uniformly to every lot or group of lots. To be considered beneficial and enforceable, any restriction or covenant that imposes an assessment on lot owners must apply to the developer on the same basis as other lot owners. Developers who maintain control of a subdivision through a Property Owners' Association, Architectural Control Committee, restrictive covenant or otherwise, shall transfer such control to the lot owners no later than when the developer ceases to own a majority of total lots in, or planned for, the subdivision. Relinquishment of developer control shall require affirmative action, usually in the form of an election based upon one vote per lot.

(vi) Reservations contained in United States land patents and similar Federal grants or reservations.

(5) Prior to the sale the developer discloses in a written statement to the purchaser all qualifying liens, reservations, taxes, assessments and restrictions applicable to the lot purchased. The developer must obtain a written receipt from the purchaser acknowledging that the statement required by this subparagraph was delivered to the purchaser.

(6) Prior to the sale the developer provides in a written statement good faith estimates of the cost to the purchaser of providing electric, water, sewer, gas and telephone service to the lot. The estimates for unsold lots must be updated every two years or more frequently if the developer has reason to believe that significant cost increases have occurred. The dates on which the estimates were made must be included in the statement. The developer must obtain a written receipt from the purchaser acknowledging that the statement required by this subparagraph was delivered to the purchaser.

(b) *Intrastate Exemption Statement.* To satisfy the requirements of paragraphs (a)(5) and (6) of this section, an Intrastate Exemption Statement containing the information prescribed in each such paragraph shall be given to each purchaser. A State-approved disclosure document may be used to satisfy this requirement if all the information required by paragraphs (a)(5) and (6) of this section is included in this disclosure. In such a case, the developer must obtain a written receipt from the purchaser and comply with all other requirements of the exemption. To be acceptable for purposes of the exemption, the statement(s) given to purchasers must contain neither advertising nor promotion on behalf of the developer or subdivision nor references to the Bureau of Consumer Financial Protection or the Consumer Financial Protection Bureau. A sample Intrastate Exemption Statement is included in the exemption guidelines.

(c) The sale must also comply with the anti-fraud provisions of §1010.4(b) and (c) of this part.

§ 1010.13 Metropolitan Statistical Area (MSA) exemption.

(a) *Eligibility requirements.* The sale of a lot which meets the following requirements is exempt from registration requirements of the Act:

(1) The lot is in a subdivision which contains fewer than 300 lots and has contained fewer than 300 lots since April 28, 1969.

(2) The lot is located within a Metropolitan Statistical Area (MSA) as defined by the Office of Management and Budget and characterized in paragraph (b) of this section.

(3) The principal residence of the purchaser is within the same MSA as the subdivision.

(4) The purchaser or purchaser's spouse makes a personal on-the-lot inspection of the lot to be purchased prior to signing a contract or agreement.

(5) Each contract:

(i) Specifies the developer's and purchaser's responsibilities for providing and maintaining roads, water and sewer facilities and any existing or promised amenities;

(ii) Contains a good faith estimate of the year in which the roads, water and sewer facilities and promised amenities will be completed;

(iii) Contains a nonwaivable provision giving the purchaser the opportunity to revoke the contract until at least midnight of the seventh calendar day following the date the purchaser signed the contract, or, if the purchaser is entitled to a longer revocation period by operation of state law, that period becomes the Federal revocation period and the contract must reflect the requirements of the longer period.

(6) The lot being sold must be free and clear of liens such as mortgages, deeds of trust, tax liens, mechanics' liens, or judgments. For purposes of this exemption, the term *liens* does not include the following:

(i) Mortgages or deeds of trust which contain release provisions for the individual lot purchased if:

(A) The contract of sale obligates the developer to deliver, within 180 days, a warranty deed (or its equivalent under local law), which at the time of delivery is free from any monetary liens or encumbrances; and

(B) The purchaser's payments are deposited in an escrow account independent of the developer until a deed is delivered.

(ii) Liens which are subordinate to the leasehold interest and do not affect the lessee's right to use or enjoy the lot.

(iii) Property reservations which are for the purpose of bringing public services to the land being developed, such as easements for water and sewer lines.

(iv) Taxes or assessments which constitute liens before they are due and payable if imposed by a state or other public body having authority to assess and tax property or by a property owners' association.

(v) Beneficial property restrictions that are mutually enforceable by the lot owners in the subdivision. Restrictions, whether separately recorded or incorporated into individual deeds, must be applied uniformly to every lot or group of lots. To be considered beneficial and enforceable, any restriction or covenant that imposes an assessment on lot owners must apply to the developer on the same basis as other lot owners. Developers who maintain control of a subdivision through a Property Owners' Association, Architectural Control Committee, restrictive covenants, or otherwise, shall transfer such control to the lot owners no later than when the developer ceases to own a majority of total lots in, or planned for, the subdivision. Relinquishment of developer control shall require affirmative action, usually in the form of an election based upon one vote per lot.

(vi) Reservations contained in United States land patents and similar Federal grants or reservations.

(7) Before the sale the developer gives a written MSA Exemption Statement to the purchaser and obtains a written receipt acknowledging that the statement was received. A sample MSA Exemption Statement is included in the exemption guidelines. A State-approved disclosure document may be used to satisfy this requirement if all of the information required by this section is included. The statement(s) given to purchasers must contain neither advertising nor promotion on behalf of the developer or the subdivision nor references to the Bureau of Consumer Financial Protection or the Consumer Financial Protection Bureau. In descriptive and concise terms, the statement that the developer must give the purchaser shall disclose the following:

(i) All liens, reservations, taxes, assessments, beneficial property restrictions which are enforceable by other lot owners in the subdivision, and adverse claims which are applicable to the lot to be purchased.

(ii) Good faith estimates of the cost to the purchaser of providing electric, water, sewer, gas and telephone service to the lot. The estimates for unsold lots must be updated every two years, or more frequently if the developer has reason to believe that significant cost increases have occurred. The dates on which the estimates were made must be included in the statement.

(8) The developer executes and gives to the purchaser a written instrument designating a person within the state of residence of the purchaser as the developer's agent for service of process. The developer must also acknowledge in writing that it submits to the legal jurisdiction of the state in which the purchaser or lessee resides.

(9) The developer executes a written affirmation for each sale made under this exemption. By January 31 of each year, the developer submits to the Director a copy of the executed affirmation for each sale made during the preceding calendar year or a master affirmation in which are listed all purchasers' names and addresses and the identity of the lots purchased. Individual affirmations must be available for the Director's review at all times during the year. The affirmation must be in the form provided in section I of the appendix to this part: Form for Developer's Affirmation for Land Sale.

(b) *Metropolitan Statistical Area.* Metropolitan Statistical Areas are defined by the Office of Management and Budget generally on the basis of population statistics reported in a census. To determine whether a subdivision is located within an MSA and the boundaries of an MSA, contact the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503.

(c) The sale must also comply with the anti-fraud provisions of §1010.4(b) and (c).

§1010.14 Regulatory exemptions.

(a) *Eligibility requirements.* The following transactions are exempt from the registration requirements of the Act unless the Director has terminated the exemption in accordance with paragraph (b) of this section.

(1) The sale of lots, each of which will be sold for less than $100, including closing costs, if the purchaser will not be required to purchase more than one lot.

(2) The lease of lots for a term not to exceed five years if the terms of the lease do not obligate the lessee to renew.

(3) The sale of lots to a person who is engaged in a bona fide land sales business.

(4) The sale of a lot to a person who owns the contiguous lot which has a residential, commercial or industrial building on it.

(5) The sale of real estate to a government or government agency.

(6) The sale of a lot to a person who has leased and resided primarily on the lot for at least the year preceding the sale.

(b) *Termination.* If the Director has reasonable grounds to believe that exemption from the registration requirements in a particular case is not in the public interest, the Director may, after issuing a notice and giving the respondent an opportunity to request a hearing within fifteen days of receipt of the notice, terminate eligibility for exemption. The basis for issuing a notice may be the conduct of the developer or agent, such as unlawful conduct or insolvency, or adverse information about the lots or real estate that should be disclosed to the purchasers. Proceedings will be governed by §1012.238.

(c) The sale must also comply with the anti-fraud provisions of §1010.4(b) and (c) of this part.

§1010.15 Regulatory exemption—multiple site subdivision—determination required.

(a) *General.* (1) The sale of lots contained in multiple sites of fewer than 100 lots each, offered pursuant to a single common promotional plan, is exempt from the registration requirements.

(2) For purposes of this exemption, the sale of lots in an individual site that exceeds 99 lots is not exempt from registration. Likewise, the sale of lots in a site containing fewer than 100 lots, where the developer either owns contiguous land or holds an option or other evidence of intent to acquire contiguous land which, when taken cumulatively, would or could result in one site of 100 or more lots, is not exempt from registration. Furthermore, the sale of lots that are within a subdivision established by a separate developer is not exempt from registration by this provision.

(b) *Eligibility requirements.* The sale of each lot must meet the following requirements to be eligible for this exemption.

(1) The lot is sold ''as is'' with all advertised improvements and amenities completed and in the condition advertised.

(2) The lot is in conformance with all local codes and standards.

(3) The lot is accessible, both legally and physically. For lots which are advertised or otherwise represented as ''residential,'' either primary or secondary, with any inference that a permanent or temporary dwelling unit of any description (excluding collapsible tents) can be built or installed, physical access must be available by automobile, pick-up truck or equivalent ''on-road'' vehicle.

(4) At the time of closing, a title insurance binder or title opinion reflecting the condition of title must be issued to the purchaser showing that, subject only to exceptions approved in writing by the purchaser at the time of closing, marketable title is vested in the seller.

(5) Each contract or agreement and any promissory notes:

(i) Contain the non-waivable provision found in section II of the appendix to this part: Language Notifying Buyer of Option to Cancel Contract in bold face type (which must be distinguished from the type used for the rest of the document) on the face or signature page above all signatures. If the purchaser is entitled to a longer revocation period by operation of state or local law, that period becomes the Federal revocation period and the contract must reflect the requirement of the longer period rather than the seven days. The revocation provisions may not be limited or qualified in the contract or other document by requiring a specific type of notice or by requiring that notice be given at a specified place.

(ii) Obligate the developer to deliver, within 180 days, a warranty deed (or its equivalent under local law) for the lot which at the time of delivery is free from any monetary liens or encumbrances.

(6) The purchaser or purchaser's spouse makes a personal on-the-lot inspection of the lot to be purchased before signing a contract.

(7) The purchaser's payments are deposited in an escrow account independent of the developer until a deed is delivered.

(8) Prior to the purchaser signing a contract or agreement of sale, the developer discloses in a written Lot Information Statement all liens, reservations, taxes, assessments, easements and restrictions applicable to the lot purchased (see paragraph (b)(11) of this section).

(9) Prior to the purchaser signing a contract or agreement of sale, the developer discloses in a written Lot Information Statement the name, address and telephone number of the local governmental agency or agencies from which information on permits or other requirements for water, sewer and electrical installations can be obtained. This Statement will also contain the name, address and telephone number of the suppliers which would or could provide the foregoing services.

(10) The lot sale must comply with the anti-fraud provisions of 12 CFR 1010.4(b) and (c) and the sales practices and standards in §§1011.10 through 1011.28.

(11) A written Lot Information Statement must be delivered to, and acknowledged by, each purchaser prior to his or her signing a contract or agreement of sale, and must contain the information shown in the format below. The Statement must be typed or printed in at least 10 point font. A copy of the acknowledgement will be maintained by the developer for three years and will be made available to ILSRP upon request. If the Statement is not delivered as required, the contract or agreement of sale may be revoked and a full refund paid, at the option of the purchaser, within two years of the signing date and the contract or agreement of sale will clearly provide this right. A sample format for the Statement is provided in section III of the appendix to this part: Sample Lot Information Statement and Sample Receipt.

(c) *Request for Multiple Site Subdivision Exemption.* (1) The developer must file a request for the Multiple Site Subdivision Exemption. The request must be

accompanied by a filing fee of $500 (prepared in accordance with §1010.35(a)) and a sample Lot Information Statement, substantially in the form set forth in section IV of the appendix to this part: Request for Multiple Site Subdivision Exemption.

(2) This exemption will become effective upon issuance of an Exemption Order by the Director.

(d) *Annual Report.* (1) By January 31 of each year the developer will send a report to the Director listing each site and its location available for a sale pursuant to the exemption during the preceding year and indicate the number of lot sales made in each site. The report will describe any changes in the information provided in the Request for the Multiple Site Subdivision Exemption or contain a statement that there are no changes.

(2) The Annual Report must be accompanied by a filing fee of $100.

(3) The Annual Report must be signed and dated by the developer, attesting to its completeness and accuracy.

(4) Failure to submit the Annual Report within ten days after the receipt of notice from the Director will automatically terminate eligibility for the exemption as of the Report due date.

(e) *Termination.* If, subsequent to the issuance of an Exemption Order, the Director has reasonable grounds to believe that exemption from the registration requirements in the particular case is not in the public interest, the Director may, after issuing a notice and giving the respondent an opportunity to request a hearing within fifteen days of receipt of the notice, terminate the exemption order. The basis for issuing a notice may be apparent omissions or misrepresentations in the documents submitted to the Director, the conduct of the developer or agent, such as unlawful conduct or insolvency, or adverse information about the real estate that should be disclosed to purchasers. Proceedings will be governed by §1012.238.

§1010.16 Regulatory exemption—determination required.

(a) *General.* The Director may exempt from the registration requirements of the Act any subdivision or lots in a subdivision by issuing an order in writing if it is determined that registration is not necessary in the public interest and for the protection of purchasers on the basis of the small amount or limited character of the offering and the requirements contained in paragraph (b) of this section.

(b) *Eligibility requirements.* An exemption order may be issued at the discretion of the Director on the basis of the small amount or limited character of the offering if the following requirements are met:

(1) The subdivision or sales substantially meet the requirements of one of the exemptions available under this chapter.

(2) Each contract:

(i) Specifies the developer's and purchaser's responsibilities for providing and maintaining roads, water and sewer facilities and any existing or promised amenities;

(ii) Contains a good faith estimate of the year in which the roads, water and sewer facilities and promised amenities will be completed;

(iii) Contains a non-waivable provision giving the purchaser the opportunity to revoke the contract until at least midnight of the seventh calendar day following the date the purchaser signed the contract. If the purchaser is entitled to a longer revocation period by operation of state law, that period becomes the Federal revocation period and the contract must reflect the requirements of the longer period.

(iv) Contains a provision that obligates the developer to deliver to the purchaser within 180 days of the date the purchaser signed the sales contract, a warranty deed, or its equivalent under local law, which at the time of delivery is free from any monetary liens or encumbrances.

(3) The purchaser or purchaser's spouse makes a personal on-the-lot inspection of the lot to be purchased before signing a contract.

(4) The developer files a request for an exemption order and supporting documentation in accordance with paragraphs (c) and (d) of this section and submits a filing fee of $500.00 in accordance with §1010.35(a) of this part. This fee is not refundable.

(c) *Request.* The request for an Exemption Order must be substantially in

the format set forth in section V of the appendix to this part: Request for Regulatory Exemption Order.

(d) *Supporting documentation.* A request for an exemption order must be accompanied by the following documentation:

(1) A plat of the entire subdivision with the lots subject to the exemption request delineated thereon.

(2) A copy of the contract to be used.

(3) A clear and specific statement detailing how the proposed sales of lots subject to the exemption request substantially complies with one of the available exemption provisions.

(4) A description of the method by which the lots have been and will be promoted and to which population centers the promotion has been and will be directed.

(e) The sale must also comply with the anti-fraud provisions of §1010.4(b) and (c) of this part.

(f) *Termination.* If, subsequent to the issuance of an exemption order, the Director has reasonable grounds to believe that exemption from the registration requirements in the particular case is not in the public interest, the Director may, after issuing a notice and giving the respondent an opportunity to request a hearing within fifteen days of receipt of the notice, terminate the exemption order. The basis for issuing a notice may be apparent omissions or misrepresentations in the documents submitted to the Director, the conduct of the developer or agent, such as unlawful conduct or insolvency, or adverse information about the real estate that should be disclosed to purchasers. Proceedings will be governed by §1012.238.

§1010.17 Advisory opinion.

(a) *General.* A developer may request an opinion from the Director as to whether an offering qualifies for an exemption or is subject to the jurisdiction of the Act.

(b) *Requirements.* All requests for Advisory Opinions must be accompanied by the following:

(1) A $500.00 filing fee submitted in accordance with §1010.35(a). This fee is not refundable.

(2) A comprehensive description of the conditions and operations of the offering. There is no prescribed format for submitting this information, but the developer should at least cite the applicable statutory or regulatory basis for the exemption or lack of jurisdiction and thoroughly explain how the offering either satisfies the requirements for exemption or falls outside the purview of the Act.

(3) An affirmation as set forth in section VI of the appendix to this part: Developer's Affirmation for Advisory Opinion.

§1010.18 No Action Letter.

(a) If the sale of lots is subject to the registration requirements of the Act but the circumstances of the sale are such that no affirmative action to enforce the registration requirements is needed to protect the public interest or prospective purchasers, the Director may issue a No Action Letter.

(b) To obtain a No Action Letter a developer must submit a request which includes a thorough description of the proposed transaction, the property involved, and the circumstances surrounding the sale.

(c) The issuance of a No Action Letter will not affect any right which a purchaser has under the Act, and it will not limit future action by the Director if there is evidence to show that affirmative action is necessary to protect the public interest or prospective purchasers. In no event will a No Action Letter be issued after the sale has occurred.

§1010.19 [Reserved]

§1010.20 Requirements for registering a subdivision—Statement of Record—filing and form.

(a) *Filing.* In order to register a subdivision and receive an effective date, the developer or owner of the subdivision must file a Statement of Record with the Director. The official address to be used is: CFPB Interstate Land Sales, c/o: Armedia LLC, 8221 Old Courthouse Road, Suite 206, Vienna, VA 22182. When the Statement of Record is filed, a fee in the amount set out in §1010.35(b) must be paid in accordance with §1010.35(a).

(b) *Form.* The Statement of Record shall be in the format specified in

§ 1010.100 and shall be completed in accordance with the instructions in §§ 1010.102, 1010.105 through 1010.118, 1010.200, 1010.208 through 1010.216 and 1010.219. It shall be supported by the documents required by §§ 1010.208 through 1010.216 and 1010.219. It shall include any other information or documents which the Director may require as being necessary or appropriate for the protection of purchasers.

(c) *State filings.* A Statement of Record submitted under the provisions of 12 CFR part 1010, subpart C—Certification of Substantially Equivalent State Law, shall consist of the materials designated by the Certification Agreement between the Director and the certified state in which the subdivision is located.

§ 1010.21 Effective dates.

(a) *General.* The effective date of an initial, consolidated or amended Statement of Record is the 30th day after the filing of the latest amendatory material unless the Director notifies the developer in writing prior to such 30th day that:

(1) The effective date has been suspended in accordance with § 1010.45(a), or

(2) An earlier effective date has been determined.

(b) *Suspension of effective date by developer.* (1) A developer, or owner, may request that the effective date of its Statement of Record be suspended, provided there are no administrative proceedings pending against either of them at the time the request is submitted. The request must include any consolidations or amendments which have been made to the initial Statement of Record. Forms for this purpose will be furnished by the Director upon request.

(2) Upon acceptance by the Director, the effectiveness of the Statement of Record shall be suspended as of the date the request was executed by the developer or owner.

(3) The suspension shall continue until the developer, or owner, submits all amendments necessary to bring the registration into full compliance with the Regulations which are in effect on the date of the amendments and the Director allows those amendments to become effective.

§ 1010.22 Statement of record—initial or consolidated.

(a) *Initial Statement of Record.* (1) Except in the case of exempt transactions, an initial Statement of Record shall be filed, and an effective date issued, prior to selling or leasing any lot in a subdivision.

(2) If a developer buys from another developer 100 or more lots from an existing registration, the new developer, or owner, may have to submit a new initial Statement of Record and receive an effective date covering the acquired lots prior to selling or leasing any of those lots.

(3) Changes in principals due to a sale of stock in a corporation or changes in partners or joint venturers which are accomplished in accordance with the partnership or joint venture agreement but which do not cause a change in the title to the land in the subdivision may be submitted as an amendment.

(4) Any initial Statement of Record must be accompanied by a fee, as specified in § 1010.35(b), based upon the number of lots sought to be registered.

(b) *Consolidated Statement of Record.* (1) If the developer intends to sell or lease additional lots as part of the same common promotional plan with lots already registered, a consolidated Statement of Record may be submitted for the additional lots. A fee, as specified in § 1010.35(b) and based on the number of additional lots, must accompany the submission. The additional lots may not be sold or leased until a new effective date is issued.

(2) If the additional lots are simply the result of a replatting of lots previously registered and enumerated in the Property Report and do not include any additional land, the change may be made by an amendment. However, the amendment must be accompanied by a fee, as specified in § 1010.35(b), based on the number of additional lots.

(c) *Consolidated Statement of Record—Form.* A consolidated Statement of Record shall contain the elements listed in paragraphs (c)(1) through (4) of this section. Pages having no changes and documents in previous submissions which apply equally to the additional

lots may be included by reference. However, the developer may, at its option, submit the entire format for an initial filing, including copies of previously submitted documents, to expedite the examination process.

(1) Those pages of the Property Report portion and Additional Information and Documentation portion which contain changes which have occurred since the last effective submission, and

(2) A recapitulation or listing of each of the section headings, and subheadings if necessary, of the Additional Information and Documentation portion. Each item of the listing shall contain a statement as to whether or not any change is made in the section; whether any new or additional information is being submitted and, if documentation is added by cross reference, the previous submission in which that documentation may be found, and

(3) Documentation to support the additional lots (*e.g.*, plat maps, topographic maps and general plan to reflect new lots, title information, permits for additional facilities, financial assurances of completion of additional facilities, financial statements) or updated or expanded documents in support of previous submissions, and

(4) The affirmation required by § 1010.219.

(d) *Consolidated Statement of Record amends prior Statement of Record.* A Consolidated Statement of Record shall contain all applicable information for all registered lots in the subdivision except those deleted pursuant to other provisions in these regulations. The resulting Property Report shall be used for all sales in the subdivision, except for those transactions which are exempt from the provisions of the Act or which have been granted an exempt status by the Director, unless the Director has specifically authorized the use of multiple Property Reports.

(e) *Initial Statement of Record—when prior approval to submit is required.* In those subdivisions where there is a disparity between the lots already registered and those sought to be registered because of location, terrain, proposed use of the lots or the amenities to be furnished or available, the developer may present a resume of the differences and request the Director's permission to file a separate initial Statement of Record for the additional lots. Upon consideration of the facts submitted, the Director may allow such a procedure.

(f) *Lots which have been deleted from registration.* Should the developer, for any reason, delete by amendment any registered lots from an effective Statement of Record, those lots must be reregistered by a consolidation and a new effective date issued, before they can be sold or leased. An appropriate fee must accompany the submission.

(g) *Lots sold to individual purchasers.* It is not necessary to delete from the registration those lots which have been sold to individual purchasers for their own use.

§ 1010.23 Amendment—filing and form.

(a) *Filing.* If any change occurs in any representation of material fact required to be stated in an effective Statement of Record, an amendment shall be filed. The amendment shall be filed within 15 days of the date on which the developer knows, or should have known, that there has been a change in material fact.

(b) *Form.* An amendment shall include by reference the prior Statement of Record except for any changes in material fact. A change in material fact shall be specifically described and supported by the same documentation which would be required for an initial submission. Any amendment shall be accompanied by:

(1) A letter from the developer giving a clear and concise description of the purpose and significance of the amendment and referring to the section and page of the Statement of Record which is being amended, and

(2) All pages of the Statement of Record, which have been amended, retyped in the required format to reflect the changes. The ILSRP number of the Statement of Record shall appear at the top of each page of the material submitted.

(c) *Amendments to suspended filings.* Developers wishing to reactivate a suspended filing shall file the following:

(1) Any amendments necessary to bring the filing into compliance, submitted in accordance with paragraphs (a) and (b) of this section;

(2) An activity report in the form prescribed by § 1010.310; and

(3) An amendment fee, if required under § 1010.35(d)(2).

§§ 1010.24–1010.28 [Reserved]

§ 1010.29 Use of property report—misstatements, omissions, or representation of Bureau approval prohibited.

Nothing in these regulations shall be construed to authorize or approve the use of a property report containing any untrue statement of a material fact or omitting to state a material fact required to be stated therein. Nor shall anything in these regulations be construed to authorize or permit any representation that the Property Report is prepared or approved by the Director, ILSRP or the Bureau of Consumer Financial Protection.

§ 1010.35 Payment of fees.

(a) *Method of payment.* (1) Each fee must be paid by:

(i) Certified check, cashier's check, or postal money order made payable to the Treasurer of the United States, with the registration number, when known, and the name, of the subdivision on the face of the check, and mailed to an address specified by the Director; or

(ii) Electronic payment in a manner specified by the Director.

(2) Information regarding the current mailing address or electronic payment procedures is available from: Office of Nonbank Supervision, Bureau of Consumer Financial Protection,1700 G Street NW., Washington, DC 20006.

(b) *Fees for registration.* The fee for each initial and consolidated registration is set forth in section VII of the appendix to this part: Initial and Consolidated Registration Fee Schedule.

(c) *Fee for Exemption Order or Advisory Opinion.* The filing fee for an Exemption Order or an Advisory Opinion (§ 1010.16 or § 1010.17) is $500. This fee is not refundable.

(d) *Amendment fee.* (1) A fee of $800 is charged when an Annual Activity Report reflects an annual ending inventory of 101 or more unsold registered lots.

(2) A fee of $800 is charged for an amendment to reactivate a Statement of Record subsequent to its suspension, unless the developer has 100 or fewer unsold lots included in the Statement of Record.

§ 1010.45 Suspensions.

(a) *Suspension notice—prior to effective date.* (1) If it appears to the Director that a Statement of Record or an amendment is on its face incomplete or inaccurate in any material respect, the Director shall so advise the developer, by issuing a suspension notice, within a reasonable time after the filing of such materials but prior to the time the materials would otherwise be effective.

(2) A suspension notice issued pursuant to this subsection shall suspend the effective date of the Statement of Record or the amendment. It shall continue in effect until 30 days, or such earlier date as the Director may determine, after the necessary amendments are submitted which correct all deficiencies cited in the notice.

(3) Upon receipt of a suspension notice, the developer has 15 days in which to request a hearing. If a hearing is requested, it shall be held within 20 days of the receipt of the request by the Director.

(b) *Suspension orders—subsequent to effective date.* (1) A notice of proceedings to suspend an effective Statement of Record may be issued to a developer if the Director has reasonable grounds to believe that an effective Statement of Record includes an untrue statement of a material fact, or omits a material fact required by the Act or rules and regulations, or omits a material fact which is necessary to make the statements therein not misleading. The Director may, after notice, and after opportunity for a hearing requested pursuant to § 1012.220 within 15 days of receipt of such notice, issue an order suspending the Statement of Record. In the event that a suspension order is issued, such order shall remain in effect until the developer has amended the Statement of Record or otherwise complied with the requirements of the order. When the developer has complied with the requirements of the order, the Director shall so declare and thereupon the suspension order shall cease to be effective.

(2) If the Director undertakes an examination of a developer or its records to determine whether a suspension order should be issued, and the developer fails to cooperate with the Director or obstructs, or refuses to permit the Director to make such examination, the Director may issue an order suspending the Statement of Record. Such order shall remain in effect until the developer has complied with the requirements of the order. When the developer has complied with the requirements of the order, the Director shall so declare and thereupon the suspension order shall cease to be effective. In accordance with the procedure described in §1012.235, a hearing may be requested.

(3) Upon receipt of an amendment to an effective Statement of Record, the Director may issue an order suspending the Statement of Record until the amendment becomes effective if the Director has reasonable grounds to believe that such action is necessary or appropriate in the public interest or for the protection of purchasers. In accordance with the procedure described in §1012.235, a hearing may be requested.

(4) Suspension orders issued pursuant to this subsection shall operate to suspend the Statement of Record as of the date the order is either served on the developer or its registered agent or is delivered by certified or registered mail to the address of the developer or its authorized agent.

Subpart B—Reporting Requirements

§1010.100 Statement of Record—format.

(a) The Statement of Record consists of two portions; the Property Report portion and the Additional Information and Documentation portion.

(b) General format. The Statement of Record shall be prepared in accordance with the format set forth in section VIII of the appendix to this part: Property Report:

§1010.101 [Reserved]

§1010.102 General instructions for completing the Statement of Record.

(a) *Paper and type.* The Statement of Record shall be on good quality, unglazed white or pastel paper. Letter size paper, approximately 8½ × 11 inches in size, will be used for the Property Report portion and legal size paper, approximately 8½ × 14 inches in size, will be used for the Additional Information and Documentation portion. Side margins shall be no less than 1 inch and no greater than 1½ inches. Top and bottom margins shall be no less than 1 inch. In the preparation of the charts to be included in the Property Report, the developer may vary from the above margin requirements or print the charts lengthwise on the required size paper if such measures are necessary to make the charts readable. The Statement of Record shall be prepared in an easily readable, uniform font.

(b) *Numbering and dating.* Each page of the Statement of Record as submitted to ILSRP shall be numbered and shall include the date of typing or preparation in the lower right hand corner, except in the final printed version of the Property Report portion.

(c) *Signing.* The Statement of Record shall be signed by the senior executive officer of the developer or a designated agent.

(d) *Printing.* The Statement of Record and, insofar as practical, all papers and documents filed as a part thereof, shall be printed, lithographed, photocopied, typewritten or prepared by any similar process which, in the opinion of the Director, produces copies suitable for a permanent record. Irrespective of the process used, all copies of any such materials shall be clear and easily readable.

(e) *Headings, subheadings, captions, introductory paragraphs, warnings.* Property Report subject ''headings'' are those descriptive introductory words which appear immediately after section numbers 1010.106 through 1010.116 (*e.g.* §1010.108 has ''General Information'' and §1010.111 has ''Utilities''). Each such heading shall be printed in

the Property Report in underlined capital letters and centered at the top of a new page. Section numbers shall not be printed in the Property Report. Property Report subheadings are those descriptive introductory words which appear in italics in the regulations at the beginning of paragraphs designated by paragraph letters (a), (b), (c) etc. An example of a subheading is ''water'' found immediately after the paragraph letter (a) in §1010.111. These subheadings will be printed in the Property Report only if they are relevant to the subject subdivision. If printed these subheadings shall be capitalized and shall begin at the left hand margin of the page. Property Report ''captions'' are those descriptive introductory words which appear in italics in the Regulations at the beginning of subparagraphs designated by numbers (1), (2), (3), etc. An example of such captions is ''Sales Contract and Delivery of Deed'' found immediately after the subparagraph number ''(1)'' in §1010.109(b). These captions are to be printed in the Property Report only if they are applicable to the subject subdivision. If printed, these captions shall be centered on the page from the side margins, and shall have only the first letter of each word capitalized. Headings and subheadings will be used in the Property Report in accordance with the sample page appearing in §1010.102. Introductory paragraphs will follow headings if they are applicable and necessary for a readable entry into the subject matters, but note, the introductory paragraphs for ''Title to the Property and Land Use'' are to be used in every case as provided in §1010.109(a)(1). Subheadings and captions which do not apply to the subdivision should be omitted from the Property Report portion and answered ''not applicable'' in the Additional Information and Documentation portion, unless specifically required to be included elsewhere in these instructions. Warnings shall be printed substantially as they appear in the instructions in §§1010.105 through 1010.118. They shall be printed in capital letters and enclosed in a box as shown on the sample page in §1010.102. The paragraphs in the Property Report portion need not be numbered. A sample page is set forth in section IX of the appendix to this part: Sample Page for Statement of Record.

(f) *Language style.* All information given in the Property Report portion shall be stated in narrative form using plain, concise, everyday language which can be readily understood by purchasers who are unfamiliar with real estate transactions. Excessively long paragraphs should be avoided. Keep them as brief as possible. Use separate paragraphs for different points discussed. Disclose all pertinent facts. Potential consequences to a purchaser must be made clear even though not specifically asked for in the format and the instructions. In the Property Report the pronouns ''you'' and ''your'' shall generally be used in referring to the prospective purchaser and the pronouns ''we,'' ''us,'' and ''our'' shall generally be used in referring to the developer. The Director specifically reserves the right to require modification of the text when the narrative does not meet the standards of this section.

(g) *Format of the Additional Information and Documentation portion of the Statement of Record.* The supporting information and documentation required by these regulations shall be identified by affixing a tab on the right side of the cover sheet of the required information or documentation and by identifying on the tab the section number of the Statement of Record instructions to which the information or documentation corresponds. This information or documentation shall then be placed immediately after the page(s) on which the section number and answers for that section appear. If the data in a document is applicable to more than one section of instructions, the developer may substitute as a document in the second case a statement incorporating the earlier document. Deeds, title policies, subdivision plats or maps and other documentary information required to be contained in the Additional Information and Documentation portion of the Statement of Record need not be on the same size paper as the Statement of Record but, if larger, shall be folded to a size no larger than 8½ × 14 inches. Supporting documents shall be inserted into the binding in such a manner as to permit

them to be examined without the necessity of removing them from the binding. This may be accomplished by proper folding or through the use of envelopes.

(h) *Binding.* The Statement of Record shall be bound with the Property Report portion on top, including any documents which may be required to be attached when delivered to the purchaser, followed by the Additional Information and Documentation portion.

(i) *Advertising and promotional material.* No advertising, or promotional material or statements which are self-serving on behalf of the developer or owner may be included in the Statement of Record or resulting Property Report.

(j) *Additional information.* (1) In addition to the information expressly required to be stated in the Statement of Record, there shall be added, and the Director may require, such further material information, documentation and certification as may be necessary in the public interest and for the protection of purchasers or necessary in order to make the statements not misleading in the light of circumstances under which they are made.

(2) The instructions are not all inclusive. The developer shall include any other facts which would have a bearing upon the use by the purchaser of any of the facilities, services or amenities; which would cause or result in additional expenses to the purchaser; which would have an effect upon the use and enjoyment of the lot by the purchaser for the purpose for which it is sold or which would adversely affect the value of the lot.

(k) *Modification of format or content.* The Director may require or permit modification to the content and format of the Property Report to include additional information, to modify or omit required information, or to change the sequence or position of information when such changes are deemed to be in the public interest or for the protection of purchasers.

(l) *Required documentation.* Where the documentation required by the Statement of Record cannot be obtained, the Director may permit the best available alternative documentation to be substituted.

(m) *Final version of property report.* On the date that a Statement of Record becomes effective, the Property Report portion shall become the Property Report for the subject subdivision. The version of the Property Report delivered to prospective lot purchasers shall be verbatim to that found effective by the Director and shall have no covers, pictures, emblems, logograms or identifying insignia other than as required by these regulations. It shall meet the same standards as to grade of paper, type size, margins, style and color of print as those set herein for the Statement of Record, except where required otherwise by these regulations. However, the date of typing or preparation of the pages and the ILSRP number shall not appear in the final version. If the final version of the Property Report is commercially printed, or photocopied by a process which results in a commercial printing quality, and is bound on the left side, both sides of the pages may be used for printed material. If it is typed or photocopied by a process which does not result in a clear and legible product on both sides of the page or is bound at the top, printing shall be done on only one side of the page. Three copies of the final version of the Property Report, in the exact form in which it is delivered to prospective lot purchasers, shall be sent to ILSRP Office within 20 days of the date on which the Statement of Record, amendment, or consolidation is allowed to become effective by the Director. If a Property Report in a foreign language is used as required by §1011.25(g), three copies of that Property Report together with copies of the translated documents shall be furnished the Director within 20 days of the date on which the advertising is first used. A Property Report prepared pursuant to these regulations shall not be distributed to potential lot purchasers until after the Statement of Record of which it is a part or any amendment to that Statement of Record has been made effective by the Director.

§1010.103 Developer obligated improvements.

(a) If the developer represents either orally or in writing that it will provide

or complete roads or facilities for water, sewer, gas, electricity or recreational amenities, it must be contractually obligated to do so (see §1011.15(f)), and the obligation shall be clearly stated in the Property Report. While the developer may disclose relevant facts about completion, the obligation to complete cannot be conditioned, other than as provided for in §1011.15(f), and an estimated completion date (month and year) must be stated in the Property Report. However, a developer that has only tentative plans to complete may so state in the Property Report, provided that the statement clearly identifies conditions to which the completion of the facilities are subject and states that there are no guarantees the facilities will be completed.

(b) If a party other than the developer is responsible for providing or completing roads or facilities for water, sewer, gas, electricity or recreational amenities, that entity shall be clearly identified in the Property Report under the categories described in §1010.110, §1010.111 or §1010.114, as applicable. A statement shall be included in the proper section of the Property Report that the developer is not responsible for providing or completing the facility or amenity and can give no assurance that it will be completed or available for use.

§1010.104 [Reserved]

§1010.105 Cover page.

The cover page of the Property Report shall be prepared in accordance with the following directions:

(a) The margins shall be at least 1 inch.

(b) The next 3 inches shall contain a warning, centered, in ½ inch capital letters in red type with ¼ inch space between the lines which reads as follows: ''READ THIS PROPERTY REPORT BEFORE SIGNING ANYTHING''.

(c) The remainder of the page shall contain the language set forth in section X of the appendix to this part: Language for Warning on Cover Page of Property Report beginning ¼-inch below the last line of the warning.

(d)(1) If the purchaser is entitled to a longer revocation period by operation of state law, that period becomes the Federal revocation period and the Cover Page must reflect the requirements of the longer period, rather than the seven days.

(2)(i) If a deed is not delivered within 180 days of the signing of the contract or agreement of sale or unless certain provisions are included in the contract or agreement, the purchaser is entitled to cancel the contract within two years from the date of signing the contract or agreement.

(ii) The deed must be a warranty deed, or where such a deed is not commonly used, a similar deed legally acceptable in the jurisdiction where the lot is located. The deed must be free and clear of liens and encumbrances.

(iii) The contract provisions are:

(A) A legally sufficient and recordable lot description; and

(B) A provision that the seller will give the purchaser written notification of purchaser's default or breach of contract and the opportunity to have at least 20 days from the receipt of notice to correct the default or breach; and

(C) A provision that, if the purchaser loses rights and interest in the lot because of the purchaser's default or breach of contract after 15% of the purchase price, exclusive of interest, has been paid, the seller shall refund to the purchaser any amount which remains from the payments made after subtracting 15% of the purchase price, exclusive of interest, or the amount of the seller's actual damages, whichever is the greater.

(iv) If a deed is not delivered within 180 days of the signing of the contract or if the necessary provisions are not included in the contract, the following statement shall be used in place of any other rescission language: ''Under Federal law you may cancel your contract or agreement of sale any time within two years from the date of signing.''

(e) At the time of submission, the developer may indicate its intention to comply with the red printing by an illustration or by a statement to that effect.

(f) The ''Date of This Report'' shall be the date on which the Director allows the Statement of Record to become effective and shall not be entered until the submission has become effective.

§ 1010.106 Table of contents.

(a) The second page(s) shall consist of a Table of Contents which lists the headings in the Property Report, the major subheadings, if any, and the page on which they appear. An example is set forth in section XI of the appendix to this part: Sample Entry in Table of Contents for Statement of Record.

(b) *Use of ''You'' and ''We.''* At the end of the Table of Contents insert the following remark: ''In this Property Report, the words ''you'' and ''your'' refer to the buyer. The words ''we,'' ''us'' and ''our'' refer to the developer.''

§ 1010.107 Risks of buying land.

(a) The next page shall be headed ''Risks of Buying Land'' and shall contain the paragraphs listed in section XII of the appendix to this part: Required Paragraphs for Risks of Buying Land.

(b) Warnings. If the instructions of the Director require any warnings to be included in the Property Report portion, the following statement shall be added beneath the ''Risks of Buying Land'' under a heading ''Warnings'': ''Throughout this Property Report there are specific warnings concerning the developer, the subdivision or individual lots. Be sure to read all warnings carefully before signing any contract or agreement.'' Both the heading, ''Warnings,'' and the statement shall be printed in capital letters and enclosed in a box.

§ 1010.108 General information.

Insert and complete the format set forth in section XIII of the appendix to this part: Format for General Information.

§ 1010.109 Title to the property and land use.

(a) *General instructions.* (1) Below the heading ''Title to the Property and Land Use'' insert the introductory paragraphs set forth in section XIV of the appendix to this part: Paragraphs to be included in the General Report—Title to the Property and Land Use.

(2) *Information to be provided.* After the above introductory paragraphs provide the information required by the following instructions and questions. Follow a general form identical to the sample page set forth in section IX of the appendix to this part: Sample Page for Statement of Record.

(b) *Method of sale:*

(1) *Sales contract and delivery of deed.* (i) Will the buyer sign a purchase money or installment contract or similar instrument in connection with the purchase of the lot? When will a deed be delivered?

(ii) If an installment contract is used, include the following, or substantially the same, language in the disclosure narrative under ''Method of Sale'': ''If you fail to make your payments required by the contract, you may lose your lot and all monies paid.''

(iii) If, at the time of a credit sale, the developer gives the buyer a deed to the lot, what type of security must the buyer give the seller?

(iv) If the lots are to be sold on the basis of an installment contract, can the developer or the owner of the subdivision or their creditors encumber the lots under contract? If so, include the following warning in the disclosure narrative under the caption ''Sales contract and delivery of deed'': ''The (indicate subdivision developer, owner, or their creditors) can place a mortgage on or encumber the lots in this subdivision after they are under contract. This may cause you to lose your lot and any monies paid on it.''

(2) *Type of deed.* What type of deed will be used to convey title to lots in the subdivision?

(3) *Quitclaim deeds.* If a quitclaim deed is to be given to lot purchasers insert the below warning, or a warning which is substantially the same, in the disclosure narrative below the caption ''Quitclaim Deeds.'' This particular warning may be deleted at the direction of the Director if an acceptable attorney's opinion is submitted with the Statement of Record which indicates that a quitclaim deed has a meaning in the jurisdiction where the subdivision is located which is substantially contrary to the effect of this warning. This

warning shall be phrased substantially as follows: ''The Quitclaim deed used to transfer title to lots in this subdivision gives you no assurance of ownership of your lot.''

(4) *Oil, gas, and mineral rights.* If oil, gas or mineral rights have been reserved, insert the following statement or one substantially the same in the narrative answer under the caption ''oil, gas, and mineral rights'': ''The (indicate oil, gas, or mineral rights) to (state which lots) in this subdivision will not belong to the purchaser of those lots. The exercise of these rights could affect the use, enjoyment and value of your lot.''

(c) *Encumbrances, mortgages and liens*—(1) *In general.* State whether any of the lots or common facilities which serve the subdivision, other than recreation facilities, are subject to a blanket encumbrance, mortgage or lien. If yes, identify the type of encumbrance (*e.g.*, deed of trust, mortgage, mechanics liens), the holder of the lien, and the lots covered by the lien. If any blanket encumbrance, mortgage, or lien is not current in accordance with its terms, so indicate.

(2) *Release provisions.* (i) Explain the effect of any release provisions of any blanket encumbrance, mortgage or lien and include the one of the following statements that pertains.

(A) If the release clauses are not included in a recorded instrument, insert the statement set forth in section XV of the appendix to this part: Statement on Release Provisions, or one substantially the same in the disclosure narrative below under the caption ''Release Provisions.''

(B) If the developer or subdivision owner states that the release provisions are recorded and that the lot purchaser may pay the release price of the mortgage, the statement shall be supported by documentation supplied in § 1010.209. If the purchaser may pay the release fee, state the amount of the release fee and inform the purchaser that the amount may be in addition to the contract payments unless there is a bona fide trust or escrow arrangement in which the purchaser's payments are set aside to pay the release price before any payments are made to the developer.

(C)(*1*) If there are no provisions in the blanket encumbrance for release of an individual purchaser's lot from a blanket encumbrance, include the warning set forth in section XVI of the appendix to this part: Warning for Release Provisions or a warning substantially the same, in the disclosure narrative under the ''Release Provisions'' caption.

(*2*) If the provisions for release of individual lots from the blanket encumbrance may be exercised only by the developer insert the following statement, or one substantially the same, in the disclosure narrative under the ''Release Provisions'' caption: ''The release provisions in the (state the type of encumbrance) on (indicate all or particular lots) in this subdivision may be exercised only by us. Therefore, if we default on the (state type of encumbrance) before obtaining a release of your lot, you may lose your lot and any money you have paid for it.''

(d) *Recording the contract and deed*—(1) *Method or purpose of recording.* (i) State what protection, if any, recording of deeds and contracts gives a lot purchaser in your jurisdiction.

(ii) If the sales contract or deed may be recorded, so state. Also state whose responsibility it is to record the contract or deed.

(iii) If the developer or subdivision owner will not have the sales contract officially acknowledged or if the applicable jurisdiction will not record sales contracts, state that sales contracts will not be recorded and why they will not be recorded.

(iv) If at, or immediately after, the signing of a contract, the contract or a deed transfer to the buyer is not recorded by the developer or owner or if title to the lot is not otherwise transferred of record to a trust, or if other sufficient notice of transfer or sale is not placed of record, then the developer shall include the warning set forth in section XVII of the appendix to this part: Method and Purpose of Recording Warning, or substantially the same warning in the disclosure narrative under the caption ''Method and Purpose of Recording.'' The reference to contracts shall be deleted from the above warning if the answer to paragraph (d)(1)(i) of this section indicates

that recording of a contract in the subject jurisdiction does not protect the purchaser from claims of later purchasers or creditors of anyone having an interest in the land.

(2) *Title insurance.* If the developer does not deliver a title insurance policy to the buyer, state that the purchaser should obtain an attorney's opinion of title or a title insurance policy which will describe the rights of ownership which are being acquired in the lot. Recommend that an appropriate professional should interpret the opinion or policy.

(e) *Payments*—(1) *Escrow.* If purchasers' deposits, down payments, or installment payments are to be placed in a third party controlled escrow or similar account, describe the arrangement including the name and address of the escrow holder or similar person. If there is no such arrangement, insert the statement set forth in section XVIII of the appendix to this part: Escrow Statement. The questions regarding an escrow agreement or similar protection may be answered affirmatively only if the money is under the control of an independent third party, allowing a purchaser to receive a return of all money paid in the event of the developer's failure to convey title or the developer's default on any obligation which would otherwise result in the purchaser's loss of that money.

(2) *Prepayments.* Explain any prepayment penalties or privileges in everyday language.

(3) *Default.* What are the developer's or subdivision owners' remedies against a defaulted purchaser?

(f) *Restrictions on the use of your lot*—(1) *Restrictive covenants.* (i) Have any restrictive covenants been recorded against the land in the subdivision? If so, do they contain items which require the purchaser to secure permissions, approvals or take any other action prior to using or disposing of his lot (*e.g.*, architectural control, developer's right of first refusal, building deadlines, etc.)? If any of these or similar items are included, explain their meaning and effect upon the purchaser.

(ii) If any restrictive covenants are to be used and if they have not been recorded, how will they be imposed? Include a statement to the effect that the restrictive covenants have not been recorded; that there is no assurance they will be applied uniformly; that they may be changed and that they may be difficult to enforce. If no restrictive covenants will be imposed, include a statement to the effect that, since there are no restrictive covenants on the use of the lots, they may be used for purposes which could adversely affect the use and enjoyment of surrounding lots.

(iii) If there are restrictive covenants, whether recorded or unrecorded, the following statement shall be made: ''A complete copy of these restrictions is available upon request.''

(2) *Easements.* (i) Are there easements which may have an effect on the purchaser's building or lot use plans (*e.g.*, large drainage easements along lot lines, high voltage electric transmission lines, pipe lines or drainage easements which encroach upon the building area of the lot or inhibit its use)?

(ii) Is the subdivision subject to any type of flood control or flowage easements?

(iii) If the answer to either (2)(i) or (2)(ii) is in the affirmative, identify the affected lots and state the effect upon the use of the lots.

(g) *Plats, zoning, surveying, permits and environment*—(1) *Plats.* (i) Have the subdivision plans and plats of specific units been approved by the regulatory authorities? If the approvals have not been obtained, include a warning to the effect that regulatory authorities have not approved the proposed plats; that they may require significant alterations before they will approve them and they may not allow the land to be used for the purpose for which it is being sold.

(ii) Have plats covering the lots in this Report been recorded? If so, where are they recorded? If they have not been recorded, is the description of the lots given in this Report legally adequate for the conveyance of land in the jurisdiction where the subdivision is located? If it is not, include a statement to the effect that the description of the lots is not legally adequate for the conveyance of the lots and that it will not be until the plat is recorded.

(2) *Zoning.* For what purpose may the lots be used (*e.g.*, single family homes, camping, commercial)? Does this use conform to local zoning requirements and the restrictive covenants?

(3) *Surveying.* Has each lot been surveyed and is each lot marked for identification? If not, and the purchaser is responsible for the expense, state the estimated cost.

(4) *Permits.* Must the purchaser obtain a building permit before beginning construction on his lot? Where is the permit obtained? Are any other permits necessary to use the lot for the purpose for which it is sold or for construction in connection with its use?

(5) *Environment.* Has there been any environmental impact study prepared which considers the effect of the subdivision on the environment? If a study has been prepared, summarize any adverse conclusions and refer the lot buyer to the proper State Clearinghouse for complete information. If a study has not been prepared, include a statement that ''No determination has been made as to the possible adverse effects the subdivision may have upon the environment and surrounding area.'' If the developer does not know whether an environmental impact study has been prepared, or the name and location of the Office where any study made can be found, inquiry should be made to the State or Area Clearinghouse established under the authority of title IV of the Intergovernmental Cooperation Act of 1968.

§ 1010.110 Roads.

(a) *Access to the subdivision.* (1) Is access to the subdivision provided by public or private roads? What type of surface do they have? How many lanes? What is the width of the wearing surface?

(2) Who is responsible for their maintenance? What is the cost to the purchaser, if any? Are any improvements contemplated? If so, when will they begin and when will they be completed? At whose expense?

(b) *Access within the subdivision.* (1) How have legal and physical access by conventional automobile been or will they be, provided to the lots (*e.g.*, road on recorded easement; right of way dedicated to the public; right of way dedicated to use of lot owners)?

(2) Who is responsible for the road construction? Is there any construction cost to the purchaser? Is there any financial assurance of completion? If there is no financial assurance of completion, enter a warning to the effect that no funds have been set aside in an escrow or trust account and there are no other financial arrangements to assure completion of the roads.

(3) How many lanes do the interior roads have? What is the estimated starting date of construction (month and year); the present percentage of construction now complete; the present surface; the estimated completion date (month and year) and what is the final surface to be? If there are separate units or sections in the subdivision which will have different completion dates or different surfaces, the chart in section XIX of the appendix to this part: Road Chart shall be used rather than a narrative paragraph.

(4) Who is responsible for road maintenance? If the roads are to be maintained by a public authority, a property owners' association or some other entity at some time in the future, who is responsible for their maintenance during the interim period? What is the cost to the purchaser during the interim period and after acceptance for permanent maintenance? Will they be maintained so as to provide access to the lots on a year round basis? If not, include a warning which informs the purchaser that access may not be available year round. Identify the months when access may not be available to lots. If there are no arrangements for maintenance, include a warning to the effect that purchasers are responsible for maintaining the roads and that, if maintenance is not performed, the roads may soon deteriorate and access may become difficult or impossible.

(5) If estimated completion dates given in prior Statements of Record have not been met, state that previous dates have not been met and give the previous dates. Underline the answer. If the roads are 100 percent completed, no dates are needed.

(6) Complete the chart in section XX of the appendix to this part: Nearby

Communities Chart by listing the county seat (identify) and at least two nearby communities. Include at least one community of significant size which offers general services.

(7) If the purchasers will be individually responsible for providing access to their lots and for maintaining that access, what is the estimated cost of construction and maintenance?

§ 1010.111 Utilities.

(a) *Water.* (1) How is water to be supplied to the individual lots (*e.g.*, central system or individual wells)? Of the following items only those which apply to the subdivision need be included.

(i) *Individual system.* (A) If water is to be supplied by an individual private well, cistern or other individual system, what are the total estimated costs of the system, including but not limited to, the costs of installation, storage, any treatment facilities and other necessary equipment?

(B) If individual cisterns or similar storage tanks are to be used, state where water to fill them can be secured; the cost of the water, and its delivery costs for a supply sufficient to serve the monthly needs of a family of four living in a house on a year-round basis. Include a statement to the effect that water stored for extended periods tends to become stale and may acquire an unpleasant taste or odor.

(C) If individual wells are to be used and if the sales contract contains no provisions for refund or exchange in the event a productive well cannot be installed, include a statement to the effect that there is no assurance a productive well can be installed and, if it cannot, no refund of the purchase price of the lot will be made.

(D) If individual wells or individual cisterns are to be used, include a brief statement to the effect that the purity and chemical content of the water cannot be determined until each individual well or source of water is completed and tested.

(E) If there have been no hydrological surveys in connection with the use of individual wells or sources of hauled water for cisterns, include a warning to the effect that there is no assurance of a sufficient supply of water for the anticipated population.

(F) Is a permit required to install the individual system to be used? If so, from whom and where is the permit secured? State the cost of a permit.

(ii) *Central system.* (A) If water is to be provided by a central system, who is the supplier? What is the supplier's address?

(B) Will the water mains be extended in front of, or adjacent to, each lot? When will construction begin? What is the present percentage of completion of the water mains and central supply plant? When will service be available to the individual lots? If the central system is not complete and there are separate units or sections of the subdivision included in the Statement of Record which have different completion dates, then the starting date for construction (month and year), the percentage of construction now complete and the estimated service availability date (month and year) shall be set forth in the chart in section XXI of the appendix to this part: Water Chart Form rather than in a narrative paragraph.

(C) What is the present capacity of the central plant (*i.e.*, how many connections can be supplied)? If the capacity is not sufficient to serve all lots in the Statement of Record and is to be expanded in phases, what is the timetable for each phase to be in service and what will trigger the beginning of the expansion for each phase? If an entity other than the developer or an affiliate or subsidiary of the developer will supply the water for the central system; if the operation of that entity is supervised by a governmental agency and if that entity states it can supply the anticipated population of the development, then information as to the capacity of the plant and a hydrological survey is not necessary. If the entity does not indicate it can supply enough water for the anticipated population or if the capacity of any central system is not sufficient to serve all lots in the Statement of Record, include a warning which describes the limitations and sets forth the number of lots which can now be served.

(D) Have there been any hydrological surveys to determine that a sufficient source of water is available to serve

the anticipated population of the subdivision? Has the water in the central system been tested for purity and chemical content? If so, did the results show that the water meets all standards for a public water supply? If there have been no hydrological surveys showing a sufficient supply of water or no tests for purity and chemical content for the central system, include a warning to the effect that there is no assurance of a sufficient supply or that the water is drinkable.

(E) Is there any financial assurance of completion of the central system and any future expansion? If not, include a warning to the effect that no funds have been set aside in an escrow or trust account nor have any other financial arrangements been made to assure completion of the water system.

(F) If the developer or an affiliate or subsidiary of the developer operates the central system, have all permits been obtained from the proper agencies for the construction, use and operation of the central system? If not, include a warning to the effect that the required permits, approvals or licenses for construction, operation or use of the water system have not been obtained, therefore there is no assurance the system can be constructed or used.

(G) If previous completion dates given in prior Statements of Record have not been met, state that previous completion dates have not been met and give the previous dates. Underline the answer. If the central water system is 100 percent completed, no dates are needed.

(H) Is the purchaser to pay any construction costs, one-time connection fees, availability fees, special assessments or deposits for the central system? If so, what are the amounts? If not, state that there are no charges other than use fees. If the purchaser will be responsible for construction costs of the water mains, state the cost to install the mains to the most remote lot covered by this report.

(I) If a purchaser wishes to use a lot prior to the date central water is available to it, may the purchaser install an individual system? If so, include the information required for individual systems in §1010.111(a)(1)(i). Will the purchaser be required to discontinue use of any individual system and connect to the central system when service is available to the lot? If the purchaser is not required to connect to the central system, must any construction costs, connection fees, availability fees, special assessments or deposits in connection with the central system still be paid? If an individual system may not be installed, so state and indicate water will not be available until the central system is extended to the lot.

(J) If connection to the system is voluntary and not all purchasers elect to use the system, will the cost to those who do use the system be increased? If so, include a statement to the effect that connection to the central system is voluntary and those who use the system may have to pay a disproportionate share of the cost of the system and its operation.

(K) If the developer is to construct the system and will later turn it over to a property owners' association for operation and maintenance, state the estimated date and conditions of the conveyance and if it will be conveyed free and clear of any encumbrance. If there is a charge or if the association must assume an encumbrance, state the estimated amount of either and the terms for retirement of either obligation.

(L) If the supplier of water is other than a governmental agency or an entity which is regulated and supervised by a governmental agency, state that neither the operation of the water system nor the rates are regulated by a public authority.

(M) The warning ''We do not own or operate the central water system so we cannot assure its continued availability for your use'' shall be included unless:

(*1*) The central water system is owned and operated by the developer, or an affiliate or subsidiary of the developer, or

(*2*) The central water system is owned and operated by a governmental agency or by an entity which is regulated and supervised by a governmental agency.

(b) *Sewer.* (1) What methods of sewage disposal are to be used (*e.g.,* central system, comfort stations or individual on-site systems such as septic tanks,

holding tanks, etc.) in the subdivision? Of the following items, only those which apply to the subdivision need be included.

(i) *Individual systems.* (A) If individual systems are to be used, have the local authorities given general approval to the use of these systems in the subdivision or have they given specific approval for each lot? Are permits necessary? From whom and where are they obtained? Must testing of the lot be done prior to the issuance of a permit? State the cost of a permit and the estimated costs of the system and any necessary tests.

(B) If holding tanks are to be used, state whether pumping and hauling service is available and the estimated monthly costs of that service for a family of four living in a house on a year-round basis.

(C) If each and every lot has not been approved for the use of an individual on-site system, include a warning to the effect that there is no assurance permits can be obtained for the installation and use of individual on-site systems. If the sales contract contains no provisions for refund or exchange in the event a permit cannot be obtained, include a statement to the effect that there is no assurance an individual on-site system can be installed and, if it cannot, no refund of the purchase price of the lot will be made.

(D) If no permit is required for the installation and use of individual on-site systems, explain whether this may have an effect upon the purchaser or the availability of construction or permanent financing.

(E) If the developer has knowledge that permits for the installation of individual on-site systems have been denied; that there have been unsatisfactory percolation tests or that systems have not operated satisfactory in the subdivision, state the number of these rejections, unsatisfactory tests or operations.

(ii) *Comfort stations.* (A) If comfort stations are to be used, how many lots will be served by each station? When will construction be started? When will the station or stations be completed and ready for use? Have the necessary permits been obtained for the construction and use of comfort stations? If the necessary permits have not been obtained, include a warning that the necessary permits, approvals or licenses have not been obtained for the construction and use of the comfort stations; therefore there is no assurance they can be constructed or used. If there are comfort stations located in different units and having different completion dates, the chart found in section XXII of the appendix to this part: Comfort Station Chart shall be used to show the estimated construction starting date (month and year), the present percentage of completion and the date on which they will be used rather than a narrative paragraph.

(B) Who is to construct the comfort stations? Is there any financial assurance of their completion? If not, include a warning to the effect that no funds have been set aside in an escrow or trust account nor have any other financial arrangements been made to assure completion of the comfort stations and there is no assurance the facilities will be completed.

(C) Who will be responsible for maintenance of the comfort stations? Is there any cost to the purchaser for construction, use or maintenance?

(iii) *Central system.* (A) If a central sewage treatment and collection system is being installed, who is responsible for construction of the system? Will the sewer mains be installed in front of, or adjacent to, each lot? When will construction be started (month and year)? When will service be available (month and year)? Who will own and operate the system? Give the name and address of the entity.

(B) What is the present percentage of completion and the present capacity of the system (*i.e.,* number of connections which can be served)? If the present capacity is not sufficient to serve all lots in the Statement of Record and it is to be expanded in phases, what is the time-table for expansion and what will trigger that expansion? If the central system is not complete and there are separate units or sections of the subdivision which have different service availability dates, the chart found in section XXIII of the appendix to this part: Sewer Chart shall be used to show the construction starting date (month

and year); the percentage of completion and service availability date (month and year) in each unit or section rather than a narrative paragraph. If sewage treatment facilities are to be supplied by an entity which is regulated by a governmental agency and which is not the developer or an affiliate or subsidiary of the developer and the entity has stated it can serve the anticipated population of the development, then information on capacity need not appear.

(C) If the developer or an affiliate or subsidiary of the developer operates the central system, have all necessary permits been obtained for the construction, operation and use of the central system? Do these permits limit the number of connections or homes which the system may serve? If the permits have not been obtained, enter a warning to the effect that the necessary permits, approvals or licenses have not been obtained for the central sewage system; therefore there is no assurance that the system can be completed, operated or used.

(D) If the system cannot now serve all lots included in the Statement of Record, either because the supplier of the service has not stated it can and will serve all lots or if construction has not reached a stage where all lots can be served or permits to serve all lots have not been obtained, include a warning which states that all lots cannot now be served; the number which can be served and the reason for the lack of capacity.

(E) Will the purchaser pay any construction costs, special assessments, one time connection fees or availability fees? What are the amounts of these charges? If the purchaser is to pay construction costs of the sewer mains, state the cost of installation of the mains to the most remote lot in this Report.

(F) If the purchaser wishes to use the lot prior to the date central sewer service is available, may the purchaser install an individual system? If so, include the information on individual systems required by §1010.111(b)(1)(i). Will the purchaser be required to discontinue use of the individual system and connect to the central system when service is available? If the purchaser is not required to connect to the central system, must the purchaser still pay any construction costs, connection fees, availability fees, or special assessments? If the purchaser may not install an individual system, so state and indicate service will not be available until the central system reaches the lot.

(G) If connection to the system is voluntary and not all purchasers elect to use the system, will the cost to those who do use the system be increased? If so, include a statement to the effect that connection to the central system is voluntary and those who use the system may have to pay a disproportionate share of the cost of the system and its operation.

(H) Is there any financial assurance of completion of the central system and any future expansion? If not, include a warning that no funds have been set aside in an escrow or trust account nor have any other financial arrangements been made to assure the completion of the central system; therefore there is no assurance that it will be completed.

(I) If previous completion dates given in prior Statements of Record have not been met, state that previous dates have not been met and give the previous dates. Underline the answer. If the central sewage treatment and collection system are 100 percent completed, no dates are needed.

(J) If the developer is to construct the system and will later turn it over to a property owners' association for operation and maintenance, state the date of the transfer and whether there will be any charge for the conveyance and if it will be conveyed free and clear of any encumbrance. If there is a charge or if the association must assume an encumbrance, state the estimated amount of either and the terms for retirement of either obligation.

(K) If the owner or operator of the central sewer system is other than a governmental agency or an entity which is regulated and supervised by a governmental agency, state that neither the operation of the sewer system nor the rates are regulated by a public authority.

(L) The warning ''We do not own or operate the central sewer system so we

cannot assure its continued availability for your use.'' shall be included unless:

(*1*) The central sewer system is owned and operated by the developer, or an affiliate or subsidiary of the developer, or

(*2*) The central sewer system is owned and operated by a governmental agency or by an entity which is regulated and supervised by a governmental agency.

(c) *Electricity*. (1) Who will provide electrical services to the subdivision?

(2) Have primary electrical service lines been extended in front of, or adjacent to, all of the lots? If not, when (month and year) or under what conditions will construction begin and when will service be available? If they have not been installed, who is responsible for their construction? If electrical service lines have not been extended in front of, or adjacent to, all lots and there are separate units or sections having different service availability dates, the chart found in section XXIV of the appendix to this part: Electric Service Chart shall be used rather than a narrative paragraph.

(3) If construction of the lines or service to the ultimate consumer is provided by an entity other than a publicly regulated utility, who provides, or will provide, the service? Who will be responsible for maintenance? What is the assurance of completion? If service is not provided by a publicly regulated utility, what charges or assessments will the purchaser pay?

(4) If the primary service lines have not been extended in front of, or adjacent to each lot, will the purchaser be responsible for any construction costs? If so, what is the utility company's policy and charges for extension of primary lines? Based on that policy, what would be the cost to the purchaser for extending primary service to the most remote lot in this Report?

(5) If electrical service will not be provided, what is an alternate source (*e.g.*, generators, etc.) and what are the estimated costs?

(6) If the lines are to be installed by some entity other than a publicly regulated utility and if there is no financial assurance of completion, include a warning to the effect that no funds have been set aside in an escrow or trust account nor have any other financial arrangements been made to assure construction of the electric lines.

(d) *Telephone*. (1) Is telephone service now, or will it be, available? Who will furnish the service?

(2) Have the service lines been extended in front of, or adjacent to, each of the lots? If not, when, and under what conditions, will construction be started and when will service be available (month and year)?

(3) If the service lines have not been extended in front of, or adjacent to, each lot, will the purchaser be responsible for any construction costs? If so, what is the utility company's policy and charges for extension of service lines? Based on that policy, what would be the cost to the purchaser of extending service lines to the most remote lot in this Report?

(e) *Fuel or other energy source*. (1) What fuel, or other energy source, will be available for heating, cooking, etc. in the subdivision? If other than electricity is to be used, describe the availability of the fuel or other energy source. Give the name and address of the supplier. If the fuel is natural gas, when will the mains be installed to the lots? What is the cost to the purchaser for installation fees and connection fees? If oil or propane gas will be used, include the cost of a storage tank.

(2) [Reserved]

§ 1010.112 Financial information.

(a) The information required by paragraphs (b) and (c) of this section need appear only if the answer to the question is an affirmative one.

(b) Has the developer had a deficit in retained earnings or experienced an operating loss during the last fiscal year or, if less than a year old, since its formation? If so, include a statement to the effect that this may affect the developer's ability to complete promised facilities and to discharge financial obligations. This statement may be omitted if:

(1) All facilities, utilities and amenities proposed to be completed by the developer in the Property Report and sales contract have been completed so that the lots included in the Statement of Record are immediately usable for

the purpose for which they are sold, or if:

(2) The developer is contractually obligated to the purchaser to complete all facilities, utilities and amenities promised by it in the Statement of Record, and:

(i) The developer has made financial arrangements, such as the posting of surety bonds (corporate or individual notes or bonds are not acceptable), irrevocable letters of credit, escrow or trust accounts, to assure that the facilities, utilities and amenities will be completed by the dates set out in the Property Report or contract;

(ii) The sales contract provides for delivery of a deed within 180 days of the signing of the contract which conveys title free of any mortgage or lien, or the developer has filed an assurance of title agreement with ILSRP as outlined in §1010.212(e); and

(iii) Any down payments or deposits are held in an escrow or trust account.

(c) If the developer's financial statements have been audited, did the accountant qualify the opinion or decline to give an opinion? If so, why was the opinion qualified or declined?

(d) The following statement shall appear: ''A copy of our financial statements for the period ending _____ is available from us upon request.''

(e) The information furnished in §1010.212(b) may necessitate a warning as to costs and/or feasibility of the completion of the subdivision.

§1010.113 Local services.

(a) *Fire protection*. Describe the availability of fire protection and indicate whether it is available year round.

(b) *Police protection*. Describe the availability of police protection.

(c) *Schools*. State whether elementary, junior high and senior high schools are available to residents of the subdivision. Is school bus transportation available from within the subdivision?

(d) *Hospital*. Give the name and location of the nearest hospital and state whether ambulance service is available.

(e) *Physicians and dentists*. State the location of the nearest physicians' and dentists' offices.

(f) *Shopping facilities*. State the location of the nearest shopping facilities.

(g) *Mail service*. If there is no mail service to the subdivision, describe the arrangements the purchasers must make to receive mail service.

(h) *Public transportation*. Is there public transportation available in the subdivision or to nearby towns? If not, give the location of the nearest public transportation and the distance from the subdivision.

§1010.114 Recreational facilities.

(a) *Recreational facilities to be covered*. Unless otherwise indicated, all information required by paragraphs (b) and (c) of this section shall be provided for only those recreational facilities which

(1) The developer is contractually responsible to provide or complete and which are:

(i) Within, adjacent or contiguous to the subdivision, and

(ii) Maintained substantially for the use of lot owners; or

(2) For which a third party is responsible and which are:

(i) Within, adjacent or contiguous to the subdivision, and

(ii) Maintained substantially for the use of lot owners.

(b) *Recreational facility chart*. Complete the chart found in section XXV of the appendix to this part: Recreational Facility Chart in accordance with the instructions which follow it. This chart shall immediately follow the §1010.114 heading. Limit the chart to facilities provided essentially for use of lot buyers.

(1) *Facility*. Identify each recreational facility. Identify closely related facilities (*e.g.*, swimming pool and bathhouse) separately only if their availability dates differ. If any recreational facility is not owned by the developer, insert a warning below the chart phrased substantially as follows: ''We do not own the (name of facility or facilities) so we can not assure its (their) continued availability.''

(2) *Percent complete*. State the present percentage of completion of construction for each recreational facility.

(3) *Estimated date of start of construction*. Insert the estimated date of the start of construction for the facility (month and year).

(4) *Estimated date available for use.* If the construction of the facility is not complete or if it is not available to lot owners for its intended use, indicate the estimated date (month and year) that the facility will be available for use. If the ''estimated date available for use'' for any facility has been amended to delay it to a later date, indicate such delay in a statement immediately below the chart. Underline the response. This statement shall include the name of the facility and the prior estimated availability date, and it shall be referenced to the appropriate facility listed on the chart by use of an asterisk or other appropriate symbol. If a facility is 100 percent completed and in use, no date is needed.

(5) *Financial assurance of completion.* If the construction of the facility is not complete, state whether there is any financial assurance of completion. If none, state ''none.'' If such exists, state the type of assurance (*i.e.*, bond, escrow, or trust). If no documentation for such assurance has been provided in §1010.214 of the Statement of Record, then do not indicate such assurance on the chart, but in place of such assurance on the chart state ''none.''

(6) *Buyer's annual cost or assessments.* State the lot buyer's annual cost or assessments for using the facility. These costs should include any applicable property owners' association assessment, and the developer's maintenance assessment. If the cost information is lengthy, you may use an asterisk or other appropriate symbol and include the cost information in a paragraph below the chart.

(c) Information to be provided below the recreational facility chart and related warnings.

(1) *Constructing the facilities.* If the facilities are not complete, indicate who is responsible for the construction of the facilities. Indicate whether the purchaser will be required to pay any of the cost of construction of these facilities (estimate and disclose such cost, if any).

(2) *Maintaining the facilities.* Indicate who is responsible for the operation and maintenance of these facilities.

(3) *Facilities which will be leased to lot purchasers.* If no facilities covered here will be leased to a Property Owners' Association or other lot owners in the subject subdivision, omit this caption and any information requested under it from the Property Report. If such leases exist or are anticipated, state which facilities are or will be leased and indicate the term of the lease. Also, state whether the lot owners will have an opportunity to terminate or ratify the lease after control of the Property Owners' Association is turned over to them. Indicate whether the owner of a recreational facility leased to the Property Owners' Association or other lot owners may encumber it and whether the holders of such encumbrances may acquire the leased facilities and not honor the lease. Indicate whether the lease payments may be increased on an escalating or other basis and what costs or expenses, if any, will be borne by the owner. State whether the lease can be assigned or sublet. State how the lease can be terminated.

(4) *Transfer of the facilities.* If there are presently any liens or mortgages on any of these recreational facilities, describe such liens or mortgages. If the developer, or owner of the subdivision, their principals, or subsidiaries, intend to transfer the title of a listed recreational facility in the future, explain at what time, by what type of conveyance, and to whom such transfer will be made. Disclose any adverse effects on, or cost to, lot purchasers which may be caused by such transfer. If any facility is to be transferred to lot owners as a Property Owners' Association or otherwise, state whether the facility will be transferred free and clear of all liens and encumbrances. If not, state the amount of the encumbrance to be assumed and disclose any contractual conditions on such transfer which relate to lot purchasers.

(5) *Permits.* If the necessary permits have not been obtained for the construction and/or use of the facilities, identify the facilities for which such permits have not been obtained and include the following statement, or one substantially the same, in the narrative under the caption ''Permits'': ''The (identify the permit or license) has not been obtained and therefore there is no assurance that the lot owners will be able to use the (identify the facility).''

(6) *Who may use the facilities.* Indicate who will be permitted to use the recreational facilities (*e.g.,* lot owners, their guests, employees of developer, general public). If the general public will be permitted to use the facilities include the following statement in the narrative under the caption ''Who may use the facilities'': ''The (identify the facility) is open to use by the general public and their use of the facility may limit use of it by lot owners.''

§ 1010.115 Subdivision characteristics and climate.

(a) *General topography.* What is the general topography and the major physical characteristics of the land in the subdivision? State the percentage of the subdivision which is to remain as natural open space and as developed parkland. Are there any steep slopes, rock outcroppings, unstable or expansive soil conditions, etc., which will necessitate the use of special construction techniques to build on, or use, any lot in the subdivision? If so, identify the lots affected, and describe the techniques recommended. If any lots in the subdivision have a slope of 20%, or more, include a warning that ''Some lots in this subdivision have a slope of 20%, or more. This may affect the type and cost of construction.''

(b) *Water coverage.* Are any lots, or portions of any lots, covered by water at any time? What lots are affected? When are they covered by water? How does this affect their use for the purpose for which they are sold? Can the condition be corrected? At what cost to the purchaser?

(c) *Drainage and fill.* Identify the lots which require draining or fill prior to being used for the purpose for which they are being sold. Who will be responsible for any corrective action? If the purchaser is responsible, what are the estimated costs?

(d) *Flood plain.* Is the subdivision located within a flood plain or an area designated by any Federal, state or local agency as being flood prone? What lots are affected? Is flood insurance available? Is it required in connection with the financing of any improvements to the lot? What is the estimated cost of the flood insurance?

(e) *Flooding and soil erosion.* (1) Does the developer have a program which provides, or will provide, at least minimum controls for soil erosion, sedimentation or periodic flooding throughout the subdivision?

(2) If there is a program, describe it. Include in the description information as to whether the program has been approved by the appropriate government officials; when it is to start; when it is to be completed (month and year); whether the developer is obligated to comply with the program and whether there is any financial assurance of completion.

(3) If there is no program or if the program has not been approved by the appropriate officials or if the program does not provide minimum protection, include a statement to the effect that the measures being taken may not be sufficient to prevent property damage or health and safety hazards. A minimum program will usually provide for:

(i) Temporary measures such as mulching and seeding of exposed areas and silt basins to trap sediments in runoff water, and

(ii) Permanent measures such as sodding and seeding in areas of heavy grading or cut and fill along with the construction of diversion channels, ditches, outlet channels, waterway stabilizers and sediment control basins.

(f) *Nuisances.* Are there any land uses which may adversely affect the subdivision (*e.g.,* unusual or unpleasant noises or odors, pollutants or nuisances such as existing or proposed industrial activity, military installations, airports, railroads, truck terminals, race tracks, animal pens, noxious smoke, chemical fumes, stagnant ponds, marshes, slaughterhouses and sewage treatment facilities)? If any nuisances exist, describe them. If there are none, state there are no nuisances which affect the subdivision.

(g) *Hazards.* (1) Are there any unusual safety factors which affect the subdivision (*e.g.,* dilapidated buildings, abandoned mines or wells, air or vehicular traffic hazards, danger from fire or explosion or radiation hazards)? Is the developer aware of any proposed plans for construction which may create a nuisance or safety hazard or adversely affect the subdivision? If there are any

existing hazards or if there is any proposed construction which will create a nuisance or hazard, describe the hazard or nuisance. If there are no existing or possible future hazards, state that there are none.

(2) Is the area subject to natural hazards or has it been formally identified by any Federal, state or local agency as an area subject to the frequent occurrence of natural hazards (*e.g.*, tornadoes, hurricanes, earthquakes, mudslides, forest fires, brush fires, avalanches, flash flooding)? If the jurisdiction in which the subdivision is located has a rating system for fire hazard, state the rating assigned to the land in the subdivision and explain its meaning.

(h) *Climate.* What are the average temperature ranges, summer and winter, for the area in which the subdivision is located (*i.e.*, high, low and mean)? What is the average annual rainfall and snowfall?

(i) *Occupancy*. How many homes are occupied on a full- or part-time basis as of (date of submission)?

§ 1010.116 Additional information.

(a) *Property Owners' Association.* (1) Will there be a property owners' association for the subdivision? Has it been formed? What is its name? Is it operating? If not yet formed, when will it be formed? Who is responsible for its formation?

(2) Does the developer exercise, or have the right to exercise, any control over the Association because of voting rights or placement of officers or directors? For how long will this control last?

(3) Is membership in the association voluntary? Will non-member lot owners be subject to the payment of dues or assessments? What are the association dues? Can they be increased? Are members subject to special assessments? For what purpose? If membership in the association is voluntary and if the association is responsible for operating or maintaining facilities which serve all lot owners, include the following statement: ''Since membership in the association is voluntary, you may be required to pay a disproportionate share of the association costs or it may not be able to carry out its responsibilities.''

(4) What are the functions and responsibilities of the association? Will the association hold architectural control over the subdivision?

(5) Are there any functions or services that the developer now provides at no charge for which the association may be required to assume responsibility in the future? If so, will an increase in assessments or fees be necessary to continue these functions or services?

(6) Does the current level of assessments, fees, charges or other income provide the capability for the association to meet its present, or planned, financial obligations including operating costs, maintenance and repair costs and reserves for replacement? If not, how will any deficit be made up?

(b) *Taxes.* (1) When will the purchaser's obligation to pay taxes begin? To whom are the taxes paid? What are the annual taxes on an unimproved lot after the sale to a purchaser? If the taxes are to paid to the developer, include a statement that ''Should we not forward the tax funds to the proper authorities, a tax lien may be placed against your lot.''

(2) If the subdivision is encompassed within a special improvement district or if a special district is proposed, describe the purpose of the district and state the amount of assessments. Describe the purchaser's obligation to retire the debt.

(c) *Violations and litigations.* This information need appear only if any of the questions are answered in the affirmative. Unless the Director gives prior approval for it to be omitted, a brief description of the action and its present status or disposition shall be given.

(1) With respect to activities relating to or in violation of a Federal, state or local law concerned with the environment, land sales, securities sales, construction or sale of homes or home improvements, consumer fraud or similar activity, has the developer, the owner of the land or any of their principals, officers, directors, parent corporation, subsidiaries or an entity in which any of them hold a 10% or more financial interest, been:

(i) Disciplined, debarred or suspended by any governmental agency, or is there now pending against them an action which could result in their being disciplined, debarred or suspended or,

(ii) Convicted by any court, or is there now pending against them any criminal proceedings in any court? ILSRP suspension notices on pre-effective Statements of Record and amendments need not be listed.

(2) Has the developer, the owner of the land, any principal, any person holding a 10% or more financial or ownership interest in either, or any officer or director of either, filed a petition in bankruptcy? Has an involuntary petition in bankruptcy been filed against it or them or have they been an officer or director of a company which became insolvent or was involved, as a debtor, in any proceedings under the Bankruptcy Act during the last 13 years?

(3) Is the developer or any of its principals, any parent corporation or subsidiary, any officer or director a party to any litigation which may have a material adverse impact upon its financial condition or its ability to transfer title to a purchaser or to complete promised facilities? If so, include a warning which describes the possible effects which the action may have upon the subdivision.

(d) *Resale or exchange program.* (1) Are there restrictions which might hinder lot owners in the resale of their lots (*e.g.,* a prohibition against posting signs, limitations on access to the subdivision by outside brokers or prospective buyers; the developer's right of first refusal; membership requirements)? If so, briefly explain the restrictions.

(2) Does the developer have an active resale program? If the answer is ''no,'' include the following statement: ''We have no program to assist you in the sale of your lot.''

(3) Does the developer have a lot exchange program? If the answer is ''yes,'' describe the program; state any conditions and indicate if the program reserves a sufficient number of lots to accommodate all those wishing to participate. If there is no program or if sufficient lots are not reserved, include one of the following statements as applicable: ''We do not have any provision to allow you to exchange one lot for another'' or ''We do not have a program which assures that you will be able to exchange your lot for another.''

(e) *Unusual situations.* This topic need appear only if one or more of the following cases apply to the subdivision, then only the applicable subject, or subjects, will appear.

(1) *Leases.* What is the term of the lease? Is it renewable? Is it recordable? Can creditors of the developer, or owner, acquire title to the property without any obligation to honor the terms of the lease? Are the lease payments a flat sum or are they graduated? Can the lessee mortgage or otherwise encumber the leasehold? Will the lessee be permitted to remove any improvements which have been installed when the lease expires or is terminated?

(2) *Foreign subdivision.* (i) Is the owner or developer of the subdivision a foreign country corporation? If legal action is necessary to enforce the contract, must it be taken in the courts of the country where the subdivision is located?(ii) Does the country in which the subdivision is located have any laws which restrict, in any way, the ownership of land by aliens? If so, what are the restrictions?

(iii) Must an alien obtain a permit or license to own land, build a home, live, work or do business in the country where the subdivision is located? If so, where is such permit or license secured; for how long is it valid and what is its cost?

(3) *Time sharing.* (i) How is title to be conveyed? How many shares will be sold in each lot? How is use time allocated? How are taxes, maintenance and utility expenses divided and billed? How are voting rights in any Association apportioned? Are there management fees? If so, what are their amounts and how are they apportioned?

(ii) Is conveyance of any portion of the lot contingent upon the sale of the remaining portions? Is the initial buyer responsible for any greater portion of the expense than his normal share until the remaining interests are sold? If the purchase of any of the portions is financed, will the default of

one owner have any effect upon the remaining owners?

(4) *Memberships.* (i) Does the purchaser receive any interest in title to the land? What is the term of the membership? Is it renewable? What disposition is made of the membership in the event of the death of the member? Are the lots individually surveyed and the corners marked? If not, how does the member identify the area which the member is entitled to use? What is the approximate square footage the member is entitled to use? Are there different classes of membership? How are the different classes identified and what are the differences between them?

(ii) If the member does not receive any interest in the title to the land, include a warning to the effect that ''you receive no interest in the title to the land but only the right to use it for a certain period of time.''

(f) *Equal opportunity in lot sales.* State whether or not the developer is in compliance with title VIII of the Civil Rights Act of 1968 by not directly or indirectly discriminating on the basis of race, color, religion, sex, national origin, familial status, and handicap in any of the following general areas: Lot marketing and advertising, rendering of lot services, and in requiring terms and conditions on lot sales and leases. An affirmative answer cannot be given if the developer, directly or indirectly, because of race, color, religion, sex, national origin, familial status, or handicap is:

(1) Refusing to sell or lease lots after the making of a bona fide offer or to negotiate for the sale or lease of lots or is otherwise making unavailable or denying a lot to any person, or

(2) Discriminating against any person in the terms, conditions or privileges in the sale or leasing of lots or in providing services or facilities in connection therewith, or

(3) Making, printing, publishing or causing to be made, printed or published any notice, statement or advertisement with respect to the sale or leasing of lots that indicates any preference, limitation or discrimination against any person, or

(4) Representing to any person that any lot is not available for inspection, sale or lease when such lot is in fact available, or

(5) For profit, inducing or attempting to induce any person to sell or lease any lot by representations regarding the entry or non-entry into the neighborhood of a person or persons of a particular race, color, religion, sex, national origin, familial status, or handicap.

(g) *Listing of lots.* Provide a listing of lots which shall consist of a description of the lots included in the Statement of Record by the names or number of the section or unit, if any; the block number, if any; and the lot numbers. The lots shall be listed in the most efficient and concise manner. If the filing is a consolidation, the listing shall include all lots registered to date in the subdivision, except any which have been deleted by amendment.

§ 1010.117 Cost sheet, signature of Senior Executive Officer.

(a) *Cost sheet—Format.* (1) The cost sheet shall be prepared in accordance with the format found in section XXVI of the appendix to this part: Cost Sheet Format and paragraph (a)(2) of this section.

(2) *Cost sheet instructions.* (i) All amounts for cost sheet items will be entered before the purchaser signs the receipt. However, any costs that are identical for all lots may be pre-printed.

(ii) If a central water or sewer system will be used in all or part of the subdivision and a private system in all or other parts, then the portion that does not apply to the purchaser's lot shall be crossed out.

(iii) If individual private systems may be used prior to the availability of service from any central system and the purchaser is not required to connect to any central system, both figures may be entered or only the highest cost figures may be used with a parenthetical explanation or footnote. If the purchaser is required to connect to any central system and discontinue the use of his private system when central service is available, both cost figures shall be given, together with an explanation or footnote.

(iv) If there is a one time, lump sum ''availability fee'' which is assessed to

the purchaser in connection with a central utility, include under ''other'' and identify.

(v) Dues and assessments need be included only if they are involuntary regardless of use.

(vi) At the discretion of the Director, where there is extreme diversity in the figures for different areas of the subdivision, variations may be permitted as to whether the figures will be printed, entered manually, or a range of costs used or any combination of these features.

(vii) The estimated annual taxes shall be based upon the projected valuation of the lot after sale to a purchaser.

(b) *Signature of the Senior Executive Officer*. The Senior Executive Officer or a duly authorized agent shall sign the property report. Facsimile signatures may be used for purposes of reproduction of the property report.

§ 1010.118 Receipt, agent certification, and cancellation page.

(a) *Format*. The receipt, agent certification and cancellation page shall be prepared in accordance with the sample found in section XXVII of the appendix to this part: Sample Receipt, Agent Certification and Cancellation Page.

(b) The original and one copy of this executed page shall be attached to the Property Report delivered to prospective purchasers. After the purchaser has signed the receipt and the salesman has signed the certification, the copies can be retained by the developer for a period of three years from the date of execution or the term of the contract, whichever is the longer. Upon demand by the Director, the developer shall, without delay, make the copies of these receipts and certifications available for inspection by the Director or the developer shall forward to the Director any of the receipts and certifications, or copies thereof, as the Director may specify.

(c) If the transaction takes place through the mails, the cost figures shall be entered and the person most active in dealing with the prospective purchaser shall sign the certification prior to mailing the Property Report to the purchaser. Otherwise, the certification shall be executed in the presence of the purchaser.

(d) The date of Report appearing on the receipt shall be the same as that appearing on the cover sheet of the Property Report.

(e) Notification of cancellation by mail shall be considered given at the time post-marked.

§ 1010.200 Instructions for Statement of Record, Additional Information and Documentation.

The Additional Information and Documentation portion of the Statement of Record shall contain the statements and documents required in §§ 1010.208 through 1010.219. Each section number and its associated heading and each paragraph letter or number and their associated subheadings or captions must appear in this portion. Following each heading, subheading, or caption printed in this portion, the registrant shall insert an appropriate response. If a heading, subheading, or caption does not apply to the subdivision, it shall be followed by the words ''not applicable''. Immediately after the page(s) on which the section number and answers for that section appear, insert the information or documents which support that section. In addition to the statements and documentation expressly required there shall be added any further material, information, documentation and certifications as may be necessary in the public interest and for the protection of purchasers or to cause the statements made to be not misleading in the light of the circumstances under which they are made.

§§ 1010.201–1010.207 [Reserved]

§ 1010.208 General information.

(a) *Administrative information*. (1) State whether the material represents an initial Statement of Record or a consolidated Statement of Record. If it is a consolidated Statement of Record, identify the original ILSRP number assigned to the initial Statement of Record. State whether subsequent Statements of Record will be submitted for additional lots in the subdivision.

(2) Has the developer submitted a request for an exemption for the subdivision?

(3) List the states in which registration has been made by the developer for the sale of lots in the subdivision.

(4) If any state listed in paragraph (a)(3) of this section has not permitted a registration to become effective or has suspended the registration or prohibited sales, name the state involved and give the reasons cited by the state for their action.

(5) State whether the developer has made, or intends to make, a filing with the U.S. Securities and Exchange Commission (SEC) which is related in any way to the subdivision. If a filing has been made with the SEC, give the SEC identification number; identify the prospectus by name; date of filing and state the page number of the prospectus upon which specific reference to the subdivision is made. Any disciplinary action taken against the developer by the SEC should be disclosed in §§ 1010.116 and 1010.216.

(b) *Subdivision information.* (1) If this is a consolidated Statement of Record, state the number of lots being added, the number of lots in prior Statements of Record and the new total number of lots. The Director must be able to reconcile the numbers stated here with the title evidence; the plat maps and the disclosure in § 1010.108.

(2) State the number of acres represented by the lots in this Statement of Record. If this is a consolidated Statement of Record, state the number of acres being added, the number of acres in prior Statements of Record and the new total number of acres. State the total acreage owned in the subdivision, the number of acres under option or similar arrangement for acquisition of title to the land and the total acreage to be offered pursuant to the same common promotional plan.

(3) State whether any lots have been sold in this subdivision since April 28, 1969, and prior to registration with ILSRP. If they were sold pursuant to an exemption, identify the exemption provision and state whether an advisory opinion, exemption order or exemption determination was obtained with respect to those lots sales. Give the ILSRP number assigned to the exemption, if any.

(c) *Developer information.* (1) State the name, address, Internal Revenue Service number and telephone number of the owner of the land. If the owner is other than an individual, name the type of legal entity and list the interest, and extent thereof, of each principal. Identify the officers and directors.

(2) If the developer is not the owner of the land, state the developer's name, address, Internal Revenue Service number and telephone number. If the developer is other than an individual, name the type of legal entity and list the interest, and the extent thereof, of each principal. Identify the officers and directors.

(3) If you wish to appoint an authorized agent, state the agent's name, address and telephone number and scope of responsibility. This shall be the party designated by the developer to receive correspondence, service of process and notice of any action taken by ILSRP. In all Statements of Record, including those for foreign subdivisions, the authorized agent shall be a resident of the United States. A change of the authorized agent will require an appropriate amendment.

(4) State whether the owner of the land, the developer, its parent, subsidiaries or any of the principals, officers or directors of any of them are directly or indirectly involved in any other subdivision containing 100 or more lots. If so, identify the subdivision by name, location, and ILSRP number, if any.

(5) State whether the owner or developer is a subsidiary corporation. If either the owner or developer is a subsidiary corporation or if any of the principals of the owner or developer are corporate entities, name the parent and/or corporate entity and state the principals of each to the ultimate parent entity.

(d) *Documentation* . (1) Submit a copy of the property report, subdivision report, offering statement or similar document filed with the state or states with which the subdivision has been registered.

(2) Submit a copy of a general plan of the subdivision. This general plan must consist of a map, prepared to scale, and

it must identify the various proposed sections or blocks within the subdivision, the existing or proposed roads or streets, and the location of the existing or proposed recreational and/or common facilities. In an initial filing, this map must at least show the area included in the Statement of Record. In a consolidated Statement of Record, show areas being added, as well as the areas previously registered. If a map of the entire subdivision is submitted with the initial Statement of Record, and if no substantial changes are made when material for a consolidated Statement of Record is submitted, the original map may be included by reference.

(3)(i) If the developer is a corporation, submit a copy of the articles of incorporation, with all amendments; a copy of the certificate of incorporation or a certificate of a corporation in good standing and, if the subdivision is located in a state other than the one in which the original certificate of corporation was issued, a certificate of registration as a foreign corporation with the state where the subdivision is located.

(ii) If the developer is a partnership, unincorporated association, joint stock company, joint venture or other form of organization, submit a copy of the articles of partnership or association and all other documents relating to its organization.

(iii) If the developer is not the owner of the land, submit copies of the above documents for the owner.

§ 1010.209 Title and land use.

(a) *General information.* (1) State whether the developer has reserved the right to exchange or withdraw lots after a purchaser has signed a sales contract (*e.g.,* for prior sales, failure to pass credit check). If yes, indicate this authority and make reference to the applicable paragraph in the sales contract or other document.

(2) State whether there is a provision giving purchasers an option to exchange lots. If yes, indicate this and make reference to the applicable paragraph in the sales contract or other document.

(3) State whether the developer knows of any instruments not of record which, if recorded, would affect title to the subdivision. If yes, copies of these instruments shall be submitted, except that copies of unrecorded contracts for sales of lots in the subdivision need not be submitted.

(4)(i) Identify the Federal, State, and local agencies or similar organizations which have the authority to regulate or issue permits, approvals or licenses which may have a material effect on the developer's plans with respect to the proposed division of the land, and any existing or proposed facilities, common areas or improvements to the subdivision.

(ii) Describe or identify the land or facilities affected; the permit, approval or license required; and indicate whether the permit, approval or license has been obtained by the developer.

(iii) If no agency regulates the division of the land or issues any permits, approvals or licenses with respect to improvements, so state.

(iv) Answers must specifically cover the areas of environmental protection; environmental impact statements; and construction, dredging, bulkheading, etc. that affect bodies of water within or around the subdivision. Also include licenses or permits required by water resources boards, pollution control boards, river basin commissions, conservation agencies or similar organizations.

(5) State whether it is unlawful to sell lots prior to the final approval and recording of a plat map in the jurisdiction where the subdivision is located.

(b) *Title evidence.* (1) Submit title evidence that specifically states the status of the legal and equitable title to the land comprising the lots covered by the Statement of Record and any common areas or facilities disclosed in the Property Report. Title evidence need not be submitted for those common areas and facilities which are not owned by the developer.

(2) Acceptable title evidence shall be dated no earlier than 20 business days preceding the date of the filing of the Statement of Record with the Director. Previously issued title evidence may be updated to the date referred to in the preceding sentence by endorsements or attorneys' opinions of title.

(3) The developer shall amend the title evidence to reflect the change in status of title of any previously registered, reacquired lots unless their status is at least as marketable as they were when first offered for sale by the developer as registered lots.

(c) *Forms of acceptable title evidence.* (1) An original or a copy of a signed owner's or mortgagee's policy of title insurance, title commitment, certificate of title or similar instrument issued by a title company authorized by law to issue such instruments in the state in which the subdivision is located. Title evidence that limits insurance or negligence liability to amounts less than the market value of the subject land at the time of its acquisition by the subdivision owner is not acceptable;

(2) A legal opinion stating the condition of title, prepared and signed by an attorney at law experienced in the examination of titles and a member of the Bar in the state in which the property is located. The title opinion may be based on a Torrens land registration system certificate of title, or similar instrument, provided it meets all general title evidence requirements of this section and a copy of the registration certificate of title is submitted. Title opinions that limit negligence liability to amounts less than the market value of the subject land at the time of its acquisition by the subdivision owner are not acceptable.

(d) *Title searches.* The required evidence of the status of title shall be based on a search of all public records which may contain documents affecting title to the land or the developer's ability to deliver marketable title. The search must cover a period which is required or generally considered adequate for insuring marketability of title in the jurisdiction in which the subdivision is located. Such search shall include an examination of at least the documents listed in paragraphs (d)(1) through (5) of this section. This search may be accomplished through the use of a title insurance company title plant, the information in which is based on current searches of the appropriate and necessary documents, including as a minimum those listed immediately above. For any attorney's title opinion based on Torrens certificates of title, the title search need only go beyond the original time of registration of the certificate of title for those types of encumbrances which were not conclusively settled by the proceedings at the time of such registration. In such cases, the required statement shall clearly reflect the documents and periods searched.

(1) The records of the recorder of deeds or similar authority;

(2) U.S. Internal Revenue Liens;

(3) The records of the circuit, probate, or other courts including Federal courts and bankruptcy or reorganization proceedings which have jurisdiction to affect the title to the land;

(4) The tax records;

(5) Financing statements filed pursuant to the Uniform Commercial Code or similar law. If it is held that the financing statements do not affect the title of the land, include a statement of the legal authority for that opinion.

(e) *Items to be included in the title evidence.* The acceptable title evidence must include the following information, instruments and statements and need not be repeated or duplicated elsewhere in the Statement of Record.

(1) A legal description of the land on which the lots, common areas, and facilities covered by the title evidence are located. This legal description shall be adequate for conveying land in the jurisdiction in which the subdivision is located. If this legal description is based on a recorded plat, the lot numbers, recording place, book name, book number, and page number shall be stated in the description. If this legal description is given by metes and bounds, the title evidence shall include or be accompanied by a certified statement of the preparer of the title evidence, a licensed attorney, or an engineer or surveyor, indicating that all subject lots, common areas, and common facilities are encompassed within the metes and bounds description in the evidence. If at any time after the submission of the legal description required above, the description of the subject land is changed or found to be in error, a correcting amendment shall be made to the Statement of Record.

(2) The name of the person(s) or other legal entity(ies) holding fee title to the property described.

(3) The name of any person(s) or other legal entity(ies) holding a leasehold estate or other interest of record in the property described.

(4) A listing of any and all exceptions or objections to the title, estate or interest of the person(s) or legal entity(ies) referred to in paragraph (e)(2) or (3) of this section, including any encumbrances, easements, covenants, conditions, reservations, limitations or restrictions of record. Any reference to exceptions or objections to title shall include specific references to the instruments in the public records upon which they are based. When an objection or exception to title affects less than all of the property covered by this Statement of Record, the title evidence shall specifically note what portion of the property is so affected.

(5) Copies of all instruments in the public records specifically referred to in paragraph (e)(4) of this section. Abstracts of such instruments are acceptable if prepared by an attorney or professional or official abstractor qualified and authorized by law to prepare and certify such abstracts and if the abstracts contain a material portion of the recorded instruments sufficient to determine the nature and effect of such instruments. Also include copies of any release provisions, relating to encumbrances on the property described, which are not included in the documents otherwise required by this section.

(6) If an attorney's title opinion has been submitted pursuant to this section which has been based on a Torrens land registration certificate of title, submit a copy of such certificate.

(f) *Supplemental title information.* (1) If there is a holder of an ownership interest in the land other than the developer, submit a copy of any documentation which evidences the developers' authorization to develop and/or sell the land.

(2) Submit copies of any trust deeds, deeds in trust, escrow agreements or other instruments which purport to protect the purchaser in the event of default or bankruptcy by the developer on any instrument or instruments which create a blanket encumbrance upon the property unless they have been previously provided as part of ''title evidence'' submitted pursuant to paragraph (e) of this section.

(3)(i) Submit copies of all forms of contracts or agreements and notes to be used in selling or leasing lots. The contracts or agreements, including promissory notes, must contain the following language in boldface type (which must be distinguished from the type used for the rest of the contract) on the face or signature page above all signatures: ''You have the option to cancel your contract or agreement of sale by notice to the seller until midnight of the seventh day following the signing of the contract or agreement. If you did not receive a Property Report prepared pursuant to the rules and regulations of the Bureau of Consumer Financial Protection, in advance of your signing the contract or agreement, the contract or agreement of sale may be cancelled at your option for two years from the date of signing.''

(ii) If the purchaser is entitled to a longer revocation period by operation of state law or the Act, that period becomes the Federal revocation period and the contract or agreement must reflect the requirements of the longer period, rather than the seven days. This language shall be consistent with that shown on the cover page (see §1010.105).

(iii) The revocation provisions may not be limited or qualified in the contract or other document by requiring a specific type of notice or by requiring that notice be given at a specified place.

(iv) If it is represented that the developer will provide or complete roads or facilities for waters, sewer, gas, electric service or recreational amenities, the contract must contain a provision that the developer is obligated to provide or complete such roads, facilities and amenities (see §1011.15(f)).

(4) Submit copies of deeds and leases by which the developer will lease or convey title to the lots to purchasers or lessees.

(g) *Plat maps, environmental studies and restrictions*—(1) *Plat maps.* (i) In those jurisdictions where it is unlawful to sell lots prior to final approval and recording of the plat, and in those

cases where a plat has been recorded, submit a copy of the recorded plat. This plat should be an exact copy of the recorded document. It should reflect the signatures of the approving authorities and bear a stamp or notation by the recorder of deeds, or similarly constituted officer, as to the recording data.

(ii) If the plat has not been approved by the local authorities nor recorded, and if it is not unlawful to sell lots prior to final approval and recording, submit a map which has been prepared to scale and which shows the proposed division of the land, the lot dimensions and their relation to proposed or existing streets and roads. The map shall contain sufficient engineering data to enable a surveyor to locate the lots.

(iii) Whether recorded or unrecorded, the plat or map should show:

(A) The dimensions of each lot, stated in the standard unit of measure acceptable for such purposes in the political subdivision where the land is located.

(B) A clear delineation of each of the lots and any common areas or facilities.

(C) Any encroachments or rights-of-way on, over, or under the land, or a notation of these items together with the identity of the lots affected.

(D) The courses, distances and monuments, natural or otherwise, of the land's boundaries; contiguous boundaries and identification or ownership of adjoining land and names of abutting streets, ways, etc.

(E) The location of the section or unit encompassing the lots in relationship to the larger tract, or tracts, in the subdivision.

(F) The delineation of any flood plains or flood control easements affecting any of the lots.

(iv) The plat, or map shall be prepared by a licensed surveyor or engineer.

(v) If all lots on each page of the plat are not included in the Statement of Record with which the plat or map is submitted, then the lots which are to be included in the Statement of Record shall be identified on the plat or map; a legend describing the method of identification shall be entered on the face of the plat or map and the number of lots so identified entered in the lower right hand corner of the plat map. The Director must be able to reconcile the totals of these numbers with the information given in §§ 1010.108 and 1010.208 of the Statement of Record and the title evidence.

(2) *Environmental impact study.* If the developer is aware of any environmental impact study which considers the effect of the subdivision on the environment, submit a summary of that study.

(3) *Restrictions or covenants.* Submit a copy of any recorded or proposed restrictions or covenants for the subdivision if not submitted elsewhere in this Statement of Record. A copy of these restrictions or covenants shall be delivered to a prospective purchaser upon request. A supply shall be maintained at whatever place or places as will be necessary to allow immediate delivery upon request.

§ 1010.210 Roads.

(a) State the estimated cost to the developer of the proposed road system.

(b) If the developer is to complete any roads providing access to the subdivision, submit copies of any bonds or escrow agreements which have been posted to guarantee completion thereof.

(c) Submit copies of any bonds or escrow agreements which have been posted to assure completion of the roads within the subdivision.

(d) If the interior roads are to be maintained by a public authority, submit a copy of a letter from that authority which states that the roads have been, or the conditions upon which they will be, accepted for maintenance and when.

§ 1010.211 Utilities.

(a) *Water.* (1) State the estimated cost to the developer of the central water system.

(2) If water is to be supplied by a central system, furnish a letter from the supplier that it will supply the water. If the system is operated by a governmental division or by an entity whose operations are regulated by a governmental agency but which is not affiliated with or under the control of the developer, the letter shall include a

statement that the supply of water will be sufficient to serve the anticipated population of the subdivision or how many homes or connections it can and will serve and that the water is tested at regular intervals and has been found to meet all standards for a public water supply.

(3) If the water is to be supplied by individual wells, by an entity which is not regulated by a governmental agency, by the developer or by an entity which is affiliated with or controlled by the developer, submit a copy of any engineers' reports or hydrological surveys which indicate there is a sufficient supply of water to serve the anticipated population of the subdivision.

(4) If the supplier of water is not in one of the categories in paragraph (a)(2) of this section, submit a copy of a letter or report from a cognizant health officer, or from a private laboratory licensed by the state to perform tests and issue reports on water, to the effect that the water was found to meet all drinking water standards required by the state for a public water system.

(5) If any bond, escrow agreement or other financial assurance of the completion of the central system, including any phases which are to be constructed in the future, has been posted by the developer or an entity not regulated by a government agency, furnish a copy of the document.

(6) Furnish a copy of any permits which have been obtained by the developer or any entity affiliated with or under the control of the developer in connection with the construction and operation of the central system. If a permit is required to install individual wells, submit a letter from the proper authority which states the requirements for obtaining the permit and that there is no objection to the use of individual wells in the subdivision.

(7) Furnish a copy of any membership agreement or contract which allows or requires lot owners to use the central water system. If this document is furnished elsewhere in the Statement of Record, reference to it may be made here.

(b) *Sewer.* (1) State the estimated cost to the developer of the central sewer system.

(2) If sewage disposal is to be by individual on-site systems, furnish a letter from the local health authorities giving general approval to the use of these systems in the subdivision or giving specific approval for each and every lot.

(3) If sewage disposal is to be through a central system which is owned and operated by a governmental division, or by an entity whose operations are regulated by a governmental agency but which is not affiliated with, or under the control of, the developer, furnish a letter from the entity that it will provide this service and that its treatment facilities have the capacity to serve the anticipated population of the subdivision or how many homes or connections it can and will serve.

(4) Furnish a copy of any permits obtained by the developer or any entity affiliated with or under the control of the developer, for the construction and operation of the central sewer system or construction and use of any other method of sewage disposal contemplated for the subdivision except those to be obtained by individual lot owners at a later date.

(5) If any bond, escrow agreement or other financial assurance of the completion of the central system or other system for which the developer is responsible, and any future expansion, has been posted, furnish a copy of the document.

(6) Furnish a copy of any membership agreement of contract which allows, or requires, the lot owners to use the central system. If this document is furnished elsewhere in the Statement of Record, it may be included here by reference.

(c) *Electricity.* Give an estimate of the total construction cost to be expended by the developer and submit any instrument providing financial assurance of completion of the facilities which has been posted by the developer.

(d) *Telephone.* Give an estimate of the total construction cost to be expended by the developer and submit a copy of any instrument providing financial assurance of the completion of the facilities which has been posted by the developer.

§ 1010.212 Financial information.

(a) *Financing of improvements.* Describe the financing plan that is to be used in financing on-site or off-site improvements proposed in the Statement of Record.

(b) Complete the following format (If the subdivision or common promotional plan contains, or will contain, 1000 or more lots, furnish this information in its entirety. If the subdivision or common promotional plan contains, or will contain, less than 1,000 lots, only paragraphs (b)(3)(iii) and (iv) of this section need be completed.)

(1) Estimated date for full completion of amenities

(2) Projected date for complete sell out of subdivision

(3) Cost and expense recap for lots included in this Statement of Record:

(i) Land acquisition cost or current fair market value of land.

(ii) Development and improvement costs (include the estimated cost of such items as roads, utilities, and amenities which the developer will incur).

(iii) Estimated marketing and advertising costs.

(iv) Estimated sales commission.

(v) Interest (include cost in financing the land purchase, improvements, or other borrowings).

(vi) Estimated other expenses (include general costs, administrative costs, profit, etc.).

(vii) Total.

(4) Total land sales revenue:

(i) Estimated total land sales income.

(ii) Estimated other income.

(iii) Total income.

(c) *Financial statements.* (1) Submit a copy of the developer's financial statements for the last full fiscal year. These statements shall be prepared in accordance with generally accepted accounting principles as prescribed by the Financial Accounting Standards Board and generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants, and shall be audited by an independent licensed public accountant. They shall include a balance sheet, a statement of profit and loss, a statement of changes in financial condition and a certified opinion by the accountant. The statements shall be no more than six months old on the date the Statement of Record is submitted.

(2) If the audited statements are more than six months old at the date of submission of the Statement of Record, or if the last full fiscal year has ended within the last 90 days and audited Statements are not yet available, the developer may submit a copy of the audited statements for the previous full fiscal year and supplement them with unaudited, interim statements so that the financial information is no more than six months old on the date that the Statement of Record is submitted. The interim statements may be prepared by company personnel but must contain a balance sheet, a statement of profit and loss and a statement of changes in financial condition and be prepared in accordance with generally accepted accounting principles.

(d) *Annual report.* (1) Each year after the initial effective date, the developer shall submit a copy of its latest financial statements. These statements must meet the standards set out in §1010.212(c)(1), unless the developer has qualified for an exception under §1010.212(e), and must be submitted within 120 days after the close of the developer's fiscal year.

(2) If a developer has submitted its latest statements with a consolidated filing since the close of its fiscal year and prior to the end of the 120 day period, a second submission of the statements to comply with this section is not necessary.

(3) If the developer no longer has an active sales program on the date this report is due, the information set forth in §1010.310(c)(7)(iii) may be furnished in lieu of this report.

(e) *Exceptions.* (1) If the developer does not have audited financial statements and the criteria in one of the following exceptions are met, statements need not be audited and certified but must meet all of the other requirements set forth in paragraphs (c)(1) and (2) of this section.

(2) The term ''conveys title free of any mortgage or lien'' in these exceptions is not intended to prohibit the taking of an instrument as security for

the lot purchase price after title is conveyed. For the purposes of these exceptions, these definitions shall apply:

(i) *Deed* shall mean a warranty deed, or its equivalent, which conveys title free and clear of liens and encumbrances.

(ii) *Assurance of Title Agreement* shall mean a legal arrangement whereby the purchaser is guaranteed a deed upon payment of no more than the full purchase price of the lot (*e.g.* subdivision trust). In addition to a copy of any Assurance of Title Agreement, the Director may require additional documentation such as an attorney's opinion letter to assure that the purchaser's title is fully protected.

(iii) *Date of contract* shall mean the date on which the contract or agreement is signed by the purchaser.

(iv) *Escrow or trust account as to down payments and deposits* shall mean an account, established in accordance with local real estate laws or regulations, which assures the return to the purchaser of any monies paid in the event title is not delivered to the purchaser in accordance with the terms of the contract.

(3) The exceptions are:

(i) The aggregate sales price of all lots offered pursuant to a common promotional plan equals $500,000.00 or less; or

(ii) Each of the following conditions of paragraphs (e)(3)(ii)(A) and (B) of this section are met, plus the conditions of one of paragraphs (e)(3)(ii)(C), (D), or (E) of this section:

(A) Down payments and deposits are held in an escrow or trust account.

(B) The contract provides for delivery of a deed which conveys title free of any mortgage or lien within 180 days of the signing of the contract. (In lieu of delivery of a deed, the developer may submit to ILSRP an Assurance of Title Agreement.)

(C) The aggregate sales prices of all lots offered pursuant to a common promotional plan is at least $500,000 but less than $1,500,000.

(D) All facilities, utilities and amenities proposed by the developer in the Property Report or sales contract have been completed so that the lots in the Statement of Record are immediately usable for the purpose for which they are sold.

(E) (*1*) The developer is contractually obligated to the purchaser to complete all facilities, utilities and amenities proposed by the developer in the Property Report and sales contract so that all lots included in the Statement of Record will be usable for the purpose for which they are sold by the dates set out in the Property Report, and;

(*2*) The developer has made financial arrangements, such as the posting of surety bonds (corporate bonds or individual notes or bonds are not acceptable), irrevocable letters of credit or the establishment of escrow or trust accounts, which assure completion of all facilities, utilities and amenities proposed by the developer in the Property Report or contract.

(f) *Newly-formed entity*. If the developer is newly formed or has not had any significant operating experience, an audited or unaudited balance sheet and statements of receipts and disbursements of funds may be submitted.

(g) *Use of parent company statements*. (1) If the developer is a subsidiary company and does not have audited financial statements, the Director may permit the use of the audited and certified statements of the parent company: *Provided*, That those statements are accompanied by an unconditional guaranty that the parent shall perform and fulfill the obligations of the subsidiary. If this procedure is adopted, the developer shall submit the following:

(i) The audited and certified financial statements of the parent company, together with interim statements if necessary, which comply with §1010.212(c).

(ii) A properly executed guaranty in a form acceptable to the Director.

(2) In cases described in paragraph (g)(1) of this section, the disclosure information required in §1010.112 shall be appropriately amended to reference the parent company and not the developer and must include a statement to the effect that the developer's parent company (insert name) has entered into an unconditional guaranty to perform and fulfill the obligations of the developer.

(h) *Opinions*. If the accountant qualifies or disclaims his opinion, the Director may accept the statements and require such additional disclosure as the

Director deems necessary in the public interest or for the protection of purchasers.

(i) *Copies for prospective purchasers.* Copies of the financial statements filed with the Statement of Record shall be made available to prospective purchasers upon request. A supply of the latest submitted statements shall be maintained at whatever place, or places, as is necessary to allow immediate delivery upon request by a prospective purchaser. These statements shall contain financial information only and shall not include any promotional material such as that usually set forth in annual reports.

(j) *Change from audited to unaudited statements.* (1) Developers who file audited statements must continue with audited statements throughout the duration of the registration unless, at a later date, the developer submits amendments which demonstrate to the satisfaction of the Director that it then qualifies for an exception from audited statements under paragraph (e)(3)(ii) of this section. For purposes of paragraph (e)(3)(ii)(C) of this section, the Director will consider the aggregate sales prices of only the lots yet to be sold, and may consider whether any additions to the subdivisions or reacquisitions of lots already sold would be likely to cause the dollar limits to be exceeded.

(i) The aggregate sales prices of the lots yet to be sold in the subdivision has been reduced to less than $1,500,000.00, and that it will not exceed this amount through further additions to the subdivision, or through the reacquisition of lots already sold, and;

(ii) The sales contract provides for delivery of a deed within 120 days of the date of the contract which conveys title free and clear of any mortgage or lien or the developer files an Assurance of Title Agreement with ILSRP, and;

(iii) Any down payments or deposits are held in an escrow or trust account, or;

(iv) The developer then qualifies for exception (e)(3)(iii) or (iv) of this section.

(2) The Director may allow a developer, who has made sales prior to registration, to submit unaudited statements under the provisions of paragraph (j)(1)(i) of this section. The developer must demonstrate to the satisfaction of the Director that the acceptance of unaudited statements would not be a detriment to the public interest or to the protection of purchasers.

§ 1010.214 Recreational facilities.

(a) Submit a synopsis of the proposed plans and estimated cost of any proposed or partially constructed recreational facility disclosed in § 1010.114. This item should include the general dimensions and a brief description of the facility but it should not include blueprints or similar technical materials.

(b) Submit a copy of any bond or escrow arrangements to assure completion of the recreational facilities disclosed in § 1010.114 which are not structurally complete.

(c) Submit a copy of the lease for any leased recreational facility.

§ 1010.215 Subdivision characteristics and climate.

(a) Submit *two* copies of a current geological survey topographic map, or maps, of the largest scale available from the U.S. Geological Survey with an outline of the entire subdivision and the area included in this Statement of Record clearly indicated. Photo copies made by the developer are not acceptable. Do not shade the areas on the maps which have been outlined.

(b) If drainage facilities are proposed but not yet completed, submit a synopsis of the developer's proposed plans that includes a description of the system of collecting surface waters; a description of the steps to be taken to control erosion and sedimentation and the estimated cost of the drainage facilities.

(c) Submit copies of any bonds, escrow or trust accounts or other financial assurance of completion of the drainage facilities.

(d) State whether the jurisdiction in which the subdivision is located has a system for rating the land for fire hazards.

§ 1010.216 Additional information.

(a) *Property Owners' Association.* (1) If the association has been formed as a

legal entity, submit a copy of the articles of association, bylaws or similar documents, and a copy of the charter or certificate of incorporation.

(2) If the developer exercises any control over the association, state whether any contracts have been executed between the association and the developer or any affiliate or principal of the developer. If there have been, briefly summarize the terms of the contracts, their purpose, their duration and the method and rate of payment required by the contract. State whether the association may modify or terminate the contracts after the owners assume control of the association.

(3) State whether there is any agreement which would require the association to reimburse the developer, its affiliates or successors for any attorney's fees or costs arising from an action brought against them by the association or individual property owners regardless of the outcome of the action.

(4) If the answer to paragraph (a)(2) or (a)(3) of this section is in the affirmative, disclosure may be required in §1010.116(a) at the discretion of the Director.

(5) Submit a copy of any membership agreement or similar document.

(b) *Price range, type of sales and marketing.* (1) State the price range of lots in the subdivision.

(2) State the type of sales to be made, *i.e.,* contract for deed, cash, deed with security instrument, etc.

(3) Describe the methods of advertising and marketing to be used for the subdivision. The description should include, but need not be limited to, information on such matters as to:

(i) Whether the developer will employ his own sales force or will contract with an outside group;

(ii) Whether wide area telephone solicitation will be employed;

(iii) Whether presentations will be made away from the immediate vicinity of the subdivision and/or if prospective purchasers will be furnished transportation from distant cities to the subdivision;

(iv) Whether mass mailing techniques will be used and gifts offered to those who respond.

(4) For any subdivision that meets any of the criteria in paragraphs (b)(4)(i) through (iii) of this section, submit a copy of any advertising or promotional material that is, or has been, used for the subdivision. Amendments to reflect changes in advertising or promotional material need be filed only when there is a material change related to one of the above factors. Depending upon the content of the material submitted, the Director may require additional warnings in the Property Report portion. This requirement applies to any subdivision that:

(i) Mentions or refers to recreational facilities which are not disclosed in §1010.114, or;

(ii) Promotes the sale of lots based on the investment potential or expected profits, or;

(iii) Contains information which is in conflict with that disclosed in this Statement of Record.

(c) *Violations and litigation.* (1) Submit a copy of the complaint(s), the answer(s) and the decision(s) for any litigation listed in §1010.116(c).

(2) If it is indicated in §1010.116(c) that the developer or any of the parties involved in the subdivision are, or have been, the subject of any bankruptcy proceedings, furnish a copy of the schedules of liabilities and assets (or a recap of those schedules); the petition number; the date of the filing of the petition; names and addresses of the petitioners, trustee and counsel; the name and location of the court where the proceedings took place and the status or disposition of the petition. Explain, briefly, the cause of the action.

(3) Furnish a copy of any orders issued in connection with any violations listed in §1010.116(c).

(d) *Resale or exchange program.* (1) If it is stated in §1010.116(d)(3) that there is an exchange program which provides sufficient lots to satisfy all requests for exchange, describe the method used to determine the number of lots required; state whether these lots have been reserved or set aside; whether additional lots will be provided if the lots available for exchange are exhausted and the source of any additional lots.

(e) *Unusual situations*—(1) *Foreign subdivisions.* If the subdivision is located outside the several States, the District of Columbia, the Commonwealth of

Puerto Rico or the territories or possession of the United States, the Statement of Record shall be submitted in the English language and all supporting documents, including copies of any laws which restrict the ownership of land by aliens, shall be submitted in their original language and shall be accompanied by a translation into English.

§ 1010.219 Affirmation.

The affirmation set forth in section XXVIII of the appendix to this part: Affirmation of Senior Executive Officer shall be executed by the senior executive officer or a duly authorized agent:

§ 1010.310 Annual report of activity.

(a) As an integral part of the Statement of Record, the developer shall file with the Director an Annual Report of Activity on any initial or consolidated registration not under suspension. For this purpose, only one Annual Report of Activity will be expected for subdivisions on which developers have filed consolidations. For registrations certified by a state as provided for in § 1010.500, a developer need file only one Annual Report of Activity for any registration for which the ILSRP number is the same (alphabetic designators indicate that the registration has been treated as a consolidation).

(b) The report shall be submitted within 30 days of the annual anniversary of the effective date of the initial Statement of Record.

(c) The report shall contain the following information:

(1) Subdivision name and address.

(2) Developer's name, address and telephone number.

(3) Agent's name, address and telephone number.

(4) Interstate Land Sales Registration number.

(5) The date on which the initial filing first became effective.

(6) The number of registered lots, parcels or units which are unsold as of the date on which the report is due.

(7) One of the following:

(i) A statement that the developer is still engaged in land sales activity at the subject subdivision and that there have been no changes in material fact since the last effective date was issued which would require an amendment to the Statement of Record; or

(ii) A statement that the developer is still engaged in land sales activity at the subject subdivision, that material changes have occurred since the last effective date, and that corrected pages to the Property Report portion or Additional Information and Documentation portion of the Statement accompany the report; or

(iii) A statement that the developer is no longer engaged in land sales activity at the subject subdivision, together with the reason the developer is no longer selling (*e.g.*, all lots sold to the public or the remaining lots sold to another developer, along with the date of sale and the new developer's name, address and telephone number). A request may be made that the Statement of Record be voluntarily suspended. The request should be submitted in duplicate and will become effective upon the counter-signature of the Director (or an authorized Designee) with the duplicate being returned to the developer.

(8) The report shall be dated and shall be signed by the senior executive officer of the developer on a signature line above his typed name and title. The senior executive officer's acknowledgement shall be attested to or certified by a notary public or similar public official authorized to attest or certify acknowledgements in the jurisdiction in which the report is executed.

(d) If the report indicates that there are 101 or more registered lots, parcels or units remaining for sale, the report shall be accompanied by an amendment fee in the amount and form prescribed in § 1010.35.

(e) Failure to submit the report when due shall be grounds for an action to suspend the effective Statement of Record.

Subpart C—Certification of Substantially Equivalent State Law

§ 1010.500 General.

(a) This subpart establishes procedures and criteria for certifying state land sale or lease disclosure programs and State state land development standards programs. The purpose of

State Certification is to lessen the administrative burden on the individual developer, arising where there are duplicative state and federal Federal registration and disclosure requirements, without affecting the level of protection given to the individual purchaser or lessee. If the Director determines that a state has adopted and is effectively administering a program that gives purchasers and lessees the same level of protection given to them by the Interstate Land Sales Registration Program, then the Director shall certify that state. Developers who accomplish an effective registration with a state in which the land is located after the Director has certified the state may satisfy the registration requirements of the Director by filing with the Director materials designated by agreement with certified states in lieu of the federal Federal Statement of Record and Property Report.

(b) A state that is certified by the Director shall be known as the situs certified state for all land located within its borders.

(c) After a developer is effectively registered with the Director through a certified state, the Director has the same authority over that developer as the Director has over developers who file directly with the Director. This includes the authority to subpoena information and to examine, evaluate and suspend a developer's registration under sections 1407(d) and (e) of the Act and §1010.45(b)(1) and (b)(2) of these regulations.

(d) The prohibitions against the use of the Property Report contained in §1010.29 apply to state disclosure materials and substantive development standards. In addition, for purposes of this paragraph, references made to the Director, ILSRP and the Bureau in §1010.29 will include a reference to the equivalent state officer or agency.

(e) The Purchaser's Revocation Rights, Sales Practices and Standards rules contained in part 1011 of these regulations apply to developers who register with the Director through certified States. All of the rules in part 1011 apply, excepting the disclaimer statement in §1011.50(a) which is modified to read as follows: ''Obtain the Property Report or its equivalent, required by Federal and State law and read it before signing anything. No Federal or State agency has judged the merits or value, if any, of this property.''

(f) Developers are obliged to pay filing fees as set forth in §1010.35 of this part.

§1010.503 Notice of certification.

(a) If the Director determines that a state qualifies for certification under §1010.501(a) or (b), the Director shall so notify the state in writing. The state will be effectively certified under the section and as of the date specified in the notice.

(b) If the Director determines that a state does not meet the standards for certification, the Director shall so notify the state in writing. The notice will specify particular changes in state law, regulations or administration that are needed to obtain certification. The Director shall not be bound in advance to certify a state that makes the suggested changes if other deficiencies become apparent at a later time.

(c) The Director's final determination to accept or reject a State's Application for Certification of Land Sales Program shall be published in the FEDERAL REGISTER.

(d) A state's certification will remain in effect until it is voluntarily suspended by the state or withdrawn by the Director. A state can voluntarily suspend its certification by notifying the Director in writing. The suspension will take effect as of the date and time specified in the notice to the Director, or upon receipt by the Director if no date is specified. The Director may withdraw certification as provided in §1010.505.

§1010.504 Cooperation among certified states and between certified states and the Director.

(a) By filing an Application for Certification of State Land Sales Program pursuant to §1010.502, a state agrees that, if it is certified by the Director, it will:

(1) Accept for filing and allow to be distributed as the sole disclosure document, a disclosure document currently in effect in the situs certified state. Only those documents filed with the

situs state after certification by the Director must automatically be accepted by other certified states;

(2) Certify copies of all disclosure documents, amendments and consolidations filed with it by developers of land located within its borders for and as needed by developers required to submit certified copies to the Director and all other certified states. The certification shall indicate whether the documents are currently in effect. The certification should be in the format set forth in section XXIX of the appendix to this part: Form for Certification for Disclosure Documents.

(3) Assist and cooperate with the Director and other certified states by requiring that developers of land within its borders amend disclosure documents if any change occurs in any representation of material fact required to be stated in the disclosure documents, including a change resulting from the developer's compliance with the requirements of the law in another certified state. The state shall require developers to send certified copies of the amended documents to the Director and requesting certified states. All amendments to such materials, which reflect changes in material facts regarding the subdivision, shall be submitted to the situs certified state authorities within 15 days of the date on which the developer knows, or should have known, of such change. Certified copies of the disclosure documents shall be submitted by the developer to the Director and the other certified states within 15 days after it becomes effective under the situs certified state laws.

(4) Continue to effectively operate its Land Sales Program as that Program is described in the Application for Certification and as it was certified by the Director.

(5) Assist and cooperate with the Director by monitoring the sales practices of developers registered with it directly or through another certified state, and by reporting to the Director any violations of the Act, including but not limited to the required contract provisions, revocation rights and antifraud provisions of 15 U.S.C. 1703, or the regulations.

(b) A state required to accept the disclosure documents of another situs certified state pursuant to paragraph (a)(1) of this section, may, in its discretion, require the developer to furnish it with copies certified pursuant to paragraph (a)(2) of this section.

(c) No state shall be prevented from establishing substantive or disclosure requirements which exceed the federal Federal standard provided that such requirements are not in conflict with the Act or these regulations. For example, a certified state may impose additional disclosure requirements on developers of land located within its borders but may not impose additional disclosure requirements on developers whose disclosure documents it is required to accept pursuant to paragraph (a)(1) of this section. However, a certified state may impose additional nondisclosure requirements on out of state developers even though the developer is registered in the certified state in which the land is located.

(d) After a developer is effectively registered with a certified state through a situs certified state, either or both certified states may exercise full enforcement authorities and powers over that developer according to applicable law and regulations.

(e) The Director shall cooperate with the certified states by offering a forum for nonbinding arbitration of disputes between two or more certified States arising out of the State Certification Program.

§ 1010.505 Withdrawal of State state certification.

(a) The Director shall periodically review the laws, regulations and administration thereof, of a certified state. If the Director finds that, taken as a whole, the laws, regulations or administration thereof, no longer meet the requirements of subpart C, then the Director may issue a notice to withdraw the certification of that state.

(b) The notice of proceedings to withdraw a state's certification will be issued to the state by the Director pursuant to §1012.236. The Director may, after notice and after an opportunity for a hearing, pursuant to §1012.237, issue an order withdrawing certification. In the event that a withdrawal

order is issued, the order shall remain in effect until the state has amended its laws, regulations or the administration thereof or has otherwise complied with the requirements of the order. When the state has complied with the requirements of the order, the Director shall so declare and the withdrawal order shall cease to be effective.

(c) Withdrawal orders issued pursuant to this subsection will be effective as of the date the order is received by the state. The withdrawal order shall be published in the FEDERAL REGISTER.

(d) The rules of 12 CFR part 1080, unless otherwise specified in 12 CFR part 1012, subpart D, will generally apply to hearings on withdrawal of a state's certification.

§ 1010.506 State/Federal filing requirements.

(a)(1) If the Director has certified a state under § 1010.501, the Director shall accept for filing disclosure materials or other acceptable documents which have been approved by the certified state within which the subdivision is located. Only those filings made by the developer with the state after the state was certified by the Director shall be automatically accepted by the Director.

(2) Retroactive application of the effectiveness of state's certification to a specified date may be granted on a state-by-state basis, where the Director determines that retroactive application will not result in automatic federal Federal registration of any state filing that has not met the requirements of the certified state laws.

(b) For a developer to be registered with the Director, the developer shall file with the Director a state certified copy of the Property Report or its equivalent, and any other documentation as stipulated in the Director's Notice of Certification to the state.

(c) The documents and materials filed under paragraph (b) of this section will be automatically effective as the Federal Statement of Record and Property Report after these materials and the proper filing fee have been received by the Director.

(d) The Director has authority pursuant to § 1010.45(b)(1) and (b)(2) to suspend individual filings which fail to meet the requirements of the certified state's law or regulations or the standards in the certification agreement whether or not the state agency has initiated a similar action.

(e)(1) State accepted materials filed with the Director pursuant to this section must be amended to reflect any amendment to such materials made effective by the state. All amendments to such materials must be submitted to the Director within 15 days after becoming effective under the applicable state laws. Amendments are automatically effective upon their receipt by the Director and the provisions of § 1010.45(b)(1) and (2) apply to amendments filed under this section.

(2) Amendments shall include or be accompanied by:

(i) A letter from the developer giving a narrative statement fully explaining the purpose and significance of the amendment and referring to that section and page of the material which is being amended, and;

(ii) A signed state acceptance certification substantially the same as that required by § 1010.504(a)(2).

(f) If a certified state suspends the registration of a particular subdivision for any reason, the subdivision's federal Federal registration with the Director shall be automatically suspended as a result of the state action. No action need be taken by the Director to effect the suspension.

(g) A state is certified only with regard to land located within the state borders. The Director is not required to accept filings which have been accepted by a certified state if the land which is the subject of the filing is not located within that certified state. For example, if State A is certified by the Director and State B is not, the Director is not required to accept filings from State B simply because State A accepts filings from State B.

§ 1010.507 Effect of suspension or withdrawal of certification granted under § 1010.501(a): Full disclosure requirement.

(a) If a state certified under § 1010.501(a) suspends its own certification or has its certification withdrawn under § 1010.505, the Federal disclosure materials accepted and made

effective by the Director, pursuant to §1010.506, prior to the suspension or withdrawal shall remain in effect unless otherwise suspended by the Director.

(b) In the event that there is a change in a material fact with regard to a subdivision that remains registered under the provisions of paragraph (a) of this section, the developer shall file a new registration with the Director meeting the requirements of the then applicable Federal registration regulations. Modifications of the Federal format may be used as specified by the Director.

§1010.508 Effect of suspension of certification granted under §1010.501(b): Sufficient protection requirement.

(a) If a state certified under §1010.501(b) suspends its own certification or has its certification withdrawn under §1010.505, the effectiveness of the Federal disclosure materials accepted and made effective by the Director, pursuant to §1010.506, prior to the suspension or withdrawal shall terminate ninety (90) days after the notice of withdrawal order is published in the FEDERAL REGISTER as provided in §1010.505(c).

(b) At the end of the ninety day period, or during the ninety day period in the event that there is a change in material fact with regard to a subdivision that remains registered under the provisions of paragraph (a) of this section, the developer shall file a new registration with the Director meeting the requirements of the then applicable Federal registration regulations. Modifications of the Federal format may be used as specified by the Director.

§1010.552 Previously accepted state filings.

(a) Materials filed with a state and accepted by the HUD Secretary as a Statement of Record prior to January 1, 1981, pursuant to 24 CFR 1010.52 through 1010.59 (as published in the FEDERAL REGISTER on April 10, 1979) may continue in effect. However, developers must comply with the applicable amendments to the Federal Act and the regulations thereunder. In particular, see §§1010.558 and 1010.559, which require that the Property Report and contracts or agreements contain notice of purchaser's revocation rights. In addition see §1011.15(f), which provides that it is unlawful to make any representations with regard to the developer's obligation to provide or complete roads, water, sewers, gas, electrical facilities or recreational amenities, unless the developer is obligated to do so in the contract.

(b) If any such filing becomes inactive or suspended under the laws of the state, the registration with the Director shall be ineffective from that time.

(c) Such Statement of Record may be suspended pursuant to §1010.45.

(d) The Director may refuse to accept any particular filing under this section when it is determined that acceptance is not in the public interest.

(e) The Director may require such changes, additional information, documents or certification as the Director determines to be reasonably necessary or appropriate in the public interest.

§1010.556 Previously accepted state filings—amendments and consolidations.

(a) *Amendments*—(1) *General requirements.* State accepted materials, filed with the Director pursuant to §1010.552, shall be amended to reflect any amendment to such materials made effective by the state or any change of a material fact regarding the subdivision. All amendments to such materials, which reflect changes in material facts regarding the subdivision, shall be submitted to the state authorities within 15 days of the date on which the developer knows, or should have known, of such change and to the Director within 15 days after it becomes effective under the applicable State laws. However, such amendment shall not be effective as a Federal registration until the Director has determined that the amendment meets all applicable requirements of these regulations.

(2) Amendments shall include or be accompanied by:

(i) A letter from the developer giving a narrative statement fully explaining the purpose and significance of the amendment and referring to that section and page of the Statement of Record which is being amended, and;

(ii) All amended pages of the state accepted materials filed with the Director. These pages shall be copied together with their amendments. Each such page shall have its date of preparation in the lower right hand corner, and;

(iii) A signed state acceptance certification, and;

(iv) The appropriate fees as indicated in § 1010.35.

(b) *Consolidations*—(1) *When consolidations allowed*. If lots are to be registered pursuant to § 1010.552 which are in the same common promotional plan with other lots already registered with the Director, then new consolidated state accepted materials including such lots may be filed with the Director as a Statement of Record following the format of the previously accepted filing.

(2) Consolidated Statements of Record shall include or be accompanied by:

(i) State accepted consolidation materials which are also acceptable to the Director as a Statement of Record (state property report inclusive). These state accepted consolidation materials shall cover all lots previously registered in the common promotional plan except those deleted pursuant to other provisions in these regulations. These materials shall also include information and items required for state accepted materials filed as an initial registration Statement of Record, except that, supporting documentation in materials previously made effective by the Director for other lots in the subject common promotional plan may be included incorporated by reference into the new consolidation materials submitted as a Statement of Record. However, such documentation may be incorporated by reference included only if it is applicable to the new consolidated lots as well as to the previously registered lots.

(ii) A signed state acceptance certification.

(iii) The appropriate fees as indicated in § 1010.35.

(c) *Effective date; state filing*. The effective dates of state materials filed as amendments and consolidated Statements of Record shall be determined in accordance with the provisions of § 1010.21.

§ 1010.558 Previously accepted state filings—notice of revocation rights on property report cover page.

(a)(1) The cover page on Property Reports for filings made with the Director pursuant to § 1010.552 shall be prepared in accordance with § 1010.105 and shall include the paragraphs set forth in section XXX of the appendix to this part: Language to be Included on Property Report Cover Page.

(2) If the purchaser is entitled to a longer revocation period by operation of State law, that period becomes the Federal revocation period and the cover page must reflect the longer period, rather than the seven days.

(b)(1) If a deed is not delivered within 180 days of the signing of the contract or agreement of sale or unless certain provisions are included in the contract or agreement, the purchaser is entitled to cancel the contract within two years from the date of signing the contract or agreement.

(2) The deed must be a warranty deed, or where such a deed is not commonly used, a similar deed legally acceptable in the jurisdiction where the lot is located. The deed must be free and clear of liens and encumbrances.

(3) The contract provisions are:

(i) A legally sufficient and recordable lot description, and;

(ii) A provision that the seller will give the purchaser written notification of purchaser's default or breach of contract and the opportunity to remedy the default or breach within 20 days of the notice; and

(iii) A provision that, if the purchaser loses rights and interest in the lot because of the purchaser's default or breach of contract after 15 percent of the purchase price, exclusive of interest, has been paid, the seller shall refund to the purchaser any amount which remains from the payments made after subtracting 15 percent of the purchase price, exclusive of interest, or the amount of the seller's actual damages, whichever is the greater.

(4) If a deed is not delivered within 180 days of the signing of the contract or if the necessary provisions are not included in the contract, the following statement shall be used in place of any other rescission language: ''Under Federal law you may cancel your contract

or agreement of sale any time within two years from the date of signing.''

§ 1010.559 Previously accepted state filings—notice of revocation rights in contracts and agreements.

(a)(1) All contracts or agreements, including promissory notes used in sale of lots for filings made with the Director pursuant to § 1010.552, must contain the language set forth in section XXXI of the appendix to this part: Notice of Revocation Rights in boldface type (which must be distinguished from the type used for the rest of the contract) on the face or signature page above all signatures:

(2) If the purchaser is entitled to a longer revocation period by operation of State law or the Act, that period becomes the Federal revocation period and the contract or agreement must reflect the longer period, rather than the seven days. The language shall be consistent with that shown on the Cover Page (see § 1010.558).

(b) The above revocation provisions may not be limited or qualified in the contract or other document by requiring a specific type of notice or by requiring that notice be given at a specified place.

APPENDIX A TO PART 1010—STANDARD AND MODEL FORMS AND CLAUSES

I. *Forms for Developer's Affirmation for Land Sale*—§ 1010.13(a)(9)

Developer's Name _____
Developer's Address _____
Purchaser's Name(s) _____
Purchaser's Address(es) (including county) _____
Name of Subdivision _____
Legal Description of Lot(s) Purchased _____

I hereby affirm that all of the requirements of the MSA exemption as set forth in 15 U.S.C. 1702(b)(8) and 12 CFR 1010.13 have been met in the sale or lease of the lot(s) described above.

I also affirm that I submit to the jurisdiction of the Interstate Land Sales Full Disclosure Act with regard to the sale or lease cited above.

(Date) _____
(Signature of Developer or Authorized Agent) _____
(Title) _____

II. *Language Notifying Buyer of Option to Cancel Contract*—§ 1010.15(b)(5)(i)

You have the option to cancel your contract or agreement of sale by notice to the seller until midnight of the seventh day following the date of signing of the contract or agreement.

If you did not receive a Lot Information Statement prepared pursuant to the rules and regulations of the Bureau of Consumer Financial Protection in advance of your signing the contract or agreement, the contract or agreement of sale may be cancelled at your option for two years from the date of signing.

III. *Sample Lot Information Statement and Sample Receipt*—§ 1010.15(b)(11)

Sample Format

(Use of the following headings and first paragraph are mandatory.)

Lot Information Statement

Important: Read Carefully Before Signing Anything

The developer has obtained a regulatory exemption from registration under the Interstate Land Sales Full Disclosure Act. One requirement of that exemption is that you must receive this Statement prior to the time you sign an agreement (contract) to purchase a lot.

Right To Cancel

(Under this heading the developer is to state the specific rescission rights provided for in the contract pursuant to 1010.15(b)(5)(i)).

Risk of Buying Land

(Under this heading the developer is to list the following information:)

There are certain risks in purchasing real estate that you should be aware of. The following are some of those risks:

The future value of land is uncertain and dependent upon many factors. Do not expect all land to automatically increase in value.

Any value which your lot may have will be affected if roads, utilities and/or amenities cannot be completed or maintained.

Any development will likely have some impact on the surrounding environment. Development which adversely affects the environment may cause governmental agencies to impose restriction on the use of the land.

In the purchase of real estate, many technical requirements must be met to assure that you receive proper title and that you will be able to use the land for its intended purpose. Since this purchase involves a major expenditure of money, it is recommended that you seek professional advice before you obligate yourself.

If adequate provisions have not been made for maintenance of the roads or if the land is not served by publicly maintained roads, you

may have to maintain the roads at your expense.

If the land is not served by a central sewage system and/or water system, you should contact the local authorities to determine whether a permit will be given for an on-site sewage disposal system and/or well and whether there is an adequate supply of water. You should also become familiar with the requirements for, and the cost of, obtaining electrical service to the lot.

Developer Information

(Under this heading the developer is to list the following information:)

Developer's Name: _____
Address: _____
Telephone Number: _____

Lot Information

(Under this heading the developer is to list the following information:)

Lot Location: _____

(Enter a statement disclosing all liens, reservations, taxes, assessments, easements and restrictions applicable to the lot. A copy of the restrictions may be attached in lieu of recitation.)

Suppliers of Utilities and Issuers of Permits

(Under this heading the developer is to list the name, address and phone number of the appropriate governmental agency or agencies, if any, that will provide information on permits or other requirements for water, sewer and electrical installations. The information will also contain the name, address and telephone number of the suppliers of such utilities which can provide information to the purchaser on costs and availability of such services. A chart similar to the one below may be used to supply this information).

Listed below are contact points for determining permit requirements, if any, and to obtain information on approximate costs and availability for the listed services:

	Name, address and telephone number of	
	Governmental agency	Supplier
Water Sewer Electricity		

If misrepresentations are made in the sale of this lot to you, you may have rights under the Interstate Land Sales Full Disclosure Act. If you have evidence of any scheme, artifice or device used to defraud you, you may wish to contact: Office of Nonbank Supervision, Interstate Land Sales Registration Program, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006.

(The Receipt is to be in the following form:)

Sample Receipt for Lot Information Statement

Purchaser (print or type): _____
Date: _____
Signature of purchaser: _____
_____
Street Address: _____
City: _____
State: _____
Zip: _____
Name of salesperson (print or type): _____
Signature of salesperson: _____

IV. *Request for Multiple Site Subdivision Exemption*—§ 1010.15(c)(1)

Request for Multiple Site Subdivision Exemption

Developer:
Name: _____
Address: _____
Telephone No.: _____

Agent:
Name: _____
Address: _____
Telephone No.: _____

(Insert a general description of the developer's method of operation.)

I affirm that I am, or will be, the developer of the property and/or method of operation described above.

I affirm that the lots in said property will be sold in compliance with all of the requirements of 12 CFR 1010.15.

I further affirm that the statements contained in all documents submitted with this request for an Exemption Order are true and complete.

Date: _____
Signature: _____
Title: _____

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than 5 years or both.

V. *Request for Regulatory Exemption Order*—§ 1010.16(c)

REQUEST FOR EXEMPTION ORDER

Subdivision _____
Location (including county) _____
Developer _____
Address _____
Authorized Agent or President of Developer

Address
Number of Lots Subject to Exemption Request
Description of Lots (list lot and block number or other identifying designation)

I affirm that I am the developer or owner of the property described above or will be the developer or owner at the time the lots are offered for sale to the public, or that I am the agent authorized by the developer or owner to complete this statement.I further affirm that the statements contained in all documents submitted with the request for an exemption order are true and complete.

(Date)

(Signature of Developer, Owner or Authorized Agent)

(Title)

WARNING: Section 15 U.S.C. 1717 provides: ''Any person who willfully violates any of the provisions of this title or of the rules and regulations or any person who willfully, in a Statement of Record filed under, or in a Property Report issued pursuant to this title, makes any untrue statement of a material fact shall upon conviction be fined not more than $10,000.00 or imprisoned not more than 5 years, or both.''

VI. *Developer's Affirmation for Advisory Opinion*—§1010.17(b)(3)

Developer's Affirmation

Name of Subdivision
Location (Including County and State)
Name of Developer
Address of Developer
Name of Agent
Address of Agent
Number of Lots in Subdivision
Number of Acres in Subdivision

I affirm that I am the developer or owner of the property described above or will be the developer or owner at the time the lots are offered for sale to the public, or that I am the agent authorized by the developer or owner to complete this statement.I further affirm that the statements contained in all documents submitted with the request for an Advisory Opinion are true and complete.

(Date)

(Signature)

(Title);

WARNING: 15 U.S.C. 1717 provides: ''Any person who willfully violates any of the provisions of this title or of the rules and regulations or any person who willfully, in a Statement of Record filed under, or in a Property Report issued pursuant to this title, makes any untrue statement of a material fact shall upon conviction be fined not more than $10,000.00 or imprisoned not more than 5 years, or both.''

VII. *Initial and Consolidated Registration Fee Schedule*—§1010.35(b)

Number of lots	Fees
200 or fewer lots	$800
201 or more lots	1,000

VIII. *Property Report for Statement of Record*—§1010.100(b)

Property Report
Heading and Section Number

Cover Sheet 1010.105
Table of Contents 1010.106
Risks of Buying Land, Warnings 1010.107
General Information 1010.108
Title and Land Use 1010.109
- (a) General Instructions
- (b) Method of Sale
- (c) Encumbrances, Mortgages and Liens
- (d) Recording the Contract and Deed
- (e) Payments
- (f) Restrictions
- (g) Plats, Zoning, Surveying, Permits, Environment

Roads 1010.110
Utilities 1010.111
- (a) Water
- (b) Sewer
- (c) Electricity
- (d) Telephone
- (e) Fuel or other Energy Source

Financial Information 1010.112
Local Services 1010.113
Recreational Facilities 1010.114
Subdivision Characteristics and Climate 1010.115
- (a) General Topography
- (b) Water Coverage
- (c) Drainage and Fill
- (d) Flood Plain
- (e) Flooding and Soil Erosion
- (f) Nuisances
- (g) Hazards
- (h) Climate
- (i) Occupancy

Additional Information 1010.116

(a) Property Owners' Association
(b) Taxes
(c) Violations and Litigation
(d) Resale or Exchange Program
(e) Unusual Situations
1. Leases
2. Foreign Subdivision
3. Time Sharing
4. Membership
(f) Equal Opportunity in Lot Sales
(g) Listing of lots
Cost Sheet 1010.117
Receipt, Agent Certification and Cancellation Page 1010.118

ADDITIONAL INFORMATION AND DOCUMENTATION

General Information 1010.208
Title and Land Use 1010.209
Roads 1010.210
Utilities 1010.211
Financial Information 1010.212
Recreational Facilities 1010.214
Subdivision Characteristics .. 1010.215
Additional Information 1010.216
Affirmation 1010.219

The Bureau's OMB control number for this information collection is: 3170–0012.

IX. *Sample Page for Statement of Record*—1010.102(e)

SAMPLE PAGE

ROADS

Here we discuss the roads that lead to the subdivision, those within the subdivision and the location of nearby communities.

ACCESS TO THE SUBDIVISION.

County road #43 leads to the subdivision. It has two lanes and the width of the wearing surface is 22 feet. It's paved with a macadam surface.

This road is maintained by Bottineau County with County funds. No improvements are planned at this time.

ACCESS WITHIN THE SUBDIVISION.

The roads within the subdivision will be located on rights of way dedicated to the public.

We are responsible for constructing the interior roads. There will be no additional cost to you for this construction.

WE HAVE NOT SET ASIDE ANY FUNDS IN AN ESCROW OR TRUST ACCOUNT OR MADE ANY OTHER FINANCIAL ARRANGEMENTS TO ASSURE COMPLETION OF THE ROADS, SO THERE IS NO ASSURANCE WE WILL BE ABLE TO COMPLETE THE ROADS.

At present, the roads are under construction and do not provide access to the lots in Units 2 and 3 during wet weather. The succeeding chart describes their present condition and estimated completion dates.

UUnit	Estimated starting date (month and year)	Percentage of construction now complete	Estimated completion date (month and year)	Present surface	Final surface
1	February 2010	50	December 2010	Gravel	Asphalt.
2	August 2010	0	June 2011	Dirt	Do.
3	April 2011	0	October 2011	None	Do.

X. *Language for Warning on Cover Page of Property Report*—§1010.105(c)

This Report is prepared and issued by the developer of this subdivision. It is *not* prepared or issued by the Federal Government.

Federal law requires that you receive this Report prior to your signing a contract or agreement to buy or lease a lot in this subdivision. However, NO FEDERAL AGENCY HAS JUDGED THE MERITS OR VALUE, IF ANY, OF THIS PROPERTY.

If you received this Report prior to signing a contract or agreement, you may cancel your contract or agreement by giving notice to the seller any time before midnight of the seventh day following the signing of the contract or agreement.

If you did not receive this Report before you signed a contract or agreement, you may cancel the contract or agreement any time within two years from the date of signing.

Name of Subdivision _____
Name of Developer _____
Date of This Report _____

XI. *Sample Entry in Table of Contents for Statement of Record*—§1010.106(a)

Title and Land Use # Page #
Method of Sale
Encumbrances, Mortgages and Liens
Recording the Contract and Deed
Payments
Restrictions on the Use of Your Lot
Plat Maps, Zoning, Surveying, Permits and Environment

XII. *Required Language for Risks of Buying Land*—§1010.107(a)

(1) The future value of any land is uncertain and dependent upon many factors. DO NOT expect all land to increase in value.

(2) Any value which your lot may have will be affected if the roads, utilities and all proposed improvements are not completed. This paragraph may be omitted if all improvements have been completed or if no improvements are proposed.

(3) Resale of your lot may be difficult or impossible, since you may face the competition of our own sales program and local real estate brokers may not be interested in listing your lot.

(4) Any subdivision will have an impact on the surrounding environment. Whether or not the impact is adverse and the degree of impact, will depend on the location, size, planning and extent of development. Subdivisions which adversely affect the environment may cause governmental agencies to impose restrictions on the use of the land. Changes in plant and animal life, air and water quality and noise levels may affect your use and enjoyment of your lot and your ability to sell it.

(5) In the purchase of real estate, many technical requirements must be met to assure that you receive proper title. Since this purchase involves a major expenditure of money, it is recommended that you seek professional advice before you obligate yourself.

XIII. *Format for General Information*—§1010.108

''This Report covers ____ lots located in _____ County, (*State*). See Page ____ for a listing of these lots. It is estimated that this subdivision will eventually contain ____ lots.''

''The developer of this subdivision is:

_____
(Developer's Name)

_____
(Developer's Address)

_____
(Developer's telephone number)

''Answers to questions and information about this subdivision may be obtained by telephoning the developer at the number listed above.''

XIV. *Paragraphs to be included in the General Report—Title to the Property and Land Use*—§1010.109(a)(1)

''A person with legal title to property generally has the right to own, use and enjoy the property. A contract to buy a lot may give you possession but doesn't give you legal title. You won't have legal title until you receive a valid deed. A restriction or an encumbrance on your lot, or on the subdivision, could adversely affect your title.''

''Here we will discuss the sales contract you will sign and the deed you will receive. We will also provide you with information about any land use restrictions and encumbrances, mortgages, or liens affecting your lot and some important facts about payments, recording, and title insurance.''

XV. *Statement on Release Provisions*—§1010.109(c)(2)(i)(A)

''The release provisions for the (indicate all or particular lots) have not been recorded. Therefore, they may not be honored by subsequent holders of the mortgage. If they are not honored, you may not be able to obtain clear title to a lot covered by this mortgage until we have paid the mortgage in full, even if you have paid the full purchase price of the lot. If we should default on the mortgage prior to obtaining a release of your lot, you may lose your lot and all monies paid.''

XVI. *Warning for Release Provisions*—§1010.109(c)(2)(i)(C)(*1*)

''The (state type of encumbrance) on (indicate all or particular lots) in this subdivision does not contain any provisions for the release of an individual lot when the full purchase price of the lot has been paid. Therefore, if your lot is subject to this (state type of encumbrance), you may not be able to obtain clear title to your lot until we have paid the (state type of encumbrance) in full, even though you may have received a deed and paid the full purchase price of the lot. If we should default on the (state type of encumbrance) prior to obtaining a release, you may lose your lot and all monies paid.''

XVII. *Method and Purpose of Recording Warning*—§1010.109(d)(1)(iv)

''Unless your contract or deed is recorded you may lose your lot through the claims of subsequent purchasers or subsequent creditors of anyone having an interest in the land''.

XVIII. *Escrow Statement—Disclosure* §1010.109(e)(1)

''You may lose your (indicate deposit, down payment and/or installment payments) on your lot if we fail to deliver legal title to you as called for in the contract, because (they are/it is) not held in an escrow account which fully protects you.''

XIX. *Road Chart*—§1010.110(b)(3)

UUnit	Estimated starting date (month/year)	Percentage of construction now complete	Estimated completion date (month/year)	Present surface	Final surface

XX. *Nearby Communities Chart*—§ 1010.110(b)(6)

Nearby Communities ....
Population ....
Distance Over Paved Roads ....
Distance Over Unpaved Roads ....
Total.

XXI. *Water Chart Form*—§ 1010.111(a)(1)(ii)(B)

WATER

UUnit	Estimated starting date (month and year)	Percentage of construction now complete	Estimated service availability date (month and year)

XXII. *Comfort Station Chart*—§ 1010.111(b)(1)(ii)

Comfort Stations

Unit _____
Estimated Starting Date (month-year) _____
Percentage of Construction now complete __
Estimated Service Availability Date (month and year) _____

XXIII. *Sewer Chart*—§ 1010.111(b)(1)(iii)(B)

Sewer

Unit Estimated Starting Date (month/year)
Percentage of Construction now complete __
Estimated Service Availability Date (month/year) _____

XXIV. Electric Service Chart—§ 1010.111(c)(2)

ELECTRIC SERVICE

UUnit	Estimated starting date (month and year)	Percentage of construction complete	Estimated service availability date (month and year)

XXV. *Recreational Facility Chart*—§ 1010.114(b)

Facility	Percentage of construction now complete	Estimated date of start of construction (month/year)	Estimated date available for use (month/year)	Financial assurance of completion	Buyer's annual cost or assessments

XXVI. *Cost Sheet Format*—§ 1010.117(a)

Cost Sheet

In addition to the purchase price of your lot, there are other expenditures which must be made.

Listed below are the major costs. There may be other fees for use of the recreational facilities.

All costs are subject to change.

Sales Price

Cash Price of lot ..... $
Finance Charge ..... $
Total ..... $

Estimated one-time charges

1. Water connection fee/installation or private well. $
2. Sewer connection fee/installation of private on-site sewer system. $
3. Construction costs to extend electric and/or telephone services. $
4. Other (Identify) ..... $

..... $
Total of estimated sales price and one-time charges. $

Estimated monthly/annual charges, exclusive of utility use fees

1. Taxes—Average unimproved lot after sale to purchaser. $
2. Dues and assessments ..... $

The information contained in this Property Report is an accurate description of our subdivision and development plans.

Signature of Senior Executive Officer

XXVII. *Sample Receipt, Agent Certification and Cancellation Page*—§ 1010.118(a)

Receipt, Agent Certification and Cancellation Page purchaser receipt Important: Read Carefully

Name of subdivision
ILSRP number
Date of report

We must give you a copy of this Property Report and give you an opportunity to read it before you sign any contract or agreement. By signing this receipt, you acknowledge that you have received a copy of our Property Report.

Received by
Date
Street address
City
State
Zip

If any representations are made to you which are contrary to those in this Report, please notify the:

Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20006

Agent Certification

I certify that I have made no representations to the person(s) receiving this Property Report which are contrary to the information contained in this Property Report.

Lot
Block
Section
Name of salesperson
Signature
Date

Purchase Cancellation

If you are entitled to cancel your purchase contract, and wish to do so, you may cancel by personal notice, or in writing. If you cancel in person or by telephone, it is recommended that you immediately confirm the cancellation by certified mail. You may use the form below.

Name of subdivision
Date of contract

This will confirm that I/we wish to cancel our purchase contract.

Purchaser(s) signature
Date

XXVIII. *Affirmation of Senior Executive Officer*—§ 1010.219

I hereby affirm that I am the Senior Executive Officer of the developer of the lots herein described or will be the Senior Executive Officer of the developer at the time lots are offered for sale or lease to the public, or that I am the agent authorized by the Senior Executive Officer of such developer to complete this statement (if agent, submit written authorization to act as agent); and,

That the statements contained in this Statement of Record and any supplement hereto, together with any documents submitted herein, are full, true, complete, and correct; and,

That the developer is bound to carry out the promises and obligations set forth in this Statement of Record and Property Report or I have clearly stated who is or will be responsible; and

That the fees accompanying this submission are in the amount required by the rules and regulations of the Bureau of Consumer Financial Protection.

(Date)

(Signature)

(Corporate seal if applicable)

(Title)

WARNING: 15 U.S.C. 1717 provides: ''Any person who willfully violates any of the provisions of this title or of the rules and regulations or any person who willfully, in a Statement of Record filed under, or in a Property Report issued pursuant to this title, makes any untrue statement of a material fact shall upon conviction be fined not more than $10,000.00 or imprisoned not more than 5 years, or both.''

XXIX. *Form for Certification for Disclosure Documents*—§ 1010.504(a)(2)

The (indicate the State Department of Real Estate or other appropriate entity) has reviewed the attached materials and finds they are true copies of (1) the (indicate Property Report or other similar state accepted document or amendment to such document) for (indicate the name of the subdivision), made effective by the state of _____ on _____ (give date) and still in effect; and (2) the supporting documentation upon which such (indicate the document or amendment) is based.

Signature

XXX. *Language to be Included on Property Report Cover Page*—§ 1010.558(a)(1)

''If you received this Report prior to signing a contract or agreement, you may cancel your contract or agreement by giving notice to the seller anytime before midnight of the seventh day following the signing of the contract or agreement.

''If you did not receive this Report before you signed a contract or agreement, you may cancel the contract or agreement anytime within two years from the date of signing.''

XXXI. *Notice of Revocation Rights*—§ 1010.559(a)(1)

You have the option to cancel your contract or agreement of sale by notice to the seller until midnight of the seventh day following the signing of the contract or agreement. If you did not receive a Property Report prepared pursuant to the rules and regulations of the Bureau of Consumer Financial Protection, in advance of your signing the contract or agreement, this contract or agreement may be revoked at your option for two years from the date of signing.

PART 1011—PURCHASERS' REVOCATION RIGHTS, SALES PRACTICES AND STANDARDS (REGULATION K)

Subpart A—Purchasers' Revocation Rights

Sec.
1011.1 General.
1011.2 Revocation regardless of registration.
1011.4 Contract requirements and revocation.
1011.5 Reimbursement.

Subpart B—Sales Practices and Standards

1011.10 General.
1011.15 Unlawful sales practices—statutory provisions.
1011.20 Unlawful sales practices—regulatory provisions.
1011.25 Misleading sales practices.
1011.27 Fair housing.
1011.30 Persons to whom subpart B is inapplicable.

Subpart C—Advertising Disclaimers

1011.50 Advertising disclaimers; subdivisions registered and effective with the Bureau.

AUTHORITY: 12 U.S.C. 5512, 5581; 15 U.S.C. 1718.

SOURCE: 76 FR 79522, Dec. 21, 2011, unless otherwise noted.

Subpart A—Purchasers' Revocation Rights

§ 1011.1 General.

The purpose of this subpart A is to elaborate on the revocation rights in 15 U.S.C. 1703, by enumerating certain conditions under which purchasers may exercise revocation rights. Generally, whenever revocation rights are available, they apply to promissory notes, as well as traditional agreements.

§ 1011.2 Revocation regardless of registration.

All purchasers have the option to revoke a contract or lease with regard to a lot not exempt under §§ 1010.5 through 1010.11 and 1010.14 until midnight of the seventh day after the day that the purchaser signs a contract or lease. If a purchaser is entitled to a longer revocation period under state law, that period is deemed the Federal revocation period rather than the 7 days, and all contracts and agreements (including promissory notes) shall so state.

§ 1011.4 Contract requirements and revocation.

(a) In accordance with 15 U.S.C. 1703(d)(3), the refund to the purchaser is calculated by subtracting from the amount described in 15 U.S.C. 1703(d)(3)(B), the greater of:

(1) Fifteen percent of the purchase or lease price of the lot (excluding interest owed) at the time of the default or breach of contract or agreement; or

(2) The amount of damages incurred by the seller or lessor due to the default or breach of contract.

(b) For the purposes of this section:

Damages incurred by the seller or lessor means actual damages resulting from the default or breach, as determined by the law of the jurisdiction governing the contract. However, no damages may be specified in the contract or agreement, except a liquidated damages clause not exceeding 15 percent of the purchase price of the lot, excluding any interest owed.

Purchase price means the cash sales price of the lot shown on the contract.

(c) The contractual requirements of 15 U.S.C. 1703(d) do not apply to the sale of a lot for which, within 180 days after the signing of the sales contract,

the purchaser receives a warranty deed or, where warranty deeds are not commonly used, its equivalent under state law.

§ 1011.5 Reimbursement.

If a purchaser exercises rights under 15 U.S.C. 1703(b), (c), or (d), but cannot reconvey the lot in substantially similar condition, the developer may subtract from the amount paid by the purchaser, and otherwise due to the purchaser under 15 U.S.C. 1703, any diminished value in the lot caused by the acts of the purchaser.

Subpart B—Sales Practices and Standards

§ 1011.10 General.

Sales practices means any conduct or advertising by a developer or its agents to induce a person to buy or lease a lot. This subpart describes certain unlawful sales practices and provides standards to illustrate what other sales practices are considered misleading in light of certain circumstances in which they are made and within the context of the overall offer and sale or lease.

§ 1011.15 Unlawful sales practices—statutory provisions.

The statutory prohibitions against fraudulent or misleading sales practices are set forth at 15 U.S.C. 1703(a). With respect to the prohibitions against representing that certain facilities will be provided or completed unless there is a contractual obligation to do so by the developer:

(a) The contractual covenant to provide or complete the services or amenities may be conditioned only upon grounds that are legally sufficient to establish impossibility of performance in the jurisdiction where the services or amenities are being provided or completed;

(b) Contingencies such as acts of God, strikes, or material shortages are recognized as permissible to defer completion of services or amenities; and

(c) In creating these contractual obligations developers have the option of incorporating by reference the Property Report in effect at the time of the sale or lease. If a developer chooses to incorporate the Property Report by reference, the effective date of the Property Report being included by reference must be specified in the contract of sale or lease.

§ 1011.20 Unlawful sales practices—regulatory provisions.

In selling, leasing or offering to sell or lease any lot in a subdivision it is an unlawful sales practice for any developer or agent, directly or indirectly, to:

(a) Give the Property Report to a purchaser along with other materials when done in such a manner so as to conceal the Property Report from the purchaser.

(b) Give a contract to a purchaser or encourage him to sign anything before delivery of the Property Report.

(c) Refer to the Property Report or Offering Statement as anything other than a Property Report or Offering Statement.

(d) Use any misleading practice, device or representation which would deny a purchaser any cancellation or refund rights or privileges granted the purchaser by the terms of a contract or any other document used by the developer as a sales inducement.

(e) Refuse to deliver a Property Report to any person who exhibits an interest in buying or leasing a lot in the subdivision and requests a copy of the Property Report.

(f) Use a Property Report, note, contract, deed or other document prepared in a language other than that in which the sales campaign is conducted, unless an accurate translation is attached to the document.

(g) Deliberately fail to maintain a sufficient supply of restrictive covenants and financial statements or to deliver a copy to a purchaser upon request as required by §§ 1010.109(f), 1010.112(d), 1010.209(g), and 1010.212(i).

(h) Use, as a sales inducement, any representation that any lot has good investment potential or will increase in value unless it can be established, in writing, that:

(1) Comparable lots or parcels in the subdivision have, in fact, been resold by their owners on the open market at a profit, or;

(2) There is a factual basis for the represented future increase in value and the factual basis is certain, and;

(3) The sales price of the offered lot does not already reflect the anticipated increase in value due to any promised facilities or amenities. The burden of establishing the relevancy of any comparable sales and the certainty of the factual basis of the increase in value shall rest upon the developer.

(i) Represent a lot as a homesite or building lot unless:

(1) Potable water is available at a reasonable cost;

(2) The lot is suitable for a septic tank operation or there is reasonable assurance that the lot can be served by a central sewage system;

(3) The lot is legally accessible; and

(4) The lot is free from periodic flooding.

§ 1011.25 Misleading sales practices.

Generally, promotional statements or material will be judged on the basis of the affirmative representations contained therein and the reasonable inferences to be drawn therefrom, unless the contrary is affirmatively stated or appears in promotional material, or unless adequate safeguards have been provided by the seller to reasonably guarantee the occurrence of the thing inferred. For example, when a lot is represented as being sold by a warranty deed, the inference is that the seller can and will convey fee simple title free and clear of all liens, encumbrances, and defects except those which are disclosed in writing to the prospective purchaser prior to conveyance. The following advertising and promotional practices, while not all inclusive, are considered misleading, and are used to evaluate a developer's or agent's representations in determining possible violations of the Act or regulations. In this section ''represent'' carries its common meaning.

(a) *Proposed improvements.* References to proposed improvements of any land unless it is clearly indicated that the improvements are only proposed or what the completion date is for the proposed improvement.

(b) *Off-premises representations.* Representing scenes or proposed improvements other than those in the subdivision unless

(1) It is clearly stated that the scenes or improvements are not related to the subdivision offered; or

(2) In the case of drawings that the scenes or improvements are artists' renderings;

(3) If the areas or improvements shown are available to purchasers, what the distance in road miles is to the scenes or improvements represented.

(c) *Land use representations.* Representing uses to which the offered land can be put unless the land can be put to such use without unreasonable cost to the purchaser and unless no fact or circumstance exists which would prohibit the immediate use of the land for its represented use.

(d) *Use of ''road'' and ''street.''* Using the words ''road'' or ''street'' unless the type of road surface is disclosed. All roads and streets shown on subdivision maps are presumed to be of an all-weather graded gravel quality or higher and are presumed to be traversable by conventional automobile under all normal weather conditions unless otherwise shown on the map.

(e) *Road access and use.* Representing the existence of a road easement or right-of-way unless the easement or right-of-way is dedicated to the public, to property owners or to the appropriate property owners association.

(f) *Waterfront property.* References to waterfront property, unless the property being offered actually fronts on a body of water. Representations which refer to ''canal'' or ''canals'' must state the specific use to which such canal or canals can be put.

(g) *Maps and distances.* (1) The use of maps to show proximity to other communities, unless the maps are drawn to scale and scale included, or the specific road mileage appears in easily readable print.

(2) The use of the terms such as ''minutes away,'' ''short distance,'' ''only miles,'' or ''near'' or similar terms to indicate distance unless the actual distance in road miles is used in conjunction with such terms. Road miles will be measured from the approximate geographical center of the subdivided lands to the approximate

downtown or geographical center of the community.

(h) *Lot size.* Representation of the size of a lot offered unless the lot size represented is exclusive of all easements to which the lot may be subject, except for those for providing utilities to the lot.

(i) *''Free'' lots.* Representing lots as ''free'' if the prospective purchaser is required to give any consideration whatsoever, offering lots for ''closing costs only'' when the closing costs are substantially more than customary, or when an additional lot must be purchased at a higher price.

(j) *Pre-development prices.* References to pre-development sales at a lower price because the land has not yet been developed unless there are plans for development, and reasonable assurance is available that the plans will be completed.

(k) *False reports of lot sales.* Repeatedly announcing that lots are being sold or to make repetitive announcements of the same lot being sold when in fact this is not the case.

(l) *Guaranteed refund.* Use of the word ''guarantee'' or phrase ''guaranteed refund'' or similar language implying a money-back guarantee unless the refund is unconditional.

(m) *Discount certificates.* The use of discount certificates when in fact there is no actual price reduction or when a discount certificate is regularly used.

(n) *Lot exchanges.* Representations regarding property exchange privileges unless any applicable conditions are clearly stated.

(o) *Resale program.* Making any representation that implies that the developer or agent will resell or repurchase the property being offered at some future time unless the developer or agent has an ongoing program for doing so.

(p) *Symbols for conditions.* The use of asterisks or any other reference symbol or oral parenthetical expression as a means of contradicting or substantially changing any previously made statement or as a means of obscuring material facts.

(q) *Proposed public facilities.* References to a proposed public facility unless money has been budgeted for construction of the facility and is available to the public authority having the responsibility of construction, or unless disclosure of the existing facts concerning the public facility is made.

(r) *Non-profit or institutional name use.* The use of names or trade styles which imply that the developer is a nonprofit research organization, public bureau, group, etc., when such is not the case.

§ 1011.27 Fair housing.

Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601, *et seq.*, and its implementing regulations and guidelines apply to land sales transactions to the extent warranted by the facts of the transaction.

§ 1011.30 Persons to whom subpart B is inapplicable.

Newspaper or periodical publishers, job printers, broadcasters, or telecasters, or any of the employees thereof, are not subject to this subpart unless the publishers, printers, broadcasters, or telecasters:

(a) Have actual knowledge of the falsity of the advertisement or

(b) Have any interest in the subdivision advertised or

(c) Also serve directly or indirectly as the advertising agent or agency for the developer.

Subpart C—Advertising Disclaimers

§ 1011.50 Advertising disclaimers; subdivisions registered and effective with the Bureau.

(a) The following disclaimer statement shall be displayed below the text of all printed material and literature used in connection with the sale or lease of lots in a subdivision for which an effective Statement or Record is on file with the Director: ''Obtain the Property Report required by Federal law and read it before signing anything. No Federal agency has judged the merits or value, if any, of this property.'' If the material or literature consists of more than one page, it shall appear at the bottom of the front page. The disclaimer statement shall be set in type of at least ten point font.

(b) If the advertising is of a classified type; is not more than five inches long

and not more than one column in print wide, the disclaimer statement may be set in type of at least six point font.

(c) This disclaimer statement need not appear on billboards, on normal size matchbook folders or business cards which are used in advertising nor in advertising of a classified type which is less than one column in print wide and is less than five inches long.

(d) A developer who is required by any state, or states, to display an advertising disclaimer in the same location, or one of equal prominence, as that of the Federal disclaimer, may combine the wording of the disclaimers. All of the wording of the Federal disclaimer must be included in the resulting combined disclaimer.

PART 1012—SPECIAL RULES OF PRACTICE (REGULATION L)

Subpart A [Reserved]

Subpart B—Filing Assistance

Sec.

1012.30 Scope of this subpart.
1012.35 Prefiling assistance.
1012.40 Processing of filings.

Subpart C [Reserved]

Subpart D—Adjudicatory Proceedings

1012.105–1012.200 [Reserved]
1012.205 Suspension notice prior to effective date.
1012.210 Hearings—suspension notice prior to effective date.
1012.215 Notice of proceedings subsequent to effective date.
1012.220 Hearings—notice of proceedings subsequent to effective date.
1012.225 Suspension order for failure to cooperate.
1012.230 Suspension order pending amendments.
1012.235 Hearings—suspension orders for failure to cooperate and pending amendments.
1012.236 Notice of proceedings to withdraw a State's certification.
1012.237 Hearings—notice of proceedings pursuant to withdrawal of state certification.
1012.238 Notices of proceedings to terminate exemptions.
1012.239 Hearings—notice of proceedings pursuant to exemptions.

AUTHORITY: 12 U.S.C. 5512, 5581; 15 U.S.C. 1718.

SOURCE: 76 FR 79524, Dec. 21, 2011, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Filing Assistance

§ 1012.30 Scope of this subpart.

This subpart applies to and governs procedures under which developers may obtain prefiling assistance and be notified of and permitted to correct deficiencies in the Statement of Record.

§ 1012.35 Prefiling assistance.

Persons intending to file with the Bureau of Consumer Financial Protection, Office of Nonbank Supervision may receive advice of a general nature as to the preparation of the filing including information as to proper format to be used and the scope of the items to be included in the format. Inquiries and requests for informal discussions with staff members should be directed to the Office of Nonbank Supervision, Interstate Land Sales Registration Program, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006.

§ 1012.40 Processing of filings.

(a) Statements of Record and accompanying filing fees will be received on behalf of the Director by the Office of Nonbank Supervision, for determination of whether the criteria set forth in paragraphs (a)(1) through (3) of this section have been satisfied. Where it appears that all three criteria are satisfied and it is otherwise practicable, acceleration of the effectiveness of the Statement of Record will normally be granted.

(1) Completeness of the statement

(2) Adequacy of the filing fee, and

(3) Adequacy of disclosure.

(b) Filings intended as Statements of Record but which do not comply in form with §§ 1010.105 and 1010.120 of this chapter, whichever is applicable, and Statements of Record accompanied by inadequate filing fees will not be effective to accomplish any purpose under the Act. At the discretion of the Interstate Land Sales Registration Program, such filings and any moneys accompanying them may be immediately

returned to the sender or after notification may be held pending the sender's appropriate response.

(c) Persons filing incomplete or inaccurate Statements of Record will be notified of the deficiencies therein by the Suspension Notice procedure described in §1010.45(a) of this chapter.

Subpart C [Reserved]

Subpart D—Adjudicatory Proceedings

§§ 1012.105–1012.200 [Reserved]

§ 1012.205 Suspension notice prior to effective date.

A suspension pursuant to §1010.45(a) of this chapter shall be effected by service of a suspension notice which shall contain:

(a) An identification of the filing to which the notice applies.

(b) A specification of the deficiencies of form, disclosure, accuracy, documentation or fee tender which constitute the grounds under §1010.45(a) of this chapter, of the suspension, and of the additional or corrective procedure, information, documentation, or tender which will satisfy the Director's requirements.

(c) A notice of the hearing rights of the developer under §1012.210 and of the procedures for invoking those rights.

(d) A notice that, unless otherwise ordered, the suspension shall remain in effect until 30 days after the developer cures the specified deficiencies as required by the notice.

§ 1012.210 Hearings—suspension notice prior to effective date.

(a) A developer, upon receipt of a suspension notice issued pursuant to §1010.45(a) of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the suspension notice. Such a request must be filed within 15 days of receipt of the suspension notice and must be accompanied by an answer and 3 copies thereof signed by the respondent or the respondent's attorney conforming to the requirements of 1081.201(b) and (c).

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 20 days of receipt of the request. The time and place for hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) A request for hearing filed pursuant to paragraph (a) of this section shall not interrupt or annul the effectiveness of the suspension notice, and suspension of the effective date of the Statement or amendment shall continue until vacated by order of the Director or administrative law judge. Except in cases in which the developer shall waive or withdraw the request for such hearing, or shall fail to pursue the same by appropriate appearance at a hearing duly scheduled, noticed and convened, the suspended filing shall be reinstated in the event of failure of the Director to schedule, give notice of or hold a duly-requested hearing within the time specified in paragraph (b) of this section, or in the event of a finding that the Director has failed to support at such hearing the propriety of the suspension with respect to the material issues of law and fact raised by the answer. Such reinstatement shall be effective on the date on which the filing would have become effective had no notice of suspension been issued with respect to it.

(d) If there is an outstanding suspension notice under §1010.45(a) with respect to the same matter for which a suspension order under §1010.45(b)(3) is issued, the notice and order shall be consolidated for the purposes of hearing. In the event that allegations upon which the suspension notice and suspension order are based are identical, only one answer need be filed.

§ 1012.215 Notice of proceedings subsequent to effective date.

A proceeding pursuant to §1010.45(b)(1) of this chapter is commenced by issuance and service of a notice which shall contain:

(a) A clear and accurate identification of the filing or filings to which the notice relates.

(b) A clear and concise statement of material facts, sufficient to inform the

respondent with reasonable definiteness of the statements, omissions, conduct, circumstances or practices alleged to constitute the grounds for the proposed suspension order under §1010.45(b)(1) of this chapter.

(c) A notice of hearing rights of the developer under §1012.220 and of the procedures for invoking those rights.

(d) Designation of the administrative law judge appointed to preside over pre-hearing procedures and over the hearings.

(e) A notice that failure to file an answer conforming to the requirements of §1081.201(b) and (c) will result in an order suspending the Statement of Record.

§1012.220 Hearings—notice of proceedings subsequent to effective date.

(a) A developer, upon receipt of a notice of proceedings issued pursuant to §1010.45(b)(1) of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the notice of proceedings. Such a request must be filed within 15 days of receipt of the notice of proceedings and must be accompanied by an answer conforming to the requirements of §1081.201(b) and (c).

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 45 days of receipt of the request by the Director unless it is determined that it is not in the public interest. The time and place for hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) Failure to answer within the time allowed by paragraph (a) of this section or failure of a developer to appear at a hearing duly scheduled shall result in an appropriate order under §1010.45(b)(1) of this chapter suspending the statement of record. Such order shall be effective as of the date of service or receipt.

§1012.225 Suspension order for failure to cooperate.

A suspension pursuant to §1010.45(b)(2) of this chapter shall be effected by service of a suspension order which shall contain:

(a) An identification of the filing to which the order applies.

(b) Bases for issuance of order.

(c) A notice of the hearing rights of the developer under §1012.235 the procedures for invoking those rights.

(d) A statement that the order shall remain in effect until the developer has complied with the Director's requirements.

§1012.230 Suspension order pending amendments.

A suspension pursuant to paragraph (b)(3) of §1010.45 of this chapter shall be effected by service of a suspension order which shall contain:

(a) An identification of the filing to which the order applies.

(b) An identification of the amendment to the filing which generated the order.

(c) A statement that the issuance of the order is necessary or appropriate in the public interest or for the protection of purchasers.

(d) A statement that the order shall remain in effect until the amendment becomes effective.

(e) A notice of the hearing rights of the developer under §1012.235 and of the procedure for invoking those rights.

§1012.235 Hearings—suspension orders for failure to cooperate and pending amendments.

(a) A developer, upon receipt of a suspension order issued pursuant to §1010.45(b)(2) or §1010.45(b)(3) of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the suspension order. Such request must be filed within 15 days of receipt of the suspension order and must be accompanied by an answer and 3 copies thereof signed by the respondent or respondent's attorney conforming to the requirements of §1081.201(b) and (c).

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 20 days of receipt of the request. The time and place for hearing shall be fixed with due regard for the public interest

and the convenience and necessity of the parties or their representatives.

(c) A request for hearing filed pursuant to paragraph (a) of this section shall not interrupt or annul the effectiveness of the suspension order.

§ 1012.236 Notice of proceedings to withdraw a State's certification.

A proceeding pursuant to § 1010.505 of this chapter is commenced by issuance and service of a notice which shall contain:

(a) An identification of the state certification to which the notice applies.

(b) A clear and concise statement of material facts, sufficient to inform the respondent with reasonable definiteness of the basis for the Director's determination, pursuant to § 1010.505, that the State's laws, regulations and the administration thereof, taken as a whole, no longer meet the requirements of § 1010.501.

(c) A notice of hearing rights of the state under § 1012.237 and of the procedures for invoking those rights.

(d) A notice that failure to file an answer conforming to the requirements of § 1081.201(b) and (c) will result in an order suspending the State's certification.

§ 1012.237 Hearings—notice of proceedings pursuant to withdrawal of state certification.

(a) A State, upon receipt of a notice of proceedings issued pursuant to § 1010.505 of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the notice of proceedings. Such request must be filed within 15 days of receipt of the notice of proceedings and must be accompanied by an answer conforming to the requirements of § 1081.201(b) and (c).

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 45 days of receipt of this request. The time and place for the hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) Failure to answer within the time allowed by paragraph (a) of this section or failure to appear at a hearing duly scheduled shall result in an appropriate order under § 1010.505 of this chapter withdrawing the State's certification. Such order shall be effective as of the date of service or receipt.

§ 1012.238 Notices of proceedings to terminate exemptions.

A proceeding to terminate a self-determining exemption under § 1010.14 or an exemption order under § 1010.15 or § 1010.16 is commenced by issuance and service of a notice which shall contain:

(a) In the case of an exemption under § 1010.14, an identification of the developer and subdivision to which this notice applies. In the case of an exemption under either § 1010.15 or § 1010.16, an identification of the exemption order to which the notice applies.

(b) A clear and concise statement of material facts, sufficient to inform the respondent with reasonable definiteness of the basis for the Director's determination that further exemption from the registration and disclosure requirements is not in the public interest or that the sales or leases do not meet the requirements for exemption, or both.

(c) A notice of hearing rights of the respondent under § 1012.239 and of the procedures for invoking those rights.

(d) A notice that failure to file an answer conforming to the requirements of § 1081.201(b) and (c) will result, in the case of a notice issued under § 1010.14, in an order terminating eligibility for the exemption, or, in the case of a notice issued under either § 1010.15 or § 1010.16, in an order terminating the exemption order.

§ 1012.239 Hearings—notice of proceedings pursuant to exemptions.

(a) A developer, upon receipt of a notice of proceedings issued under §§ 1010.14, 1010.15, and 1010.16 of this chapter, may obtain a hearing by filing a written request contained in the notice of proceedings. The request must be filed within 15 days of receipt of the notice of proceedings and must be accompanied by an answer conforming to the requirements of § 1081.201(b) and (c).

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 45

days of receipt of this request. The time and place for the hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties of their representatives.

(c) Failure to answer within the time allowed by paragraph (a) of this section, or failure to appear at a duly scheduled hearing shall result in an appropriate order under § 1010.14, § 1010.15, or § 1010.16 of this chapter terminating the developer's exemption. The order shall be effective as of the date of service or receipt.

PART 1013—CONSUMER LEASING (REGULATION M)

Sec.
1013.1 Authority, scope, purpose, and enforcement.
1013.2 Definitions.
1013.3 General disclosure requirements.
1013.4 Content of disclosures.
1013.5 Renegotiations, extensions, and assumptions.
1013.6 [Reserved]
1013.7 Advertising.
1013.8 Record retention.
1013.9 Relation to state laws.

APPENDIX A TO PART 1013—MODEL FORMS
APPENDIX B TO PART 1013 [RESERVED]
APPENDIX C TO PART 1013—ISSUANCE OF OFFICIAL INTERPRETATIONS
SUPPLEMENT I TO PART 1013—OFFICIAL INTERPRETATIONS

AUTHORITY: 15 U.S.C. 1604 and 1667f; Pub. L. 111–203 section 1100E, 124 Stat. 1376.

SOURCE: 76 FR 78502, Dec. 19, 2011, unless otherwise noted.

§ 1013.1 Authority, scope, purpose, and enforcement.

(a) *Authority*. The regulation in this part, known as Regulation M, is issued by the Bureau of Consumer Financial Protection to implement the consumer leasing provisions of the Truth in Lending Act, which is title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*). Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 3170–0006.

(b) *Scope and purpose*. This part applies to all persons that are lessors of personal property under consumer leases as those terms are defined in § 1013.2(e)(1) and (h), except persons excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111–203, 124 Stat. 1376. The purpose of this part is:

(1) To ensure that lessees of personal property receive meaningful disclosures that enable them to compare lease terms with other leases and, where appropriate, with credit transactions;

(2) To limit the amount of balloon payments in consumer lease transactions; and

(3) To provide for the accurate disclosure of lease terms in advertising.

(c) *Enforcement and liability*. Section 108 of the Act contains the administrative enforcement provisions. Sections 112, 130, 131, and 185 of the Act contain the liability provisions for failing to comply with the requirements of the Act and this part.

§ 1013.2 Definitions.

For the purposes of this part the following definitions apply:

(a) *Act* means the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) and the Consumer Leasing Act is Chapter 5 of the Truth in Lending Act.

(b) *Advertisement* means a commercial message in any medium that directly or indirectly promotes a consumer lease transaction.

(c) *Bureau* refers to the Bureau of Consumer Financial Protection.

(d) *Closed-end lease* means a consumer lease other than an open-end lease as defined in this section.

(e)(1) *Consumer lease* means a contract in the form of a bailment or lease for the use of personal property by a natural person primarily for personal, family, or household purposes, for a period exceeding four months and for a total contractual obligation not exceeding the applicable threshold amount, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease. The threshold amount is adjusted annually to reflect increases in the Consumer Price Index

for Urban Wage Earners and Clerical Workers, as applicable. See the official commentary to this paragraph (e) for the threshold amount applicable to a specific consumer lease. Unless the context indicates otherwise, in this part ''lease'' means ''consumer lease.''

(2) The term does not include a lease that meets the definition of a credit sale in Regulation Z (12 CFR 226.2(a)). It also does not include a lease for agricultural, business, or commercial purposes or a lease made to an organization.

(3) This part does not apply to a lease transaction of personal property which is incident to the lease of real property and which provides that:

(i) The lessee has no liability for the value of the personal property at the end of the lease term except for abnormal wear and tear; and

(ii) The lessee has no option to purchase the leased property.

(f) *Gross capitalized cost* means the amount agreed upon by the lessor and the lessee as the value of the leased property and any items that are capitalized or amortized during the lease term, including but not limited to taxes, insurance, service agreements, and any outstanding prior credit or lease balance. *Capitalized cost reduction* means the total amount of any rebate, cash payment, net trade-in allowance, and noncash credit that reduces the gross capitalized cost. The *adjusted capitalized cost* equals the gross capitalized cost less the capitalized cost reduction, and is the amount used by the lessor in calculating the base periodic payment.

(g) *Lessee* means a natural person who enters into or is offered a consumer lease.

(h) *Lessor* means a person who regularly leases, offers to lease, or arranges for the lease of personal property under a consumer lease. A person who has leased, offered, or arranged to lease personal property more than five times in the preceding calendar year or more than five times in the current calendar year is subject to the Act and this part.

(i) *Open-end lease* means a consumer lease in which the lessee's liability at the end of the lease term is based on the difference between the residual value of the leased property and its realized value.

(j) *Organization* means a corporation, trust, estate, partnership, cooperative, association, or government entity or instrumentality.

(k) *Person* means a natural person or an organization.

(l) *Personal property* means any property that is not real property under the law of the state where the property is located at the time it is offered or made available for lease.

(m) *Realized value* means:

(1) The price received by the lessor for the leased property at disposition;

(2) The highest offer for disposition of the leased property; or

(3) The fair market value of the leased property at the end of the lease term.

(n) *Residual value* means the value of the leased property at the end of the lease term, as estimated or assigned at consummation by the lessor, used in calculating the base periodic payment.

(o) *Security interest* and *security* mean any interest in property that secures the payment or performance of an obligation.

(p) *State* means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

§ 1013.3 General disclosure requirements.

(a) *General requirements.* A lessor shall make the disclosures required by § 1013.4, as applicable. The disclosures shall be made clearly and conspicuously in writing in a form the consumer may keep, in accordance with this section. The disclosures required by this part may be provided to the lessee in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). For an advertisement accessed by the consumer in electronic form, the disclosures required by § 1013.7 may be provided to the consumer in electronic form in the advertisement, without regard to the consumer consent or other provisions of the E-Sign Act.

(1) *Form of disclosures.* The disclosures required by § 1013.4 shall be given to the lessee together in a dated statement

that identifies the lessor and the lessee; the disclosures may be made either in a separate statement that identifies the consumer lease transaction or in the contract or other document evidencing the lease. Alternatively, the disclosures required to be segregated from other information under paragraph (a)(2) of this section may be provided in a separate dated statement that identifies the lease, and the other required disclosures may be provided in the lease contract or other document evidencing the lease. In a lease of multiple items, the property description required by §1013.4(a) may be given in a separate statement that is included in the disclosure statement required by this paragraph.

(2) *Segregation of certain disclosures.* The following disclosures shall be segregated from other information and shall contain only directly related information: §§1013.4(b) through (f), (g)(2), (h)(3), (i)(1), (j), and (m)(1). The headings, content, and format for the disclosures referred to in this paragraph (a)(2) shall be provided in a manner substantially similar to the applicable model form in appendix A of this part.

(3) *Timing of disclosures.* A lessor shall provide the disclosures to the lessee prior to the consummation of a consumer lease.

(4) *Language of disclosures.* The disclosures required by §1013.4 may be made in a language other than English provided that they are made available in English upon the lessee's request.

(b) *Additional information; nonsegregated disclosures.* Additional information may be provided with any disclosure not listed in paragraph (a)(2) of this section, but it shall not be stated, used, or placed so as to mislead or confuse the lessee or contradict, obscure, or detract attention from any disclosure required by this part.

(c) *Multiple lessors or lessees.* When a transaction involves more than one lessor, the disclosures required by this part may be made by one lessor on behalf of all the lessors. When a lease involves more than one lessee, the lessor may provide the disclosures to any lessee who is primarily liable on the lease.

(d) *Use of estimates.* If an amount or other item needed to comply with a required disclosure is unknown or unavailable after reasonable efforts have been made to ascertain the information, the lessor may use a reasonable estimate that is based on the best information available to the lessor, is clearly identified as an estimate, and is not used to circumvent or evade any disclosures required by this part.

(e) *Effect of subsequent occurrence.* If a required disclosure becomes inaccurate because of an event occurring after consummation, the inaccuracy is not a violation of this part.

(f) *Minor variations.* A lessor may disregard the effects of the following in making disclosures:

(1) That payments must be collected in whole cents;

(2) That dates of scheduled payments may be different because a scheduled date is not a business day;

(3) That months have different numbers of days; and

(4) That February 29 occurs in a leap year.

§1013.4 Content of disclosures.

For any consumer lease subject to this part, the lessor shall disclose the following information, as applicable:

(a) *Description of property.* A brief description of the leased property sufficient to identify the property to the lessee and lessor.

(b) *Amount due at lease signing or delivery.* The total amount to be paid prior to or at consummation or by delivery, if delivery occurs after consummation, using the term ''amount due at lease signing or delivery.'' The lessor shall itemize each component by type and amount, including any refundable security deposit, advance monthly or other periodic payment, and capitalized cost reduction; and in motor vehicle leases, shall itemize how the amount due will be paid, by type and amount, including any net trade-in allowance, rebates, noncash credits, and cash payments in a format substantially similar to the model forms in appendix A of this part.

(c) *Payment schedule and total amount of periodic payments.* The number, amount, and due dates or periods of payments scheduled under the lease, and the total amount of the periodic payments.

(d) *Other charges.* The total amount of other charges payable to the lessor, itemized by type and amount, that are not included in the periodic payments. Such charges include the amount of any liability the lease imposes upon the lessee at the end of the lease term; the potential difference between the residual and realized values referred to in paragraph (k) of this section is excluded.

(e) *Total of payments.* The total of payments, with a description such as ''the amount you will have paid by the end of the lease.'' This amount is the sum of the amount due at lease signing (less any refundable amounts), the total amount of periodic payments (less any portion of the periodic payment paid at lease signing), and other charges under paragraphs (b), (c), and (d) of this section. In an open-end lease, a description such as ''you will owe an additional amount if the actual value of the vehicle is less than the residual value'' shall accompany the disclosure.

(f) *Payment calculation.* In a motor vehicle lease, a mathematical progression of how the scheduled periodic payment is derived, in a format substantially similar to the applicable model form in appendix A of this part, which shall contain the following:

(1) *Gross capitalized cost.* The gross capitalized cost, including a disclosure of the agreed upon value of the vehicle, a description such as ''the agreed upon value of the vehicle [state the amount] and any items you pay for over the lease term (such as service contracts, insurance, and any outstanding prior credit or lease balance),'' and a statement of the lessee's option to receive a separate written itemization of the gross capitalized cost. If requested by the lessee, the itemization shall be provided before consummation.

(2) *Capitalized cost reduction.* The capitalized cost reduction, with a description such as ''the amount of any net trade-in allowance, rebate, noncash credit, or cash you pay that reduces the gross capitalized cost.''

(3) *Adjusted capitalized cost.* The adjusted capitalized cost, with a description such as ''the amount used in calculating your base [periodic] payment.''

(4) *Residual value.* The residual value, with a description such as ''the value of the vehicle at the end of the lease used in calculating your base [periodic] payment.''

(5) *Depreciation and any amortized amounts.* The depreciation and any amortized amounts, which is the difference between the adjusted capitalized cost and the residual value, with a description such as ''the amount charged for the vehicle's decline in value through normal use and for any other items paid over the lease term.''

(6) *Rent charge.* The rent charge, with a description such as ''the amount charged in addition to the depreciation and any amortized amounts.'' This amount is the difference between the total of the base periodic payments over the lease term minus the depreciation and any amortized amounts.

(7) *Total of base periodic payments.* The total of base periodic payments with a description such as ''depreciation and any amortized amounts plus the rent charge.''

(8) *Lease payments.* The lease payments with a description such as ''the number of payments in your lease.''

(9) *Base periodic payment.* The total of the base periodic payments divided by the number of payment periods in the lease.

(10) *Itemization of other charges.* An itemization of any other charges that are part of the periodic payment.

(11) *Total periodic payment.* The sum of the base periodic payment and any other charges that are part of the periodic payment.

(g) *Early termination*—(1) *Conditions and disclosure of charges.* A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term; and the amount or a description of the method for determining the amount of any penalty or other charge for early termination, which must be reasonable.

(2) *Early termination notice.* In a motor vehicle lease, a notice substantially similar to the following: ''Early Termination. You may have to pay a substantial charge if you end this lease early. The charge may be up to several thousand dollars. The actual charge

will depend on when the lease is terminated. The earlier you end the lease, the greater this charge is likely to be.''

(h) *Maintenance responsibilities.* The following provisions are required:

(1) *Statement of responsibilities.* A statement specifying whether the lessor or the lessee is responsible for maintaining or servicing the leased property, together with a brief description of the responsibility;

(2) *Wear and use standard.* A statement of the lessor's standards for wear and use (if any), which must be reasonable; and

(3) *Notice of wear and use standard.* In a motor vehicle lease, a notice regarding wear and use substantially similar to the following: ''Excessive Wear and Use. You may be charged for excessive wear based on our standards for normal use.'' The notice shall also specify the amount or method for determining any charge for excess mileage.

(i) *Purchase option.* A statement of whether or not the lessee has the option to purchase the leased property, and:

(1) *End of lease term.* If at the end of the lease term, the purchase price; and

(2) *During lease term.* If prior to the end of the lease term, the purchase price or the method for determining the price and when the lessee may exercise this option.

(j) *Statement referencing nonsegregated disclosures.* A statement that the lessee should refer to the lease documents for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interests, if applicable.

(k) *Liability between residual and realized values.* A statement of the lessee's liability, if any, at early termination or at the end of the lease term for the difference between the residual value of the leased property and its realized value.

(l) *Right of appraisal.* If the lessee's liability at early termination or at the end of the lease term is based on the realized value of the leased property, a statement that the lessee may obtain, at the lessee's expense, a professional appraisal by an independent third party (agreed to by the lessee and the lessor) of the value that could be realized at sale of the leased property. The appraisal shall be final and binding on the parties.

(m) *Liability at end of lease term based on residual value.* If the lessee is liable at the end of the lease term for the difference between the residual value of the leased property and its realized value:

(1) *Rent and other charges.* The rent and other charges, paid by the lessee and required by the lessor as an incident to the lease transaction, with a description such as ''the total amount of rent and other charges imposed in connection with your lease [state the amount].''

(2) *Excess liability.* A statement about a rebuttable presumption that, at the end of the lease term, the residual value of the leased property is unreasonable and not in good faith to the extent that the residual value exceeds the realized value by more than three times the base monthly payment (or more than three times the average payment allocable to a monthly period, if the lease calls for periodic payments other than monthly); and that the lessor cannot collect the excess amount unless the lessor brings a successful court action and pays the lessee's reasonable attorney's fees, or unless the excess of the residual value over the realized value is due to unreasonable or excessive wear or use of the leased property (in which case the rebuttable presumption does not apply).

(3) *Mutually agreeable final adjustment.* A statement that the lessee and lessor are permitted, after termination of the lease, to make any mutually agreeable final adjustment regarding excess liability.

(n) *Fees and taxes.* The total dollar amount for all official and license fees, registration, title, or taxes required to be paid in connection with the lease.

(o) *Insurance.* A brief identification of insurance in connection with the lease including:

(1) *Through the lessor.* If the insurance is provided by or paid through the lessor, the types and amounts of coverage and the cost to the lessee; or

(2) *Through a third party.* If the lessee must obtain the insurance, the types and amounts of coverage required of the lessee.

(p) *Warranties or guarantees.* A statement identifying all express warranties and guarantees from the manufacturer or lessor with respect to the leased property that apply to the lessee.

(q) *Penalties and other charges for delinquency.* The amount or the method of determining the amount of any penalty or other charge for delinquency, default, or late payments, which must be reasonable.

(r) *Security interest.* A description of any security interest, other than a security deposit disclosed under paragraph (b) of this section, held or to be retained by the lessor; and a clear identification of the property to which the security interest relates.

(s) *Limitations on rate information.* If a lessor provides a percentage rate in an advertisement or in documents evidencing the lease transaction, a notice stating that ''this percentage may not measure the overall cost of financing this lease'' shall accompany the rate disclosure. The lessor shall not use the term ''annual percentage rate,'' ''annual lease rate,'' or any equivalent term.

(t) *Non-motor vehicle open-end leases.* Non-motor vehicle open-end leases remain subject to section 182(10) of the Act regarding end of term liability.

§ 1013.5 Renegotiations, extensions, and assumptions.

(a) *Renegotiation.* A renegotiation occurs when a consumer lease subject to this part is satisfied and replaced by a new lease undertaken by the same consumer. A renegotiation requires new disclosures, except as provided in paragraph (d) of this section.

(b) *Extension.* An extension is a continuation, agreed to by the lessor and the lessee, of an existing consumer lease beyond the originally scheduled end of the lease term, except when the continuation is the result of a renegotiation. An extension that exceeds six months requires new disclosures, except as provided in paragraph (d) of this section.

(c) *Assumption.* New disclosures are not required when a consumer lease is assumed by another person, whether or not the lessor charges an assumption fee.

(d) *Exceptions.* New disclosures are not required for the following, even if they meet the definition of a renegotiation or an extension:

(1) A reduction in the rent charge;

(2) The deferment of one or more payments, whether or not a fee is charged;

(3) The extension of a lease for not more than six months on a month-to-month basis or otherwise;

(4) A substitution of leased property with property that has a substantially equivalent or greater economic value, provided no other lease terms are changed;

(5) The addition, deletion, or substitution of leased property in a multiple-item lease, provided the average periodic payment does not change by more than 25 percent; or

(6) An agreement resulting from a court proceeding.

§ 1013.6 [Reserved]

§ 1013.7 Advertising.

(a) *General rule.* An advertisement for a consumer lease may state that a specific lease of property at specific amounts or terms is available only if the lessor usually and customarily leases or will lease the property at those amounts or terms.

(b) *Clear and conspicuous standard.* Disclosures required by this section shall be made clearly and conspicuously.

(1) *Amount due at lease signing or delivery.* Except for the statement of a periodic payment, any affirmative or negative reference to a charge that is a part of the disclosure required under paragraph (d)(2)(ii) of this section shall not be more prominent than that disclosure.

(2) *Advertisement of a lease rate.* If a lessor provides a percentage rate in an advertisement, the rate shall not be more prominent than any of the disclosures in § 1013.4, with the exception of the notice in § 1013.4(s) required to accompany the rate; and the lessor shall not use the term ''annual percentage rate,'' ''annual lease rate,'' or equivalent term.

(c) *Catalogs or other multipage advertisements; electronic advertisements.* A catalog or other multipage advertisement, or an electronic advertisement

(such as an advertisement appearing on an Internet Web site), that provides a table or schedule of the required disclosures shall be considered a single advertisement if, for lease terms that appear without all the required disclosures, the advertisement refers to the page or pages on which the table or schedule appears.

(d) *Advertisement of terms that require additional disclosure*—(1) *Triggering terms.* An advertisement that states any of the following items shall contain the disclosures required by paragraph (d)(2) of this section, except as provided in paragraphs (e) and (f) of this section:

(i) The amount of any payment; or

(ii) A statement of any capitalized cost reduction or other payment (or that no payment is required) prior to or at consummation or by delivery, if delivery occurs after consummation.

(2) *Additional terms.* An advertisement stating any item listed in paragraph (d)(1) of this section shall also state the following items:

(i) That the transaction advertised is a lease;

(ii) The total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;

(iii) The number, amounts, and due dates or periods of scheduled payments under the lease;

(iv) A statement of whether or not a security deposit is required; and

(v) A statement that an extra charge may be imposed at the end of the lease term where the lessee's liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

(e) *Alternative disclosures—merchandise tags.* A merchandise tag stating any item listed in paragraph (d)(1) of this section may comply with paragraph (d)(2) of this section by referring to a sign or display prominently posted in the lessor's place of business that contains a table or schedule of the required disclosures.

(f) *Alternative disclosures—television or radio advertisements*—(1) *Toll-free number or print advertisement.* An advertisement made through television or radio stating any item listed in paragraph (d)(1) of this section complies with paragraph (d)(2) of this section if the advertisement states the items listed in paragraphs (d)(2)(i) through (iii) of this section, and:

(i) Lists a toll-free telephone number along with a reference that such number may be used by consumers to obtain the information required by paragraph (d)(2) of this section; or

(ii) Directs the consumer to a written advertisement in a publication of general circulation in the community served by the media station, including the name and the date of the publication, with a statement that information required by paragraph (d)(2) of this section is included in the advertisement. The written advertisement shall be published beginning at least three days before and ending at least ten days after the broadcast.

(2) *Establishment of toll-free number.* (i) The toll-free telephone number shall be available for no fewer than ten days, beginning on the date of the broadcast.

(ii) The lessor shall provide the information required by paragraph (d)(2) of this section orally, or in writing upon request.

§ 1013.8 Record retention.

A lessor shall retain evidence of compliance with the requirements imposed by this part, other than the advertising requirements under § 1013.7, for a period of not less than two years after the date the disclosures are required to be made or an action is required to be taken.

§ 1013.9 Relation to state laws.

(a) *Inconsistent state law.* A state law that is inconsistent with the requirements of the Act and this part is preempted to the extent of the inconsistency. If a lessor cannot comply with a state law without violating a provision of this part, the state law is inconsistent within the meaning of section 186(a) of the Act and is preempted, unless the state law gives greater protection and benefit to the consumer. A state, through an official having primary enforcement or interpretative responsibilities for the state consumer leasing law, may apply to the Bureau for a preemption determination.

(b) *Exemptions*—(1) *Application.* A state may apply to the Bureau for an

exemption from the requirements of the Act and this part for any class of lease transactions within the state. The Bureau will grant such an exemption if the Bureau determines that:

(i) The class of leasing transactions is subject to state law requirements substantially similar to the Act and this part or that lessees are afforded greater protection under state law; and

(ii) There is adequate provision for state enforcement.

(2) *Enforcement and liability.* After an exemption has been granted, the requirements of the applicable state law (except for additional requirements not imposed by Federal law) will constitute the requirements of the Act and this part. No exemption will extend to the civil liability provisions of sections 130, 131, and 185 of the Act.

APPENDIX A TO PART 1013—MODEL FORMS

A–1—Model Open-End or Finance Vehicle Lease Disclosures
A–2—Model Closed-End or Net Vehicle Lease Disclosures
A–3—Model Furniture Lease Disclosures

Appendix A-1 Model Open-End or Finance Vehicle Lease Disclosures

Federal Consumer Leasing Act Disclosures

Date _____

Lessor(s) _____ **Lessee(s)** _____

Amount Due at Lease Signing or Delivery	**Monthly Payments**	**Other Charges** (not part of your monthly payment)	**Total of Payments** (The amount you will have paid by the end of the lease)
(Itemized below)*	Your first monthly payment of $ _____ is due on _____, followed by _____ payments of $ _____ due on the _____ of each month. The total of your monthly payments is $ _____.	Disposition fee (if you do not purchase the vehicle) $_____ _____ _____ Total $_____	$ _____ You will owe an additional amount if the actual value of the vehicle is less than the residual value.
$ _____			

*** Itemization of Amount Due at Lease Signing or Delivery**

Amount Due At Lease Signing or Delivery:		**How the Amount Due at Lease Signing or Delivery will be paid:**	
Capitalized cost reduction	$ _____	Net trade-in allowance	$ _____
First monthly payment	_____	Rebates and noncash credits	_____
Refundable security deposit	_____	Amount to be paid in cash	_____
Title fees	_____	_____	_____
Registration fees	_____		
_____	_____		
Total	$ _____	Total	$ _____

Your monthly payment is determined as shown below:

Gross capitalized cost. The agreed upon value of the vehicle ($ _____) and any items you pay over the lease term (such as service contracts, insurance, and any outstanding prior credit or lease balance) ..... $ _____

If you want an itemization of this amount, please check this box. ☐

Capitalized cost reduction. The amount of any net trade-in allowance, rebate, noncash credit, or cash you pay that reduces the gross capitalized cost	-	_____
Adjusted capitalized cost. The amount used in calculating your base monthly payment	=	_____
Residual value. The value of the vehicle at the end of the lease used in calculating your base monthly payment	-	_____
Depreciation and any amortized amounts. The amount charged for the vehicle's decline in value through normal use and for other items paid over the lease term	=	_____
Rent charge. The amount charged in addition to the depreciation and any amortized amounts	+	_____
Total of base monthly payments. The depreciation and any amortized amounts plus the rent charge	=	_____
Lease payments. The number of payments in your lease	÷	_____
Base monthly payment	=	_____
Monthly sales/use tax	+	_____
_____	+	_____
Total monthly payment	=$	_____

Rent and other charges. The total amount of rent and other charges imposed in connection with your lease $ _____ .

Early Termination. You may have to pay a substantial charge if you end this lease early. The charge may be up to several thousand dollars. The actual charge will depend on when the lease is terminated. The earlier you end the lease, the greater this charge is likely to be.

Excessive Wear and Use. You may be charged for excessive wear based on our standards for normal use [and for mileage in excess of _____ miles per year at the rate of _____ per mile].

Purchase Option at End of Lease Term. [You have an option to purchase the vehicle at the end of the lease term for $ _____ [and a purchase option fee of $ _____].] [You do not have an option to purchase the vehicle at the end of the lease term.]

Other Important Terms. See your lease documents for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interest, if applicable.

Appendix A-1 Model Open-End or Finance Vehicle Lease Disclosures

[The following provisions are the nonsegregated disclosures required under Regulation M.]

Description of Leased Property				
Year	Make	Model	Body Style	Vehicle ID #

Official Fees and Taxes. The total amount you will pay for official and license fees, registration, title, and taxes over the term of your lease, whether included with your monthly payments or assessed otherwise: $ _____ .

Insurance. The following types and amounts of insurance will be acquired in connection with this lease:

_____ .

_____ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $ _____.

_____ You (lessee) agree to provide insurance coverage in the amount and types indicated above.

End of Term Liability. (a) The residual value ($ _____) of the vehicle is based on a reasonable, good faith estimate of the value of the vehicle at the end of the lease term. If the actual value of the vehicle at that time is greater than the residual value, you will have no further liability under this lease, except for other charges already incurred [and are entitled to a credit or refund of any surplus.] If the actual value of the vehicle is less than the residual value, you will be liable for any difference up to $ _____ (3 times the monthly payment). For any difference in excess of that amount, you will be liable only if:
1. Excessive use or damage [as described in paragraph ____] [representing more than normal wear and use] resulted in an unusually low value at the end of the term.
2. The matter is not otherwise resolved and we win a lawsuit against you seeking a higher payment.
3. You voluntarily agree with us after the end of the lease term to make a higher payment.
Should we bring a lawsuit against you, we must prove that our original estimate of the value of the leased property at the end of the lease term was reasonable and was made in good faith. For example, we might prove that the actual value was less than the original estimated value, although the original estimate was reasonable, because of an unanticipated decline in value for that type of vehicle. We must also pay your attorney's fees.
(b) If you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

Standards for Wear and Use. The following standards are applicable for determining unreasonable or excess wear and use of the leased vehicle:

_____ .

Maintenance.
[You are responsible for the following maintenance and servicing of the leased vehicle:

_____].

[We are responsible for the following maintenance and servicing of the leased vehicle:

_____].

Warranties. The leased vehicle is subject to the following express warranties:

_____ .

Early Termination and Default. (a) You may terminate this lease before the end of the lease term under the following conditions:

_____ .

The charge for such early termination is:

_____ .

(b) We may terminate this lease before the end of the lease term under the following conditions:

_____ .

Upon such termination we shall be entitled to the following charge(s) for:

_____ .

(c) To the extent these charges take into account the value of the vehicle at termination, if you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

Security Interest. We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease:

_____ .

Late Payments. The charge for late payments is: _____ .

Option to Purchase Leased Property Prior to the End of the Lease. [You have an option to purchase the leased vehicle prior to the end of the term. The price will be [$ _____ /[the method of determining the price].] [You do not have an option to purchase the leased vehicle.]

Appendix A-2 Model Closed-End or Net Vehicle Lease Disclosures

Federal Consumer Leasing Act Disclosures

Date _____

Lessor(s) _____ **Lessee(s)** _____

Amount Due at Lease Signing or Delivery	**Monthly Payments**	**Other Charges** (not part of your monthly payment)	**Total of Payments** (The amount you will have paid by the end of the lease)
(Itemized below)*	Your first monthly payment of $ _____ is due on _____, followed by _____ payments of $ _____ due on the _____ of each month. The total of your monthly payments is $ _____.	Disposition fee (if you do not purchase the vehicle) $_____ _____ _____ Total $_____	$ _____
$ _____			

*** Itemization of Amount Due at Lease Signing or Delivery**

Amount Due At Lease Signing or Delivery:		**How the Amount Due at Lease Signing or Delivery will be paid:**	
Capitalized cost reduction	$ _____	Net trade-in allowance	$ _____
First monthly payment	_____	Rebates and noncash credits	_____
Refundable security deposit	_____	Amount to be paid in cash	_____
Title fees	_____	_____	_____
Registration fees	_____		
_____	_____		
Total	$ _____	Total	$ _____

Your monthly payment is determined as shown below:

Gross capitalized cost. The agreed upon value of the vehicle ($ _____) and any items you pay over the lease term (such as service contracts, insurance, and any outstanding prior credit or lease balance) ..... $ _____

If you want an itemization of this amount, please check this box. ☐

Capitalized cost reduction. The amount of any net trade-in allowance, rebate, noncash credit, or cash you pay that reduces the gross capitalized cost ..... − _____

Adjusted capitalized cost. The amount used in calculating your base monthly payment ..... = _____

Residual value. The value of the vehicle at the end of the lease used in calculating your base monthly payment ..... − _____

Depreciation and any amortized amounts. The amount charged for the vehicle's decline in value through normal use and for other items paid over the lease term ..... = _____

Rent charge. The amount charged in addition to the depreciation and any amortized amounts ..... + _____

Total of base monthly payments. The depreciation and any amortized amounts plus the rent charge ..... = _____

Lease payments. The number of payments in your lease ..... ÷ _____

Base monthly payment ..... = _____

Monthly sales/use tax ..... + _____

_____ ..... + _____

Total monthly payment ..... =$ _____

Early Termination. You may have to pay a substantial charge if you end this lease early. The charge may be up to several thousand dollars. The actual charge will depend on when the lease is terminated. The earlier you end the lease, the greater this charge is likely to be.

Excessive Wear and Use. You may be charged for excessive wear based on our standards for normal use [and for mileage in excess of _____ miles per year at the rate of _____ per mile].

Purchase Option at End of Lease Term. [You have an option to purchase the vehicle at the end of the lease term for $ _____ [and a purchase option fee of $ _____].] [You do not have an option to purchase the vehicle at the end of the lease term.]

Other Important Terms. See your lease documents for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interest, if applicable.

Appendix A-2 Model Closed-End or Net Vehicle Lease Disclosures

[The following provisions are the nonsegregated disclosures required under Regulation M.]

Description of Leased Property				
Year	Make	Model	Body Style	Vehicle ID #

Official Fees and Taxes. The total amount you will pay for official and license fees, registration, title, and taxes over the term of your lease, whether included with your monthly payments or assessed otherwise: $ _____ .

Insurance. The following types and amounts of insurance will be acquired in connection with this lease:

_____ .

_____ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $ _____.

_____ You (lessee) agree to provide insurance coverage in the amount and types indicated above.

Standards for Wear and Use. The following standards are applicable for determining unreasonable or excess wear and use of the leased vehicle:

_____

Maintenance.
[You are responsible for the following maintenance and servicing of the leased vehicle:

_____].

[We are responsible for the following maintenance and servicing of the leased vehicle:

_____].

Warranties. The leased vehicle is subject to the following express warranties:

_____ .

Early Termination and Default. (a) You may terminate this lease before the end of the lease term under the following conditions:

_____ .

The charge for such early termination is:

_____ .

(b) We may terminate this lease before the end of the lease term under the following conditions:

_____ .

Upon such termination we shall be entitled to the following charge(s) for:

_____ .

(c) To the extent these charges take into account the value of the vehicle at termination, if you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

Security Interest. We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease:

_____

Late Payments. The charge for late payments is: _____

Option to Purchase Leased Property Prior to the End of the Lease. [You have an option to purchase the leased vehicle prior to the end of the term. The price will be [$ _____ /[the method of determining the price].] [You do not have an option to purchase the leased vehicle.]

Appendix A-3 Model Furniture Lease Disclosures

Federal Consumer Leasing Act Disclosures

Date _____

Lessor(s) _____ **Lessee(s)** _____

Description of Leased Property				
Item	Color	Stock #	Mfg.	Quantity

Amount Due at Lease Signing or Delivery	**Monthly Payments**	**Other Charges** (not part of your monthly payment)	**Total of Payments** (The amount you will have paid by the end of the lease)
First monthly payment $ _____ Refundable security deposit $ _____ Delivery/Installation fee $ _____ _____ $ _____ Total $ _____	Your first monthly payment of $ _____ is due on _____, followed by _____ payments of $ _____ due on the _____ of each month. The total of your monthly payments is $ _____.	Pick-up fee $ _____ _____ $ _____ Total $ _____	$ _____

Purchase Option at End of Lease Term. [You have an option to purchase the leased property at the end of the lease term for $ _____ [and a purchase option fee of $ _____].] [You do not have an option to purchase the leased property at the end of the lease term.]

Other Important Terms. See your lease documents for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interest, if applicable.

[The following provisions are the nonsegregated disclosures required under Regulation M.]

Official Fees and Taxes. The total amount you will pay for official fees, and taxes over the term of your lease, whether included with your monthly payments or assessed otherwise: $ _____ .

Insurance. The following types and amounts of insurance will be acquired in connection with this lease: _____ .

_____ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $ _____ .

_____ You (lessee) agree to provide insurance coverage in the amount and types indicated above.

Standards for Wear and Use. The following standards are applicable for determining unreasonable or excess wear and use of the leased property: _____

Maintenance.

[You are responsible for the following maintenance and servicing of the leased property: _____.]

[We are responsible for the following maintenance and servicing of the leased property: _____.]

Warranties. The leased property is subject to the following express warranties: _____ .

Early Termination and Default. (a) You may terminate this lease before the end of the lease term under the following conditions: _____ .

The charge for such early termination is: _____ .

(b) We may terminate this lease before the end of the lease term under the following conditions: _____ .

Upon such termination we shall be entitled to the following charge(s) for: _____ .

Early Termination and Default. (continued)

(c) To the extent these charges take into account the value of the leased property at termination, if you disagree with the value we assign to the property, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the property which could be realized at sale. The appraised value shall then be used as the actual value.

Security Interest. We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease: _____.

Late Payments. The charge for late payments is: _____.

Purchase Option Prior to the End of the Lease Term.

[You have an option to purchase the leased property prior to the end of the term. The price will be [$ _____]/the method of determining the price].]

[You do not have an option to purchase the leased property.]

APPENDIX B TO PART 1013 [RESERVED]

APPENDIX C TO PART 1013—ISSUANCE OF OFFICIAL INTERPRETATIONS

Interpretations of this part issued by officials of the Bureau provide the formal protection afforded under section 130(f) of the Act. Except in unusual circumstances, interpretations will not be issued separately but will be incorporated in an official commentary to Regulation M (Supplement I of this part), which will be amended periodically. No official interpretations will be issued approving a lessor's forms, statements, or calculation tools or methods.

SUPPLEMENT I TO PART 1013—OFFICIAL INTERPRETATIONS

Introduction

1. *Official status.* The commentary in Supplement I is the vehicle by which the Bureau of Consumer Financial Protection issues official interpretations of Regulation M (12 CFR part 1013). Good faith compliance with this commentary affords protection from liability under section 130(f) of the Truth in Lending Act (15 U.S.C. 1640(f)). Section 130(f) protects lessors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by the Bureau.

2. *Procedures for requesting interpretations.* Under appendix C of Regulation M, anyone may request an official interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the FEDERAL REGISTER. No official interpretations are expected to be issued other than by means of this commentary.

3. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to §1013.4(f) are further divided by subparagraph, such as comment 4(f)(1)–1 and comment 4(f)(2)–1. In other cases, comments have more general application and are designated, for example, as comment 4(a)–1. This introduction may be cited as comments I–1 through I–4. An appendix may be cited as comment app. A–1.

4. *Illustrations.* Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. Illustrative lists are introduced by phrases such as ''including,'' ''such as,'' ''to illustrate,'' and ''for example.''

Section 1013.1—Authority, Scope, Purpose, and Enforcement

1. *Foreign applicability.* Regulation M applies to all persons (including branches of foreign banks or leasing companies located in the United States) that offer consumer leases to residents of any state (including foreign nationals) as defined in §1013.2(p), except persons excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376. The regulation does not apply to a foreign branch of a U.S. bank or to a leasing company leasing to a U.S. citizen residing or visiting abroad or to a foreign national abroad.

Section 1013.2—Definitions

2(b) Advertisement

1. *Coverage.* The term advertisement includes messages inviting, offering, or otherwise generally announcing to prospective customers the availability of consumer leases, whether in visual, oral, print or electronic media. Examples include:

i. Messages in newspapers, magazines, leaflets, catalogs, and fliers.

ii. Messages on radio, television, and public address systems.

iii. Direct mail literature.

iv. Printed material on any interior or exterior sign or display, in any window display, in any point-of-transaction literature or price tag that is delivered or made available to a lessee or prospective lessee in any manner whatsoever.

v. Telephone solicitations.

vi. Online messages, such as those on the Internet.

2. *Exclusions.* The term does not apply to the following:

i. Direct personal contacts, including follow-up letters, cost estimates for individual lessees, or oral or written communications relating to the negotiation of a specific transaction.

ii. Informational material distributed only to businesses.

iii. Notices required by Federal or state law, if the law mandates that specific information be displayed and only the mandated information is included in the notice.

iv. News articles controlled by the news medium.

v. Market research or educational materials that do not solicit business.

3. *Persons covered.* See the commentary to §1013.7(a).

2(d) Closed-End Lease

1. *General.* In closed-end leases, sometimes referred to as ''walk-away'' leases, the lessee is not responsible for the residual value of

the leased property at the end of the lease term.

2(e) Consumer Lease

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If a question exists as to the primary purpose for a lease, the fact that a lessor gives disclosures is not controlling on the question of whether the transaction is covered. The primary purpose of a lease is determined before or at consummation and a lessor need not provide Regulation M disclosures where there is a subsequent change in the primary use.

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond four months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. However, a lease that imposes a penalty for not continuing the lease beyond four months is considered to have a term of more than four months. To illustrate:

i. A three-month lease extended on a month-to-month basis and terminated after one year is not subject to the regulation.

ii. A month-to-month lease with a penalty, such as the forfeiture of a security deposit for terminating before one year, is subject to the regulation.

3. *Total contractual obligation.* The total contractual obligation is not necessarily the same as the total of payments disclosed under §1013.4(e). The total contractual obligation includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor, but excludes items such as:

i. Residual value amounts or purchase-option prices;

ii. Amounts collected by the lessor but paid to a third party, such as taxes, licenses, and registration fees.

4. *Credit sale.* The regulation does not cover a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), which is defined, in part, as a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

i. Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

ii. Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

5. *Agricultural purpose.* Agricultural purpose means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of personal property and services used primarily in farming. Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

6. *Organization or other entity.* A consumer lease does not include a lease made to an organization such as a corporation or a government agency or instrumentality. Such a lease is not covered by the regulation even if the leased property is used (by an employee, for example) primarily for personal, family or household purposes, or is guaranteed by or subsequently assigned to a natural person.

7. *Leases of personal property incidental to a service.* The following leases of personal property are deemed incidental to a service and thus are not subject to the regulation:

i. Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.

ii. Security alarm systems requiring the installation of leased equipment intended to monitor unlawful entries into a home and in some cases to provide fire protection.

iii. Propane gas service where the consumer must lease a propane tank to receive the service.

8. *Safe deposit boxes.* The lease of a safe deposit box is not a consumer lease under §1013.2(e).

9. *Threshold amount.* A consumer lease is exempt from the requirements of this part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. The threshold amount in effect during a particular time period is the amount stated below for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. This comment will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by

$900. If a consumer lease is exempt from the requirements of this part because the total contractual obligation exceeds the threshold amount in effect at the time of consummation, the lease remains exempt regardless of a subsequent increase in the threshold amount.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012 through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014 through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015 through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016 through December 31, 2016, the threshold amount is $54,600.

2(g) Lessee

1. *Guarantors.* Guarantors are not lessees for purposes of the regulation.

2(h) Lessor

1. *Arranger of a lease.* To ''arrange'' for the lease of personal property means to provide or offer to provide a lease that is or will be extended by another person under a business or other relationship pursuant to which the person arranging the lease (a) receives or will receive a fee, compensation, or other consideration for the service or (b) has knowledge of the lease terms and participates in the preparation of the contract documents required in connection with the lease. To illustrate:

i. An entity that, pursuant to a business relationship, completes the necessary lease agreement before forwarding it for execution to the leasing company (to whom the obligation is payable on its face) is ''arranging'' for the lease.

ii. An entity that, without receiving a fee for the service, refers a customer to a leasing company that will prepare all relevant contract documents is not ''arranging'' for the lease.

2. *Consideration.* The term ''other consideration'' as used in comment 2(h)–1 refers to an actual payment corresponding to a fee or similar compensation and not to intangible benefits, such as the advantage of increased business, which may flow from the relationship between the parties.

3. *Assignees.* An assignee may be a lessor for purposes of the regulation in circumstances where the assignee has substantial involvement in the lease transaction. See cf. *Ford Motor Credit Co.* v. *Cenance*, 452 U.S. 155 (1981) (held that an assignee was a creditor for purposes of the pre-1980 Truth in Lending Act and Regulation Z because of its substantial involvement in the credit transaction).

4. *Multiple lessors.* See the commentary to §1013.3(c).

2(j) Organization

1. *Coverage.* The term ''organization'' includes joint ventures and persons operating under a business name.

2(l) Personal Property

1. *Coverage.* Whether property is personal property depends on state or other applicable law. For example, a mobile home or houseboat may be considered personal property in one state but real property in another.

2(m) Realized Value

1. *General.* Realized value refers to either the retail or wholesale value of the leased property at early termination or at the end of the lease term. It is not a required disclosure. Realized value is relevant only to leases in which the lessee's liability at early termination or at the end of the lease term typically is based on the difference between the residual value (or the adjusted lease balance) of the leased property and its realized value.

2. *Options.* Subject to the contract and to state or other applicable law, the lessor may calculate the realized value in determining the lessee's liability at the end of the lease term or at early termination in one of the three ways stated in §1013.2(m). If the lessor sells the property prior to making the determination about liability, the price received for the property (or the fair market value) is the realized value. If the lessor does not sell the property prior to making that determination, the highest offer or the fair market value is the realized value.

3. *Determination of realized value.* Disposition charges are not subtracted in determining the realized value but amounts attributable to taxes may be subtracted.

4. *Offers.* In determining the highest offer for disposition, the lessor may disregard offers that an offeror has withdrawn or is unable or unwilling to perform.

5. *Lessor's appraisal.* See commentary to §1013.4(l).

2(o) Security Interest and Security

1. *Disclosable interests.* For purposes of disclosure, a security interest is an interest taken by the lessor to secure performance of the lessee's obligation. For example, if a bank that is not a lessor makes a loan to a leasing company and takes assignments of consumer leases generated by that company to secure the loan, the bank's security interest in the lessor's receivables is not a security interest for purposes of this part.

2. *General coverage.* An interest the lessor may have in leased property must be disclosed only if it is considered a security interest under state or other applicable law. The term includes, but is not limited to, security interests under the Uniform Commercial Code; real property mortgages, deeds of trust, and other consensual or confessed liens whether or not recorded; mechanic's, materialman's, artisan's, and other similar liens; vendor's liens in both real and personal property; liens on property arising by operation of law; and any interest in a lease when used to secure payment or performance of an obligation.

3. *Insurance exception.* The lessor's right to insurance proceeds or unearned insurance premiums is not a security interest for purposes of this part.

Section 1013.3—General Disclosure Requirements

3(a) General Requirements

1. *Basis of disclosures.* Disclosures must reflect the terms of the legal obligation between the parties. For example:

i. In a three-year lease with no penalty for termination after a one-year minimum term, disclosures are based on the full three-year term of the lease. The one-year minimum term is only relevant to the early termination provisions of §§1013.4 (g)(1), (k) and (l).

2. *Clear and conspicuous standard.* The clear and conspicuous standard requires that disclosures be reasonably understandable. For example, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other; appendix A of this part contains model forms that meet this standard. In addition, although no minimum typesize is required, the disclosures must be legible, whether typewritten, handwritten, or printed by computer.

3. *Multipurpose disclosure forms.* A lessor may use a multipurpose disclosure form provided the lessor is able to designate the specific disclosures applicable to a given transaction, consistent with the requirement that disclosures be clearly and conspicuously provided.

4. *Number of transactions.* Lessors have flexibility in handling lease transactions that may be viewed as multiple transactions. For example:

i. When a lessor leases two items to the same lessee on the same day, the lessor may disclose the leases as either one or two lease transactions.

ii. When a lessor sells insurance or other incidental services in connection with a lease, the lessor may disclose in one of two ways: As a single lease transaction (in which case Regulation M, not Regulation Z, disclosures are required) or as a lease transaction and a credit transaction.

iii. When a lessor includes an outstanding lease or credit balance in a lease transaction, the lessor may disclose the outstanding balance as part of a single lease transaction (in which case Regulation M, not Regulation Z, disclosures are required) or as a lease transaction and a credit transaction.

3(a)(1) Form of Disclosures

1. *Cross-references.* Lessors may include in the nonsegregated disclosures a cross-reference to items in the segregated disclosures rather than repeat those items. A lessor may include in the segregated disclosures numeric or alphabetic designations as cross-references to related information so long as such references do not obscure or detract from the segregated disclosures.

2. *Identification of parties.* While disclosures must be made clearly and conspicuously, lessors are not required to use the word ''lessor'' and ''lessee'' to identify the parties to the lease transaction.

3. *Lessor's address.* The lessor must be identified by name; an address (and telephone number) may be provided.

4. *Multiple lessors and lessees.* In transactions involving multiple lessors and multiple lessees, a single lessor may make all the disclosures to a single lessee as long as the disclosure statement identifies all the lessors and lessees.

5. *Lessee's signature.* The regulation does not require that the lessee sign the disclosure statement, whether disclosures are separately provided or are part of the lease contract. Nevertheless, to provide evidence that disclosures are given before a lessee becomes obligated on the lease transaction, the lessor may, for example, ask the lessee to sign the disclosure statement or an acknowledgement of receipt, may place disclosures that are included in the lease documents above the lessee's signature, or include instructions alerting a lessee to read the disclosures prior to signing the lease.

3(a)(2) Segregation of Certain Disclosures

1. *Location.* The segregated disclosures referred to in §1013.3(a)(2) may be provided on a separate document and the other required disclosures may be provided in the lease contract, so long as all disclosures are given at the same time. Alternatively, all disclosures may be provided in a separate document or in the lease contract.

2. *Additional information among segregated disclosures.* The disclosures required to be segregated may contain only the information required or permitted to be included among the segregated disclosures.

3. *Substantially similar.* See commentary to appendix A of this part.

3(a)(3) Timing of Disclosures

1. *Consummation.* When a contractual relationship is created between the lessor and the lessee is a matter to be determined under state or other applicable law.

3(b) Additional Information; Nonsegregated Disclosures

1. *State law disclosures.* A lessor may include in the nonsegregated disclosures any state law disclosures that are not inconsistent with the Act and regulation under §1013.9 as long as, in accordance with the standard set forth in §1013.3(b) for additional information, the state law disclosures are not used or placed to mislead or confuse or detract from any disclosure required by the regulation.

3(c) Multiple Lessors or Lessees

1. *Multiple lessors.* If a single lessor provides disclosures to a lessee on behalf of several lessors, all disclosures for the transaction must be given, even if the lessor making the disclosures would not otherwise have been obligated to make a particular disclosure.

3(d) Use of Estimates

1. *Time of estimated disclosure.* The lessor may, after making a reasonable effort to obtain information, use estimates to make disclosures if necessary information is unknown or unavailable at the time the disclosures are made.

2. *Basis of estimates.* Estimates must be made on the basis of the best information reasonably available at the time disclosures are made. The ''reasonably available'' standard requires that the lessor, acting in good faith, exercise due diligence in obtaining information. The lessor may rely on the representations of other parties. For example, the lessor might look to the consumer to determine the purpose for which leased property will be used, to insurance companies for the cost of insurance, or to an automobile manufacturer or dealer for the date of delivery. See commentary to §1013.4(n) for estimating official fees and taxes.

3. *Residual value of leased property at termination.* In an open-end lease where the lessee's liability at the end of the lease term is based on the residual value of the leased property as determined at consummation, the estimate of the residual value must be reasonable and based on the best information reasonably available to the lessor (see §1013.4(m)). A lessor should generally use an accepted trade publication listing estimated current or future market prices for the leased property unless other information or a reasonable belief based on its experience provides the better information. For example:

i. An automobile lessor offering a three-year open-end lease assigns a wholesale value to the vehicle at the end of the lease term. The lessor may disclose as an estimate a wholesale value derived from a generally accepted trade publication listing current wholesale values.

ii. Same facts as above, except that the lessor discloses an estimated value derived by adjusting the residual value quoted in the trade publication because, in its experience, the trade publication values either understate or overstate the prices actually received in local used vehicle markets. The lessor may adjust estimated values quoted in trade publications if the lessor reasonably believes based on its experience that the values are understated or overstated.

4. *Retail or wholesale value.* The lessor may choose either a retail or a wholesale value in estimating the value of leased property at termination of an open-end lease provided the choice is consistent with the lessor's general practice when determining the value of the property at the end of the lease term. The lessor should indicate whether the value disclosed is a retail or wholesale value.

5. *Labeling estimates.* Generally, only the disclosure for which the exact information is unknown is labeled as an estimate. Nevertheless, when several disclosures are affected because of the unknown information, the lessor has the option of labeling as an estimate every affected disclosure or only the disclosure primarily affected.

3(e) Effect of Subsequent Occurrence

1. *Subsequent occurrences.* Examples of subsequent occurrences include:

i. An agreement between the lessee and lessor to change from a monthly to a weekly payment schedule.

ii. An increase in official fees or taxes.

iii. An increase in insurance premiums or coverage caused by a change in the law.

iv. Late delivery of an automobile caused by a strike.

2. *Redisclosure.* When a disclosure becomes inaccurate because of a subsequent occurrence, the lessor need not make new disclosures unless new disclosures are required under §1013.5.

3. *Lessee's failure to perform.* The lessor does not violate the regulation if a previously given disclosure becomes inaccurate when a lessee fails to perform obligations under the contract and a lessor takes actions that are necessary and proper in such circumstances to protect its interest. For example, the addition of insurance or a security interest by the lessor because the lessee has not performed obligations contracted for in the lease is not a violation of the regulation.

Section 1013.4—Content of Disclosures

4(a) Description of Property

1. *Placement of description.* Although the description of leased property may not be included among the segregated disclosures, a lessor may choose to place the description directly above the segregated disclosures.

4(b) Amount Due at Lease Signing or Delivery

1. *Consummation.* See commentary to §1013.3(a)(3).

2. *Capitalized cost reduction.* A capitalized cost reduction is a payment in the nature of a downpayment on the leased property that reduces the amount to be capitalized over the term of the lease. This amount does not include any amounts included in a periodic payment paid at lease signing or delivery.

3. *''Negative'' equity trade-in allowance.* If an amount owed on a prior lease or credit balance exceeds the agreed upon value of a trade-in, the difference is not reflected as a negative trade-in allowance under §1013.4(b). The lessor may disclose the trade-in allowance as zero or not applicable, or may leave a blank line.

4. *Rebates.* Only rebates applied toward an amount due at lease signing or delivery are required to be disclosed under §1013.4(b).

5. *Balance sheet approach.* In motor vehicle leases, the total for the column labeled ''total amount due at lease signing or delivery'' must equal the total for the column labeled ''how the amount due at lease signing or delivery will be paid.''

6. *Amounts to be paid in cash.* The term cash is intended to include payments by check or other payment methods in addition to currency; however, a lessor may add a line item under the column ''how the amount due at lease signing or delivery will be paid'' for non-currency payments such as credit cards.

4(c) Payment Schedule and Total Amount of Periodic Payments

1. *Periodic payments.* The phrase ''number, amount, and due dates or periods of payments'' requires the disclosure of all payments that are made at regular or irregular intervals and generally derived from rent, capitalized or amortized amounts such as depreciation, and other amounts that are collected by the lessor at the same interval(s), including, for example, taxes, maintenance, and insurance charges. Other periodic payments may, but need not, be disclosed under §1013.4(c).

4(d) Other Charges

1. *Coverage.* Section 1013.4(d) requires the disclosure of charges that are anticipated by the parties incident to the normal operation of the lease agreement. If a lessor is unsure whether a particular fee is an ''other charge,'' the lessor may disclose the fee as such without violating §1013.4(d) or the segregation rule under §1013.3(a)(2).

2. *Excluded charges.* This section does not require disclosure of charges that are imposed when the lessee terminates early, fails to abide by, or modifies the terms of the existing lease agreement, such as charges for:

i. Late payment.

ii. Default.

iii. Early termination.

iv. Deferral of payments.

v. Extension of the lease.

3. *Third-party fees and charges.* Third-party fees or charges collected by the lessor on behalf of third parties, such as taxes, are not disclosed under §1013.4(d).

4. *Relationship to other provisions.* The other charges mentioned in this paragraph are charges that are not required to be disclosed under some other provision of §1013.4. To illustrate:

i. The price of a mechanical breakdown protection (MBP) contract is sometimes disclosed as an ''other charge.'' Nevertheless, the price of MBP is sometimes reflected in the periodic payment disclosure under §1013.4(c) or in states where MBP is regarded as insurance, the cost is be disclosed in accordance with §1013.4(o).

5. *Lessee's liabilities at the end of the lease term.* Liabilities that the lessor imposes upon the lessee at the end of the scheduled lease term and that must be disclosed under §1013.4(d) include disposition and ''pick-up'' charges.

6. *Optional ''disposition'' charges.* Disposition and similar charges that are anticipated by the parties as an incident to the normal operation of the lease agreement must be disclosed under §1013.4(d). If, under a lease agreement, a lessee may return leased property to various locations, and the lessor charges a disposition fee depending upon the location chosen, under §1013.4(d), the lessor must disclose the highest amount charged. In such circumstances, the lessor may also include a brief explanation of the fee structure in the segregated disclosure. For example, if no fee or a lower fee is imposed for returning a leased vehicle to the originating dealer as opposed to another location, that fact may be disclosed. By contrast, if the terms of the lease treat the return of the leased property to a location outside the lessor's service area as a default, the fee imposed is not disclosed as an ''other charge,'' although it may be required to be disclosed under §1013.4(q).

4(e) Total of Payments

1. *Open-end lease.* The additional statement is required under §1013.4(e) for open-end leases because, with some limitations, a lessee is liable at the end of the lease term for the difference between the residual and realized values of the leased property.

4(f) Payment Calculation

1. *Motor vehicle lease.* Whether leased property is a motor vehicle is determined by state or other applicable law.

2. *Multiple items.* If a lease transaction involves multiple items of leased property, one of which is not a motor vehicle under state law, at their option, lessors may include all items in the disclosures required under §1013.4(f). See comment 3(a)–4 regarding disclosure of multiple transactions.

4(f)(1) Gross Capitalized Cost

1. *Agreed upon value of the vehicle.* The agreed upon value of a motor vehicle includes the amount of capitalized items such as charges for vehicle accessories and options, and delivery or destination charges. The lessor may also include taxes and fees for title, licenses, and registration that are capitalized. Charges for service or maintenance contracts, insurance products, guaranteed automobile protection, or an outstanding balance on a prior lease or credit transaction are not included in the agreed upon value.

2. *Itemization of the gross capitalized cost.* The lessor may choose to provide the itemization of the gross capitalized cost only on request or may provide the itemization as a matter of course. In the latter case, the lessor need not provide a statement of the lessee's option to receive an itemization. The gross capitalized cost must be itemized by type and amount. The lessor may include in the itemization an identification of the items and amounts of some or all of the items contained in the agreed upon value of the vehicle. The itemization must be provided at the same time as the other disclosures required by §1013.4, but it may not be included among the segregated disclosures.

4(f)(7) Total of Base Periodic Payments

1. *Accuracy of disclosure.* If the periodic payment calculation under §1013.4(f) has been calculated correctly, the amount disclosed under §1013.4(f)(7)—the total of base periodic payments—is correct for disclosure purposes even if that amount differs from the base periodic payment disclosed under §1013.4(f)(9) multiplied by the number of lease payments disclosed under §1013.4(f)(8), when the difference is due to rounding.

4(f)(8) Lease Payments

1. *Lease Term.* The lease term may be disclosed among the segregated disclosures.

4(g) Early Termination

4(g)(1) Conditions and Disclosure of Charges

1. *Reasonableness of charges.* See the commentary to §1013.4(q).

2. *Description of the method.* Section 1013.4(g)(1) requires a full description of the method of determining an early termination charge. The lessor should attempt to provide consumers with clear and understandable descriptions of its early termination charges. Descriptions that are full, accurate, and not intended to be misleading will comply with §1013.4(g)(1), even if the descriptions are complex. In providing a full description of an early termination method, a lessor may use the name of a generally accepted method of computing the unamortized cost portion (also known as the ''adjusted lease balance'') of its early termination charges. For example, a lessor may state that the ''constant yield'' method will be utilized in obtaining the adjusted lease balance, but must specify how that figure, and any other term or figure, is used in computing the total early termination charge imposed upon the consumer. Additionally, if a lessor refers to a named method in this manner, the lessor must provide a written explanation of that method if requested by the consumer. The lessor has the option of providing the explanation as a matter of course in the lease documents or on a separate document.

3. *Timing of written explanation of a named method.* While a lessor may provide an address or telephone number for the consumer to request a written explanation of the named method used to calculate the adjusted leased balance, if at consummation a consumer requests such an explanation, the lessor must provide a written explanation at that time. If a consumer requests an explanation after consummation, the lessor must provide a written explanation within a reasonable time after the request is made.

4. *Default.* When default is a condition for early termination of a lease, default charges must be disclosed under §1013.4(g)(1). See the commentary to §1013.4(q).

5. *Lessee's liability at early termination.* When the lessee is liable for the difference between the unamortized cost and the realized value at early termination, the method of determining the amount of the difference must be disclosed under §1013.4(g)(1).

4(h) Maintenance Responsibilities

1. *Standards for wear and use.* No disclosure is required if a lessor does not set standards or impose charges for wear and use (such as excess mileage).

4(i) Purchase Option

1. *Mandatory disclosure of no purchase option.* Generally the lessor need only make the specific required disclosures that apply to a transaction. In the case of a purchase option disclosure, however, a lessor must disclose affirmatively that the lessee has no option to purchase the leased property if the purchase option is inapplicable.

2. *Existence of purchase option.* Whether a purchase option exists under the lease is determined by state or other applicable law. The lessee's right to submit a bid to purchase property at termination of the lease is not an option to purchase under §1013.4(i) if the lessor is not required to accept the lessee's bid and the lessee does not receive preferential treatment.

3. *Purchase-option fee.* A purchase-option fee is disclosed under §1013.4(i), not §1013.4(d). The fee may be separately itemized or disclosed as part of the purchase-option price.

4. *Official fees and taxes.* Official fees such as those for taxes, licenses, and registration charged in connection with the exercise of a purchase option may be disclosed under §1013.4(i) as part of the purchase-option price (with or without a reference to their inclusion in that price) or may be separately disclosed and itemized by category. Alternatively, a lessor may provide a statement indicating that the purchase-option price does not include fees for tags, taxes, and registration.

5. *Purchase-option price.* Lessors must disclose the purchase-option price as a sum certain or as a sum certain to be determined at a future date by reference to a readily available independent source. The reference should provide sufficient information so that the lessee will be able to determine the actual price when the option becomes available. Statements of a purchase price as the ''negotiated price'' or the ''fair market value'' do not comply with the requirements of §1013.4(i).

4(j) Statement Referencing Nonsegregated Disclosures

1. *Content.* A lessor may delete inapplicable items from the disclosure. For example, if a lease contract does not include a security interest, the reference to a security interest may be omitted.

4(l) Right of Appraisal

1. *Disclosure inapplicable.* The lessee does not have the right to an independent appraisal merely because the lessee is liable at the end of the lease term or at early termination for unreasonable wear or use. Thus, the disclosure under §1013.4(l) does not apply. For example:

i. The automobile lessor might expect a lessee to return an undented car with four good tires at the end of the lease term. Even though it may hold the lessee liable for the difference between a dented car with bald tires and the value of a car in reasonably good repair, the disclosure under §1013.4(l) is not required.

2. *Lessor's appraisal.* If the lessor obtains an appraisal of the leased property to determine its realized value, that appraisal does not suffice for purposes of section 183(c) of the Act; the lessor must disclose the lessee's right to an independent appraisal under §1013.4(l).

3. *Retail or wholesale.* In providing the disclosures in §1013.4(l), a lessor must indicate whether the wholesale or retail appraisal value will be used.

4. *Time restriction on appraisal.* The regulation does not specify a time period in which the lessee must exercise the appraisal right. The lessor may require a lessee to obtain the appraisal within a reasonable time after termination of the lease.

4(m) Liability at End of Lease Term Based on Residual Value

1. *Open-end leases.* Section 1013.4(m) applies only to open-end leases.

2. *Lessor's payment of attorney's fees.* Section 183(a) of the Act requires that the lessor pay the lessee's attorney's fees in all actions under §1013.4(m), whether successful or not.

4(m)(1) Rent and Other Charges

1. *General.* This disclosure is intended to represent the cost of financing an open-end lease based on charges and fees that the lessor requires the lessee to pay. Examples of disclosable charges, in addition to the rent charge, include acquisition, disposition, or assignment fees. Charges imposed by a third party whose services are not required by the lessor (such as official fees and voluntary insurance) are not included in the §1013.4(m)(1) disclosure.

4(m)(2) Excess Liability

1. *Coverage.* The disclosure limiting the lessee's liability for the value of the leased property does not apply in the case of early termination.

2. *Leases with a minimum term.* If a lease has an alternative minimum term, the disclosures governing the liability limitation are not applicable for the minimum term.

3. *Charges not subject to rebuttable presumption.* The limitation on liability applies only to liability at the end of the lease term that is based on the difference between the residual value of the leased property and its realized value. The regulation does not preclude a lessor from recovering other charges from the lessee at the end of the lease term. Examples of such charges include:

i. Disposition charges.

ii. Excess mileage charges.

iii. Late payment and default charges.

iv. In simple-interest accounting leases, amount by which the unamortized cost exceeds the residual value because the lessee has not made timely payments.

4(n) Fees and Taxes

1. *Treatment of certain taxes.* Taxes paid in connection with the lease are generally disclosed under §1013.4(n), but there are exceptions. To illustrate:

i. Taxes paid by lease signing or delivery are disclosed under §1013.4(b) and §1013.4(n).

ii. Taxes that are part of the scheduled payments are reflected in the disclosure under §1013.4(c), (f), and (n).

iii. A tax payable by the lessor that is passed on to the consumer and is reflected in the lease documentation must be disclosed under §1013.4(n). A tax payable by the lessor and absorbed as a cost of doing business need not be disclosed.

iv. Taxes charged in connection with the exercise of a purchase option are disclosed under §1013.4(i), not §1013.4(n).

2. *Estimates.* In disclosing the total amount of fees and taxes under §1013.4(n), lessors may need to base the disclosure on estimated tax rates or amounts and are afforded great flexibility in doing so. Where a rate is applied to the future value of leased property, lessors have flexibility in estimating that value, including, but not limited to, using the mathematical average of the agreed upon value and the residual value or published valuation guides; or a lessor could prepare estimates using the agreed upon value and disclose a reasonable estimate of the total fees and taxes. Lessors may include a statement that the actual total of fees and taxes may be higher or lower depending on the tax rates in effect or the value of the leased property at the time a fee or tax is assessed.

4(o) Insurance

1. *Coverage.* If insurance is obtained through the lessor, information on the type and amount of insurance coverage (whether voluntary or required) as well as the cost, must be disclosed.

2. *Lessor's insurance.* Insurance purchased by the lessor primarily for its own benefit, and absorbed as a business expense and not separately charged to the lessee, need not be disclosed under §1013.4(o) even if it provides an incidental benefit to the lessee.

3. *Mechanical breakdown protection and other products.* Whether products purchased in conjunction with a lease, such as mechanical breakdown protection (MBP) or guaranteed automobile protection (GAP), should be treated as insurance is determined by state or other applicable law. In states that do not treat MBP or GAP as insurance, §1013.4(o) disclosures are not required. In such cases the lessor may, however, disclose this information in accordance with the additional information provision in §1013.3(b). For MBP insurance contracts not capped by a dollar amount, lessors may describe coverage by referring to a limitation by mileage or time period, for example, by indicating that the mechanical breakdown contract insures parts of the automobile for up to 100,000 miles.

4(p) Warranties or Guarantees

1. *Brief identification.* The statement identifying warranties may be brief and need not describe or list all warranties applicable to specific parts such as for air conditioning, radio, or tires in an automobile. For example, manufacturer's warranties may be identified simply by a reference to the standard manufacturer's warranty. If a lessor provides a comprehensive list of warranties that may not all apply, to comply with §1013.4(p) the lessor must indicate which warranties apply or, alternatively, which warranties do not apply.

2. *Warranty disclaimers.* Although a disclaimer of warranties is not required by the regulation, the lessor may give a disclaimer as additional information in accordance with §1013.3(b).

3. *State law.* Whether an express warranty or guaranty exists is determined by state or other law.

4(q) Penalties and Other Charges for Delinquency

1. *Collection costs.* The automatic imposition of collection costs or attorney fees upon default must be disclosed under §1013.4(q). Collection costs or attorney fees that are not imposed automatically, but are contingent upon expenditures in conjunction with a collection proceeding or upon the employment of an attorney to effect collection, need not be disclosed.

2. *Charges for early termination.* When default is a condition for early termination of a lease, default charges must also be disclosed under §1013.4(g)(1). The §1013.4(q) and (g)(1) disclosures may, but need not, be combined. Examples of combined disclosures are provided in the model lease disclosure forms in appendix A.

3. *Simple-interest leases.* In a simple-interest accounting lease, the additional rent charge that accrues on the lease balance when a periodic payment is made after the due date does not constitute a penalty or other charge for late payment. Similarly, continued accrual of the rent charge after termination of the lease because the lessee fails to return the leased property does not constitute a default charge. But in either case, if the additional charge accrues at a rate higher than the normal rent charge, the lessor must disclose the amount of or the method of determining the additional charge under §1013.4(q).

4. *Extension charges.* Extension charges that exceed the rent charge in a simple-interest accounting lease or that are added separately are disclosed under §1013.4(q).

5. *Reasonableness of charges.* Pursuant to section 183(b) of the Act, penalties or other charges for delinquency, default, or early termination may be specified in the lease but only in an amount that is reasonable in light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

4(r) Security Interest

1. *Disclosable security interests.* See §1013.2(o) and accompanying commentary to determine what security interests must be disclosed.

4(s) Limitations on Rate Information

1. *Segregated disclosures.* A lease rate may not be included among the segregated disclosures referenced in §1013.3(a)(2).

Section 1013.5—Renegotiations, Extensions, and Assumptions

1. *Coverage.* Section 1013.5 applies only to existing leases that are covered by the regulation. It does not apply to the renegotiation or extension of leases with an initial term of four months or less, because such leases are not covered by the definition of consumer lease in §1013.2(e). Whether and when a lease is satisfied and replaced by a new lease is determined by state or other applicable law.

5(a) Renegotiation

1. *Basis of disclosures.* Lessors have flexibility in making disclosures so long as they reflect the legal obligation under the renegotiated lease. For example, assume that a 24-month lease is replaced by a 36-month lease. The initial lease began on January 1, 1998, and was renegotiated and replaced on July 1, 1998, so that the new lease term ends on January 1, 2001.

i. If the renegotiated lease covers the 36-month period beginning January 1, 1998, the new disclosures would reflect all payments made by the lessee on the initial lease and all payments on the renegotiated lease. In this example, since the renegotiated lease covers a 36-month period beginning January 1, 1998, the disclosures must reflect payments made since that date. On the model form, the ''total of base periodic payments'' disclosed under §1013.4(f)(7) should reflect periodic payments to be made over the entire 36-month term. Payments received since January 1, 1998, are added as a new line item disclosed as ''total of payments received'' and are subtracted from the ''total of base periodic payments'' in calculating a new item disclosed as the ''total of base periodic payments remaining.'' For example, if 6 monthly payments of $300 were received since January 1, 1998, the disclosure form should include a ''total of base periodic payments'' line from which $1,800 is subtracted to arrive at the ''total of base periodic payments remaining.'' The remainder of the disclosures would not change.

ii. If the renegotiated lease covers only the remaining 30 months, from July 1, 1998, to January 1, 2001, the disclosures would reflect only the charges incurred in connection with the renegotiation and the payments for the remaining period.

5(b) Extension

1. *Time of extension disclosures.* If a consumer lease is extended for a specified term greater than six months, new disclosures are required at the time the extension is agreed upon. If the lease is extended on a month-to-month basis and the cumulative extensions exceed six months, new disclosures are required at the commencement of the seventh month and at the commencement of each seventh month thereafter for as long as the extensions continue. If a consumer lease is extended for terms of varying durations, one of which will exceed six months beyond the originally scheduled termination date of the lease, new disclosures are required at the commencement of the term that will exceed six months beyond the originally scheduled termination date.

2. *Content of disclosures for month-to-month extensions.* The disclosures for a lease extended on a month-to-month basis for more than six months should reflect the month-to-month nature of the transaction.

3. *Basis of disclosures.* The disclosures should be based on the extension period, including any upfront costs paid in connection with the extension. For example, assume that initially a lease ends on March 1, 1999. In January 1999, agreement is reached to extend the lease until October 1, 1999. The disclosure would include any extension fee paid in January and the periodic payments for the seven-month extension period beginning in March.

Section 1013.6 [Reserved]

Section 1013.7—Advertising

7(a) General Rule

1. *Persons covered.* All ''persons'' must comply with the advertising provisions in this section, not just those that meet the definition of a lessor in §1013.2(h). Thus, automobile dealers (to the extent they are not excluded from the Bureau's rulemaking authority by section 1029 of the Dodd-Frank Act), merchants, and others who are not themselves lessors must comply with the advertising provisions of the regulation if they advertise consumer lease transactions. Pursuant to section 184(b) of the Act, however, owners and personnel of the media in which an advertisement appears or through which

it is disseminated are not subject to civil liability for violations under section 185(b) of the Act.

2. *''Usually and customarily.''* Section 1013.7(a) does not prohibit the advertising of a single item or the promotion of a new leasing program, but prohibits the advertising of terms that are not and will not be available. Thus, an advertisement may state terms that will be offered for only a limited period or terms that will become available at a future date.

3. *Total contractual obligation of advertised lease.* Section 1013.7 applies to advertisements for consumer leases, as defined in §1013.2(e). Under §1013.2(e), a consumer lease is exempt from the requirements of this part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. See comment 2(e)–9. Accordingly, §1013.7 does not apply to an advertisement for a specific consumer lease if the total contractual obligation for that lease exceeds the threshold amount in effect when the advertisement is made. If a lessor promotes multiple consumer leases in a single advertisement, the entire advertisement must comply with §1013.7 unless all of the advertised leases are exempt under §1013.2(e). For example:

i. Assume that, in an advertisement, a lessor states that certain terms apply to a consumer lease for a specific automobile. The total contractual obligation of the advertised lease exceeds the threshold amount in effect when the advertisement is made. Although the advertisement does not refer to any other lease, some or all of the advertised terms for the exempt lease also apply to other leases offered by the lessor with total contractual obligations that do not exceed the applicable threshold amount. The advertisement is not required to comply with §1013.7 because it refers only to an exempt lease.

ii. Assume that, in an advertisement, a lessor states certain terms (such as the amount due at lease signing) that will apply to consumer leases for automobiles of a particular brand. However, the advertisement does not refer to a specific lease. The total contractual obligations of the leases for some of the automobiles will exceed the threshold amount in effect when the advertisement is made, but the total contractual obligations of the leases for other automobiles will not exceed the threshold. The entire advertisement must comply with §1013.7 because it refers to terms for consumer leases that are not exempt.

iii. Assume that, in a single advertisement, a lessor states that certain terms apply to consumer leases for two different automobiles. The total contractual obligation of the lease for the first automobile exceeds the threshold amount in effect when the advertisement is made, but the total contractual obligation of the lease for the second automobile does not exceed the threshold. The entire advertisement must comply with §1013.7 because it refers to a consumer lease that is not exempt.

7(b) Clear and Conspicuous Standard

1. *Standard.* The disclosures in an advertisement in any media must be reasonably understandable. For example, very fine print in a television advertisement or detailed and very rapidly stated information in a radio advertisement does not meet the clear and conspicuous standard if consumers cannot see and read or hear, and cannot comprehend, the information required to be disclosed.

7(b)(1) Amount Due at Lease Signing or Delivery

1. *Itemization not required.* Only a total of amounts due at lease signing or delivery is required to be disclosed, not an itemization of its component parts. Such an itemization is provided in any transaction-specific disclosures provided under §1013.4.

2. *Prominence rule.* Except for a periodic payment, oral or written references to components of the total due at lease signing or delivery (for example, a reference to a capitalized cost reduction, where permitted) may not be more prominent than the disclosure of the total amount due at lease signing or delivery.

7(b)(2) Advertisement of a Lease Rate

1. *Location of statement.* The notice required to accompany a percentage rate stated in an advertisement must be placed in close proximity to the rate without any other intervening language or symbols. For example, a lessor may not place an asterisk next to the rate and place the notice elsewhere in the advertisement. In addition, with the exception of the notice required by §1013.4(s), the rate cannot be more prominent than any other §1013.4 disclosure stated in the advertisement.

7(c) Catalogs or Other Multi-Page Advertisements; Electronic Advertisements

1. *General rule.* The multiple-page advertisements referred to in §1013.7(c) are advertisements consisting of a series of numbered pages—for example, a supplement to a newspaper. A mailing comprising several separate flyers or pieces of promotional material in a single envelope is not a single multiple-page advertisement.

2. *Cross references.* A catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an internet Web site) is a single advertisement (requiring only one set of lease disclosures) if it contains a table,

chart, or schedule with the disclosures required under §1013.7(d)(2)(i) through (v). If one of the triggering terms listed in §1013.7(d)(1) appears in a catalog, or in a multiple-page or electronic advertisement, it must clearly direct the consumer to the page or location where the table, chart, or schedule begins. For example, in an electronic advertisement, a term triggering additional disclosures may be accompanied by a link that directly connects the consumer to the additional information.

7(d)(1) Triggering Terms

1. *Typical example.* When any triggering term appears in a lease advertisement, the additional terms enumerated in §1013.7(d)(2)(i) through (v) must also appear. In a multi-lease advertisement, an example of one or more typical leases with a statement of all the terms applicable to each may be used. The examples must be labeled as such and must reflect representative lease terms that are made available by the lessor to consumers.

7(d)(2) Additional Terms

1. *Third-party fees that vary by state or locality.* The disclosure of a periodic payment or total amount due at lease signing or delivery may:

i. Exclude third-party fees, such as taxes, licenses, and registration fees and disclose that fact; or

ii. Provide a periodic payment or total that includes third-party fees based on a particular state or locality as long as that fact and the fact that fees may vary by state or locality are disclosed.

7(e) Alternative Disclosures—Merchandise Tags

1. *Multiple-item leases.* Multiple-item leases that utilize merchandise tags requiring additional disclosures may use the alternate disclosure rule.

7(f) Alternative Disclosures—Television or Radio Advertisements

7(f)(1) Toll-Free Number or Print Advertisement

1. *Publication in general circulation.* A reference to a written advertisement appearing in a newspaper circulated nationally, for example, USA Today or the Wall Street Journal, may satisfy the general circulation requirement in §1013.7(f)(1)(ii).

2. *Toll-free number, local or collect calls.* In complying with the disclosure requirements of §1013.7(f)(1)(i), a lessor must provide a toll-free number for nonlocal calls made from an area code other than the one used in the lessor's dialing area. Alternatively, a lessor may provide any telephone number that allows a consumer to reverse the phone charges when calling for information.

3. *Multi-purpose number.* When an advertised toll-free number responds with a recording, lease disclosures must be provided early in the sequence to ensure that the consumer receives the required disclosures. For example, in providing several dialing options—such as providing directions to the lessor's place of business—the option allowing the consumer to request lease disclosures should be provided early in the telephone message to ensure that the option to request disclosures is not obscured by other information.

4. *Statement accompanying toll free number.* Language must accompany a telephone and television number indicating that disclosures are available by calling the toll-free number, such as ''call 1–(800) 000–0000 for details about costs and terms.''

Section 1013.8—Record Retention

1. *Manner of retaining evidence.* A lessor must retain evidence of having performed required actions and of having made required disclosures. Such records may be retained in paper form, on microfilm, microfiche, or computer, or by any other method designed to reproduce records accurately. The lessor need retain only enough information to reconstruct the required disclosures or other records.

Section 1013.9—Relation to State Laws

1. *Exemptions granted.* The Bureau recognizes exemptions granted by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. Effective October 1, 1982, the Board of Governors of the Federal Reserve System granted the following exemptions from portions of the Consumer Leasing Act:

i. *Maine.* Lease transactions subject to the Maine Consumer Credit Code and its implementing regulations are exempt from Chapters 2, 4, and 5 of the Federal act. (The exemption does not apply to transactions in which a federally chartered institution is a lessor.)

ii. *Oklahoma.* Lease transactions subject to the Oklahoma Consumer Credit Code are exempt from Chapters 2 and 5 of the Federal act. (The exemption does not apply to sections 132 through 135 of the Federal act, nor does it apply to transactions in which a federally chartered institution is a lessor.)

Appendix A—Model Forms

1. *Permissible changes.* Although use of the model forms is not required, lessors using them properly will be deemed to be in compliance with the regulation. Generally, lessors may make certain changes in the format or content of the forms and may delete any disclosures that are inapplicable to a

transaction without losing the Act's protection from liability. For example, the model form based on monthly periodic payments may be modified for single-payment lease transactions or for quarterly or other regular or irregular periodic payments. The model form may also be modified to reflect that a transaction is an extension. The content, format, and headings for the segregated disclosures must be substantially similar to those contained in the model forms; therefore, any changes should be minimal. The changes to the model forms should not be so extensive as to affect the substance and the clarity of the disclosures.

2. *Examples of acceptable changes.*

i. Using the first person, instead of the second person, in referring to the lessee.

ii. Using ''lessee,'' ''lessor,'' or names instead of pronouns.

iii. Rearranging the sequence of the nonsegregated disclosures.

iv. Incorporating certain state ''plain English'' requirements.

v. Deleting or blocking out inapplicable disclosures, filling in ''N/A'' (not applicable) or ''0,'' crossing out, leaving blanks, checking a box for applicable items, or circling applicable items (this should facilitate use of multipurpose standard forms).

vi. Adding language or symbols to indicate estimates.

vii. Adding numeric or alphabetic designations.

viii. Rearranging the disclosures into vertical columns, except for §1013.4(b) through (e) disclosures.

ix. Using icons and other graphics.

3. *Model closed-end or net vehicle lease disclosure.* Model A–2 is designed for a closed-end or net vehicle lease. Under the ''Early Termination and Default'' provision a reference to the lessee's right to an independent appraisal of the leased vehicle under §1013.4(l) is included for those closed-end leases in which the lessee's liability at early termination is based on the vehicle's realized value.

4. *Model furniture lease disclosures.* Model A–3 is a closed-end lease disclosure statement designed for a typical furniture lease. It does not include a disclosure of the appraisal right at early termination required under §1013.4(l) because few closed-end furniture leases base the lessee's liability at early termination on the realized value of the leased property. The disclosure should be added if it is applicable.

[76 FR 78502, Dec. 19, 2011, as amended at 76 FR 81790, Dec. 29, 2011; 77 FR 69736, Nov. 21, 2012; 79 FR 70194, Nov. 25, 2013; 79 FR 56483, Sept. 22, 2014; 80 FR 73947, Nov. 27, 2015]

PART 1014—MORTGAGE ACTS AND PRACTICES—ADVERTISING (REGULATION N)

Sec.

1014.1 Scope of regulations in this part.
1014.2 Definitions.
1014.3 Prohibited representations.
1014.4 Waiver not permitted.
1014.5 Recordkeeping requirements.
1014.6 Actions by states.
1014.7 Severability.

AUTHORITY: 12 U.S.C. 5512, 5581; 15 U.S.C. 1638 note.

SOURCE: 76 FR 78133, Dec. 16, 2011, unless otherwise noted.

§ 1014.1 Scope of regulations in this part.

This part, known as Regulation N, is issued by the Bureau of Consumer Financial Protection to implement the 2009 Omnibus Appropriations Act, Public L. 111–8, section 626, 123 Stat. 524 (Mar. 11, 2009), as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111–24, section 511, 123 Stat. 1734 (May 22, 2009), and as amended by the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010, Public Law 111–203, section 1097, 124 Stat. 1376 (July 21, 2010). This part applies to persons over which the Federal Trade Commission has jurisdiction under the Federal Trade Commission Act.

§ 1014.2 Definitions.

For the purposes of this part:

Commercial communication means any written or oral statement, illustration, or depiction, whether in English or any other language, that is designed to effect a sale or create interest in purchasing goods or services, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, on-hold script, upsell script, training materials provided to telemarketing firms, program-length commercial (''infomercial''), the

internet, cellular network, or any other medium. Promotional materials and items and Web pages are included in the term *commercial communication*.

Consumer means a natural person to whom a mortgage credit product is offered or extended.

Credit means the right to defer payment of debt or to incur debt and defer its payment.

Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes any of the following if used as a residence: an individual condominium unit, cooperative unit, mobile home, manufactured home, or trailer.

Mortgage credit product means any form of credit that is secured by real property or a dwelling and that is offered or extended to a consumer primarily for personal, family, or household purposes.

Person means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

Term means any of the fees, costs, obligations, or characteristics of or associated with the product. It also includes any of the conditions on or related to the availability of the product.

§ 1014.3 Prohibited representations.

It is a violation of this part for any person to make any material misrepresentation, expressly or by implication, in any commercial communication, regarding any term of any mortgage credit product, including but not limited to misrepresentations about:

(a) The interest charged for the mortgage credit product, including but not limited to misrepresentations concerning:

(1) The amount of interest that the consumer owes each month that is included in the consumer's payments, loan amount, or total amount due, or

(2) Whether the difference between the interest owed and the interest paid is added to the total amount due from the consumer;

(b) The annual percentage rate, simple annual rate, periodic rate, or any other rate;

(c) The existence, nature, or amount of fees or costs to the consumer associated with the mortgage credit product, including but not limited to misrepresentations that no fees are charged;

(d) The existence, cost, payment terms, or other terms associated with any additional product or feature that is or may be sold in conjunction with the mortgage credit product, including but not limited to credit insurance or credit disability insurance;

(e) The terms, amounts, payments, or other requirements relating to taxes or insurance associated with the mortgage credit product, including but not limited to misrepresentations about:

(1) Whether separate payment of taxes or insurance is required; or

(2) The extent to which payment for taxes or insurance is included in the loan payments, loan amount, or total amount due from the consumer;

(f) Any prepayment penalty associated with the mortgage credit product, including but not limited to misrepresentations concerning the existence, nature, amount, or terms of such penalty;

(g) The variability of interest, payments, or other terms of the mortgage credit product, including but not limited to misrepresentations using the word ''fixed'';

(h) Any comparison between:

(1) Any rate or payment that will be available for a period less than the full length of the mortgage credit product; and

(2) Any actual or hypothetical rate or payment;

(i) The type of mortgage credit product, including but not limited to misrepresentations that the product is or involves a fully amortizing mortgage;

(j) The amount of the obligation, or the existence, nature, or amount of cash or credit available to the consumer in connection with the mortgage credit product, including but not limited to misrepresentations that the consumer will receive a certain amount of cash or credit as part of a mortgage credit transaction;

(k) The existence, number, amount, or timing of any minimum or required payments, including but not limited to misrepresentations about any payments or that no payments are required in a reverse mortgage or other mortgage credit product;

(l) The potential for default under the mortgage credit product, including but not limited to misrepresentations concerning the circumstances under which the consumer could default for nonpayment of taxes, insurance, or maintenance, or for failure to meet other obligations;

(m) The effectiveness of the mortgage credit product in helping the consumer resolve difficulties in paying debts, including but not limited to misrepresentations that any mortgage credit product can reduce, eliminate, or restructure debt or result in a waiver or forgiveness, in whole or in part, of the consumer's existing obligation with any person;

(n) The association of the mortgage credit product or any provider of such product with any other person or program, including but not limited to misrepresentations that:

(1) The provider is, or is affiliated with, any governmental entity or other organization; or

(2) The product is or relates to a government benefit, or is endorsed, sponsored by, or affiliated with any government or other program, including but not limited to through the use of formats, symbols, or logos that resemble those of such entity, organization, or program;

(o) The source of any commercial communication, including but not limited to misrepresentations that a commercial communication is made by or on behalf of the consumer's current mortgage lender or servicer;

(p) The right of the consumer to reside in the dwelling that is the subject of the mortgage credit product, or the duration of such right, including but not limited to misrepresentations concerning how long or under what conditions a consumer with a reverse mortgage can stay in the dwelling;

(q) The consumer's ability or likelihood to obtain any mortgage credit product or term, including but not limited to misrepresentations concerning whether the consumer has been preapproved or guaranteed for any such product or term;

(r) The consumer's ability or likelihood to obtain a refinancing or modification of any mortgage credit product or term, including but not limited to misrepresentations concerning whether the consumer has been preapproved or guaranteed for any such refinancing or modification; and

(s) The availability, nature, or substance of counseling services or any other expert advice offered to the consumer regarding any mortgage credit product or term, including but not limited to the qualifications of those offering the services or advice.

§ 1014.4 Waiver not permitted.

It is a violation of this part for any person to obtain, or attempt to obtain, a waiver from any consumer of any protection provided by or any right of the consumer under this part.

§ 1014.5 Recordkeeping requirements.

(a) Any person subject to this part shall keep, for a period of twenty-four months from the last date the person made or disseminated the applicable commercial communication regarding any term of any mortgage credit product, the following evidence of compliance with this part:

(1) Copies of all materially different commercial communications as well as sales scripts, training materials, and marketing materials, regarding any term of any mortgage credit product, that the person made or disseminated during the relevant time period;

(2) Documents describing or evidencing all mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such mortgage credit product available to consumers; and

(3) Documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such additional product or service available to consumers.

(b) Any person subject to this part may keep the records required by paragraph (a) of this section in any legible form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required under paragraph (a) of this section shall be a violation of this part.

§ 1014.6 Actions by states.

Any attorney general or other officer of a state authorized by the state to bring an action under this part may do so pursuant to section 626(b) of the 2009 Omnibus Appropriations Act, Public Law 111–8, section 626, 123 Stat. 524 (Mar. 11, 2009), as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111–24, section 511, 123 Stat. 1734 (May 22, 2009), and as amended by Public Law 111–203, section 1097, 124 Stat. 2102 (July 21, 2010).

§ 1014.7 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Bureau of Consumer Financial Protection's intention that the remaining provisions shall continue in effect.

PART 1015—MORTGAGE ASSISTANCE RELIEF SERVICES (REGULATION O)

Sec.

1015.1 Scope of regulations in this part.
1015.2 Definitions.
1015.3 Prohibited representations.
1015.4 Disclosures required in commercial communications.
1015.5 Prohibition on collection of advance payments and related disclosures.
1015.6 Assisting and facilitating.
1015.7 Exemptions.
1015.8 Waiver not permitted.
1015.9 Recordkeeping and compliance requirements.
1015.10 Actions by states.
1015.11 Severability.

AUTHORITY: 12 U.S.C. 5512, 5581; 15 U.S.C. 1638 note.

SOURCE: 76 FR 78133, Dec. 16, 2011, unless otherwise noted.

§ 1015.1 Scope of regulations in this part.

This part, known as Regulation O, is issued by the Bureau of Consumer Financial Protection to implement the 2009 Omnibus Appropriations Act, Public Law 111–8, section 626, 123 Stat. 524 (Mar. 11, 2009), as clarified by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111–24, section 511, 123 Stat. 1734 (May 22, 2009), and as amended by the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010, Public Law 111–203, section 1097, 124 Stat. 1376 (July 21, 2010). *This part applies to persons over which the Federal Trade Commission has jurisdiction under the Federal Trade Commission Act.*

§ 1015.2 Definitions.

For the purposes of this part:

Clear and prominent means:

(1) In textual communications, the required disclosures shall be easily readable; in a high degree of contrast from the immediate background on which it appears; in the same languages that are substantially used in the commercial communication; in a format so that the disclosure is distinct from other text, such as inside a border; in a distinct type style, such as bold; parallel to the base of the commercial communication, and, except as otherwise provided in this rule, each letter of the disclosure shall be, at a minimum, the larger of 12-point type or one-half the size of the largest letter or numeral used in the name of the advertised Web site or telephone number to which consumers are referred to receive information relating to any mortgage assistance relief service. Textual communications include any communications in a written or printed form such as print publications or words displayed on the screen of a computer;

(2) In communications disseminated orally or through audible means, such as radio or streaming audio, the required disclosures shall be delivered in a slow and deliberate manner and in a reasonably understandable volume and pitch;

(3) In communications disseminated through video means, such as television or streaming video, the required

disclosures shall appear simultaneously in the audio and visual parts of the commercial communication and be delivered in a manner consistent with paragraphs (1) and (2) of this definition. The visual disclosure shall be at least four percent of the vertical picture or screen height and appear for the duration of the oral disclosure;

(4) In communications made through interactive media, such as the internet, online services, and software, the required disclosures shall:

(i) Be consistent with paragraphs (1) through (3) of this definition;

(ii) Be made on, or immediately prior to, the page on which the consumer takes any action to incur any financial obligation;

(iii) Be unavoidable, *i.e.*, visible to consumers without requiring them to scroll down a Web page; and

(iv) Appear in type at least the same size as the largest character of the advertisement;

(5) In all instances, the required disclosures shall be presented in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them; and

(6) For program-length television, radio, or internet-based multimedia commercial communications, the required disclosures shall be made at the beginning, near the middle, and at the end of the commercial communication.

Client trust account means a separate account created by a licensed attorney for the purpose of holding client funds, which is:

(1) Maintained in compliance with all applicable state laws and regulations, including licensing regulations; and

(2) Located in the state where the attorney's office is located, or elsewhere in the United States with the consent of the consumer on whose behalf the funds are held.

Commercial communication means any written or oral statement, illustration, or depiction, whether in English or any other language, that is designed to effect a sale or create interest in purchasing any service, plan, or program, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, onhold script, upsell script, training materials provided to telemarketing firms, program-length commercial (''infomercial''), the internet, cellular network, or any other medium. Promotional materials and items and Web pages are included in the term ''commercial communication.''

(1) *General Commercial Communication* means a commercial communication that occurs prior to the consumer agreeing to permit the provider to seek offers of mortgage assistance relief on behalf of the consumer, or otherwise agreeing to use the mortgage assistance relief service, and that is not directed at a specific consumer.

(2) *Consumer-Specific Commercial Communication* means a commercial communication that occurs prior to the consumer agreeing to permit the provider to seek offers of mortgage assistance relief on behalf of the consumer, or otherwise agreeing to use the mortgage assistance relief service, and that is directed at a specific consumer.

Consumer means any natural person who is obligated under any loan secured by a dwelling.

Dwelling means a residential structure containing four or fewer units, whether or not that structure is attached to real property, that is primarily for personal, family, or household purposes. The term includes any of the following if used as a residence: An individual condominium unit, cooperative unit, mobile home, manufactured home, or trailer.

Dwelling loan means any loan secured by a dwelling, and any associated deed of trust or mortgage.

Dwelling Loan Holder means any individual or entity who holds the dwelling loan that is the subject of the offer to provide mortgage assistance relief services.

Material means likely to affect a consumer's choice of, or conduct regarding, any mortgage assistance relief service.

Mortgage Assistance Relief Service means any service, plan, or program, offered or provided to the consumer in exchange for consideration, that is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:

(1) Stopping, preventing, or postponing any mortgage or deed of trust foreclosure sale for the consumer's dwelling, any repossession of the consumer's dwelling, or otherwise saving the consumer's dwelling from foreclosure or repossession;

(2) Negotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees;

(3) Obtaining any forbearance or modification in the timing of payments from any dwelling loan holder or servicer on any dwelling loan;

(4) Negotiating, obtaining, or arranging any extension of the period of time within which the consumer may:

(i) Cure his or her default on a dwelling loan,

(ii) Reinstate his or her dwelling loan,

(iii) Redeem a dwelling, or

(iv) Exercise any right to reinstate a dwelling loan or redeem a dwelling;

(5) Obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling; or

(6) Negotiating, obtaining or arranging:

(i) A short sale of a dwelling,

(ii) A deed-in-lieu of foreclosure, or

(iii) Any other disposition of a dwelling other than a sale to a third party who is not the dwelling loan holder.

Mortgage Assistance Relief Service Provider or *Provider* means any person that provides, offers to provide, or arranges for others to provide, any mortgage assistance relief service. This term does not include:

(1) The dwelling loan holder, or any agent or contractor of such individual or entity.

(2) The servicer of a dwelling loan, or any agent or contractor of such individual or entity.

Person means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity, except to the extent that any person is specifically excluded from the Federal Trade Commission's jurisdiction pursuant to 15 U.S.C. 44 and 45(a)(2).

Servicer means the individual or entity responsible for:

(1) Receiving any scheduled periodic payments from a consumer pursuant to the terms of the dwelling loan that is the subject of the offer to provide mortgage assistance relief services, including amounts for escrow accounts under section 10 of the Real Estate Settlement Procedures Act (12 U.S.C. 2609); and

(2) Making the payments of principal and interest and such other payments with respect to the amounts received from the consumer as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract.

Telemarketing means a plan, program, or campaign which is conducted to induce the purchase of any service, by use of one or more telephones and which involves more than one interstate telephone call.

§ 1015.3 Prohibited representations.

It is a violation of this rule for any mortgage assistance relief service provider to engage in the following conduct:

(a) Representing, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief service, that a consumer cannot or should not contact or communicate with his or her lender or servicer.

(b) Misrepresenting, expressly or by implication, any material aspect of any mortgage assistance relief service, including but not limited to:

(1) The likelihood of negotiating, obtaining, or arranging any represented service or result, such as those set forth in the definition of *Mortgage Assistance Relief Service* in § 1015.2;

(2) The amount of time it will take the mortgage assistance relief service provider to accomplish any represented service or result, such as those set forth in the definition of *Mortgage Assistance Relief Service* in § 1015.2;

(3) That a mortgage assistance relief service is affiliated with, endorsed or approved by, or otherwise associated with:

(i) The United States government,

(ii) Any governmental homeowner assistance plan,

(iii) Any Federal, State, or local government agency, unit, or department,

(iv) Any nonprofit housing counselor agency or program,

(v) The maker, holder, or servicer of the consumer's dwelling loan, or

(vi) Any other individual, entity, or program;

(4) The consumer's obligation to make scheduled periodic payments or any other payments pursuant to the terms of the consumer's dwelling loan;

(5) The terms or conditions of the consumer's dwelling loan, including but not limited to the amount of debt owed;

(6) The terms or conditions of any refund, cancellation, exchange, or repurchase policy for a mortgage assistance relief service, including but not limited to the likelihood of obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted, for a mortgage assistance relief service;

(7) That the mortgage assistance relief service provider has completed the represented services or has a right to claim, demand, charge, collect, or receive payment or other consideration;

(8) That the consumer will receive legal representation;

(9) The availability, performance, cost, or characteristics of any alternative to for-profit mortgage assistance relief services through which the consumer can obtain mortgage assistance relief, including negotiating directly with the dwelling loan holder or servicer, or using any nonprofit housing counselor agency or program;

(10) The amount of money or the percentage of the debt amount that a consumer may save by using the mortgage assistance relief service;

(11) The total cost to purchase the mortgage assistance relief service; or

(12) The terms, conditions, or limitations of any offer of mortgage assistance relief the provider obtains from the consumer's dwelling loan holder or servicer, including the time period in which the consumer must decide to accept the offer;

(c) Making a representation, expressly or by implication, about the benefits, performance, or efficacy of any mortgage assistance relief service unless, at the time such representation is made, the provider possesses and relies upon competent and reliable evidence that substantiates that the representation is true. For the purposes of this paragraph, *competent and reliable evidence* means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by individuals qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

§ 1015.4 Disclosures required in commercial communications.

It is a violation of this rule for any mortgage assistance relief service provider to engage in the following conduct:

(a) *Disclosures in All General Commercial Communications*—Failing to place the following statements in every general commercial communication for any mortgage assistance relief service:

(1) ''(Name of company) is not associated with the government, and our service is not approved by the government or your lender.''

(2) In cases where the mortgage assistance relief service provider has represented, expressly or by implication, that consumers will receive any service or result set forth in paragraphs (2) through (6) of the definition of *Mortgage Assistance Relief Service* in § 1015.2, ''Even if you accept this offer and use our service, your lender may not agree to change your loan.''

(3) The disclosures required by this paragraph must be made in a clear and prominent manner, and—

(i) In textual communications the disclosures must appear together and be preceded by the heading ''IMPORTANT NOTICE,'' which must be in bold face font that is two point-type larger than the font size of the required disclosures; and

(ii) In communications disseminated orally or through audible means, wholly or in part, the audio component of the required disclosures must be preceded by the statement ''Before using this service, consider the following information.''

(b) *Disclosures in All Consumer-Specific Commercial Communications*—Failing to disclose the following information in every consumer-specific commercial communication for any mortgage assistance relief service:

(1) ''You may stop doing business with us at any time. You may accept or reject the offer of mortgage assistance we obtain from your lender [or servicer]. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us (insert amount or method for calculating the amount) for our services.'' For the purposes of this paragraph (b)(1), the amount ''you will have to pay'' shall consist of the total amount the consumer must pay to purchase, receive, and use all of the mortgage assistance relief services that are the subject of the sales offer, including, but not limited to, all fees and charges.

(2) ''(Name of company) is not associated with the government, and our service is not approved by the government or your lender.''

(3) In cases where the mortgage assistance relief service provider has represented, expressly or by implication, that consumers will receive any service or result set forth in paragraphs (2) through (6) of the definition of *Mortgage Assistance Relief Service* in §1015.2, ''Even if you accept this offer and use our service, your lender may not agree to change your loan.''

(4) The disclosures required by this paragraph must be made in a clear and prominent manner, and—

(i) In textual communications the disclosures must appear together and be preceded by the heading ''IMPORTANT NOTICE,'' which must be in bold face font that is two point-type larger than the font size of the required disclosures; and

(ii) In communications disseminated orally or through audible means, wholly or in part, the audio component of the required disclosures must be preceded by the statement ''Before using this service, consider the following information'' and, in telephone communications, must be made at the beginning of the call.

(c) *Disclosures in All General Commercial Communications, Consumer-Specific Commercial Communications, and Other Communications*—In cases where the mortgage assistance relief service provider has represented, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief service, that the consumer should temporarily or permanently discontinue payments, in whole or in part, on a dwelling loan, failing to disclose, clearly and prominently, and in close proximity to any such representation that ''If you stop paying your mortgage, you could lose your home and damage your credit rating.''

§ 1015.5 Prohibition on collection of advance payments and related disclosures.

It is a violation of this rule for any mortgage assistance relief service provider to:

(a) Request or receive payment of any fee or other consideration until the consumer has executed a written agreement between the consumer and the consumer's dwelling loan holder or servicer incorporating the offer of mortgage assistance relief the provider obtained from the consumer's dwelling loan holder or servicer;

(b) Fail to disclose, at the time the mortgage assistance relief service provider furnishes the consumer with the written agreement specified in paragraph (a) of this section, the following information: ''This is an offer of mortgage assistance we obtained from your lender [or servicer]. You may accept or reject the offer. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [same amount as disclosed pursuant to §1015.4(b)(1)] for our services.'' The disclosure required by this paragraph must be made in a clear and prominent manner, on a separate written page, and preceded by the heading: ''IMPORTANT NOTICE: Before buying this service, consider the following information.'' The heading must be in bold

face font that is two point-type larger than the font size of the required disclosure; or

(c)(1) Fail to provide, at the time the mortgage assistance relief service provider furnishes the consumer with the written agreement specified in paragraph (a) of this section, a notice from the consumer's dwelling loan holder or servicer that describes all material differences between the terms, conditions, and limitations associated with the consumer's current mortgage loan and the terms, conditions, and limitations associated with the consumer's mortgage loan if he or she accepts the dwelling loan holder's or servicer's offer, including but not limited to differences in the loan's:

(i) Principal balance;

(ii) Contract interest rate, including the maximum rate and any adjustable rates, if applicable;

(iii) Amount and number of the consumer's scheduled periodic payments on the loan;

(iv) Monthly amounts owed for principal, interest, taxes, and any mortgage insurance on the loan;

(v) Amount of any delinquent payments owing or outstanding;

(vi) Assessed fees or penalties; and

(vii) Term.

(2) The notice must be made in a clear and prominent manner, on a separate written page, and preceded by heading: ''IMPORTANT INFORMATION FROM YOUR [name of lender or servicer] ABOUT THIS OFFER.'' The heading must be in bold face font that is two-point-type larger than the font size of the required disclosure.

(d) Fail to disclose in the notice specified in paragraph (c) of this section, in cases where the offer of mortgage assistance relief the provider obtained from the consumer's dwelling loan holder or servicer is a trial mortgage loan modification, the terms, conditions, and limitations of this offer, including but not limited to:

(1) The fact that the consumer may not qualify for a permanent mortgage loan modification; and

(2) The likely amount of the scheduled periodic payments and any arrears, payments, or fees that the consumer would owe in failing to qualify.

§ 1015.6 Assisting and facilitating.

It is a violation of this rule for a person to provide substantial assistance or support to any mortgage assistance relief service provider when that person knows or consciously avoids knowing that the provider is engaged in any act or practice that violates this rule.

§ 1015.7 Exemptions.

(a) An attorney is exempt from this part, with the exception of § 1015.5, if the attorney:

(1) Provides mortgage assistance relief services as part of the practice of law;

(2) Is licensed to practice law in the state in which the consumer for whom the attorney is providing mortgage assistance relief services resides or in which the consumer's dwelling is located; and

(3) Complies with state laws and regulations that cover the same type of conduct the rule requires.

(b) An attorney who is exempt pursuant to paragraph (a) of this section is also exempt from § 1015.5 if the attorney:

(1) Deposits any funds received from the consumer prior to performing legal services in a client trust account; and

(2) Complies with all state laws and regulations, including licensing regulations, applicable to client trust accounts.

§ 1015.8 Waiver not permitted.

It is a violation of this rule for any person to obtain, or attempt to obtain, a waiver from any consumer of any protection provided by or any right of the consumer under this rule.

§ 1015.9 Recordkeeping and compliance requirements.

(a) Any mortgage assistance relief provider must keep, for a period of twenty-four (24) months from the date the record is created, the following records:

(1) All contracts or other agreements between the provider and any consumer for any mortgage assistance relief service;

(2) Copies of all written communications between the provider and any consumer occurring prior to the date on which the consumer entered into an

agreement with the provider for any mortgage assistance relief service;

(3) Copies of all documents or telephone recordings created in connection with compliance with paragraph (b) of this section;

(4) All consumer files containing the names, phone numbers, dollar amounts paid, and descriptions of mortgage assistance relief services purchased, to the extent the mortgage assistance relief service provider keeps such information in the ordinary course of business;

(5) Copies of all materially different sales scripts, training materials, commercial communications, or other marketing materials, including Web sites and weblogs, for any mortgage assistance relief service; and

(6) Copies of the documentation provided to the consumer as specified in §1015.5 of this rule;

(b) A mortgage assistance relief service provider also must:

(1) Take reasonable steps sufficient to monitor and ensure that all employees and independent contractors comply with this rule. Such steps shall include the monitoring of communications directed at specific consumers, and shall also include, at a minimum, the following:

(i) If the mortgage assistance relief service provider is engaged in the telemarketing of mortgage assistance relief services, performing random, blind recording and testing of the oral representations made by individuals engaged in sales or other customer service functions;

(ii) Establishing a procedure for receiving and responding to all consumer complaints; and

(iii) Ascertaining the number and nature of consumer complaints regarding transactions in which all employees and independent contractors are involved;

(2) Investigate promptly and fully each consumer complaint received;

(3) Take corrective action with respect to any employee or contractor whom the mortgage assistance relief service provider determines is not complying with this rule, which may include training, disciplining, or terminating such individual; and

(4) Maintain any information and material necessary to demonstrate its compliance with paragraphs (b)(1) through (3) of this section.

(c) A mortgage assistance relief provider may keep the records required by paragraphs (a) and (b) of this section in any form, and in the same manner, format, or place as it keeps such records in the ordinary course of business.

(d) It is a violation of this rule for a mortgage assistance relief service provider not to comply with this section.

§1015.10 Actions by states.

Any attorney general or other officer of a state authorized by the state to bring an action under this part may do so pursuant to section 626(b) of the 2009 Omnibus Appropriations Act, Public Law 111–8, section 626, 123 Stat. 524 (Mar. 11, 2009), as amended by Public Law 111–24, section 511, 123 Stat. 1734 (May 22, 2009), and as amended by Public Law 111–203, section 1097, 124 Stat. 2102 (July 21, 2010).

§1015.11 Severability.

The provisions of this rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Bureau of Consumer Financial Protection's intention that the remaining provisions shall continue in effect.

PART 1016—PRIVACY OF CONSUMER FINANCIAL INFORMATION (REGULATION P)

Sec.

1016.1 Purpose and scope.
1016.2 Model privacy form and examples.
1016.3 Definitions.

Subpart A—Privacy and Opt Out Notices

1016.4 Initial privacy notice to consumers required.
1016.5 Annual privacy notice to customers required.
1016.6 Information to be included in privacy notices.
1016.7 Form of opt out notice to consumers; opt out methods.
1016.8 Revised privacy notices.
1016.9 Delivering privacy and opt out notices.

Subpart B—Limits on Disclosures

1016.10 Limits on disclosure of nonpublic personal information to nonaffiliated third parties.
1016.11 Limits on redisclosure and reuse of information.
1016.12 Limits on sharing account number information for marketing purposes.

Subpart C—Exceptions

1016.13 Exception to opt out requirements for service providers and joint marketing.
1016.14 Exceptions to notice and opt out requirements for processing and servicing transactions.
1016.15 Other exceptions to notice and opt out requirements.

Subpart D—Relation to Other Laws

1016.16 Protection of Fair Credit Reporting Act.
1016.17 Relation to state laws.
APPENDIX TO PART 1016—MODEL PRIVACY FORM

AUTHORITY: 12 U.S.C. 5512, 5581; 15 U.S.C. 6804.

SOURCE: 76 FR 79028, Dec. 21, 2011, unless otherwise noted.

§ 1016.1 Purpose and scope.

(a) *Purpose.* This part governs the treatment of nonpublic personal information about consumers by the financial institutions listed in paragraph (b) of this section. This part:

(1) Requires a financial institution to provide notice to customers about its privacy policies and practices;

(2) Describes the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by ''opting out'' of that disclosure, subject to the exceptions in §§ 1016.13, 1016.14, and 1016.15.

(b) *Scope.* (1) This part applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes from the institutions listed below. This part does not apply to information about companies or about individuals who obtain financial products or services for business, commercial, or agricultural purposes. This part applies to those financial institutions and other persons for which the Bureau of Consumer Financial Protection (Bureau) has rulemaking authority pursuant to section 504(a)(1)(A) of the Gramm-Leach-Bliley Act (GLB Act) (15 U.S.C. 6804(a)(1)(A)). Specifically, this part applies to any financial institution and other covered person or service provider that is subject to Subtitle A of Title V of the GLB Act, including third parties that are not financial institutions but that receive nonpublic personal information from financial institutions with whom they are not affiliated. This part does not apply to certain motor vehicle dealers described in 12 U.S.C. 5519 or to entities for which the Securities and Exchange Commission or the Commodity Futures Trading Commission has rulemaking authority pursuant to sections 504(a)(1)(A)–(B) of the GLB Act (15 U.S.C. 6804(a)(1)(A)–(B)). Except as otherwise specifically provided herein, entities to which this part applies are referred to in this part as ''you.''

(2)(i) Nothing in this part modifies, limits, or supersedes the standards governing individually identifiable health information promulgated by the Secretary of Health and Human Services under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–1320d–8).

(ii) Any institution of higher education that complies with the Federal Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations, 34 CFR part 99, and that is also a financial institution described in § 1016.3(l)(3) of this part, shall be deemed to be in compliance with this part if it is in compliance with FERPA.

(3) Nothing in this part shall apply to:

(i) A financial institution that is a person described in section 1029(a) of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111–203, 124 Stat. 1376 (12 U.S.C. 5519(a));

(ii) A financial institution or other person subject to the jurisdiction on

the Commodity Futures Trading Commission under 7 U.S.C. 7b–2;

(iii) A broker or dealer that is registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*;)

(iv) A registered investment adviser, properly registered by or on behalf of either the Securities Exchange Commission or any state, with respect to its investment advisory activities and its activities incidental to those investment advisory activities;

(v) An investment company that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*;) or

(vi) An insurance company, with respect to its insurance activities and its activities incidental to those insurance activities, that is subject to supervision by a state insurance regulator.

[76 FR 79028, Dec. 21, 2011, as amended at 79 FR 64081, Oct. 28, 2014]

§ 1016.2 Model privacy form and examples.

(a) *Model privacy form.* Use of the model privacy form in the appendix to this part, consistent with the instructions in the appendix constitutes compliance with the notice content requirements of §§ 1016.6 and 1016.7 of this part, although use of the model privacy form is not required.

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

§ 1016.3 Definitions.

As used in this part, unless the context requires otherwise:

(a)(1) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(2) *Examples in the case of a credit union.* (i) An affiliate of a Federal credit union is a credit union service organization (CUSO), as provided in 12 CFR part 712, that is controlled by the Federal credit union.

(ii) An affiliate of a federally-insured, state-chartered credit union is a company that is controlled by the credit union.

(b)(1) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) *Examples*—(i) *Reasonably understandable.* You make your notice reasonably understandable if you:

(A) Present the information in the notice in clear, concise sentences, paragraphs, and sections;

(B) Use short explanatory sentences or bullet lists whenever possible;

(C) Use definite, concrete, everyday words and active voice whenever possible;

(D) Avoid multiple negatives;

(E) Avoid legal and highly technical business terminology whenever possible; and

(F) Avoid explanations that are imprecise and readily subject to different interpretations.

(ii) *Designed to call attention.* You design your notice to call attention to the nature and significance of the information in it if you:

(A) Use a plain-language heading to call attention to the notice;

(B) Use a typeface and type size that are easy to read;

(C) Provide wide margins and ample line spacing;

(D) Use boldface or italics for key words; and

(E) In a form that combines your notice with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, when you combine your notice with other information.

(iii) *Notices on Web sites.* If you provide a notice on a Web site, you design your notice to call attention to the nature and significance of the information in it if you use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the Web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice, and you either:

(A) Place the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(B) Place a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to

convey the importance, nature, and relevance of the notice.

(c) *Collect* means to obtain information that you organize or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e)(1) *Consumer* means an individual who obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes, or that individual's legal representative.

(2) *Examples in the case of a financial institution other than a credit union.* For purposes of this paragraph (e)(2), ''you'' is limited to financial institutions other than credit unions.

(i) An individual who applies to you for credit for personal, family, or household purposes is a consumer of a financial service, regardless of whether the credit is extended.

(ii) An individual who provides nonpublic personal information to you in order to obtain a determination about whether he or she may qualify for a loan to be used primarily for personal, family, or household purposes is a consumer of a financial service, regardless of whether the loan is extended.

(iii) An individual who provides nonpublic personal information to you in connection with obtaining or seeking to obtain financial, investment, or economic advisory services is a consumer regardless of whether you establish a continuing advisory relationship.

(iv) If you hold ownership or servicing rights to an individual's loan that is used primarily for personal, family, or household purposes, the individual is your consumer, even if you hold those rights in conjunction with one or more other institutions. (The individual is also a consumer with respect to the other financial institutions involved.) An individual who has a loan in which you have ownership or servicing rights is your consumer, even if you, or another institution with those rights, hire an agent to collect on the loan.

(v) An individual who is a consumer of another financial institution is not your consumer solely because you act as agent for, or provide processing or other services to, that financial institution.

(vi) An individual is not your consumer solely because he or she has designated you as trustee for a trust.

(vii) An individual is not your consumer solely because he or she is a beneficiary of a trust for which you are a trustee.

(viii) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

(3) *Examples in the case of a credit union.* For purposes of this paragraph (e)(3), ''you'' is limited to credit unions.

(i) An individual who provides nonpublic personal information to you in connection with obtaining or seeking to obtain credit union membership is your consumer regardless of whether you establish a customer relationship.

(ii) An individual who provides nonpublic personal information to you in connection with using your ATM is your consumer.

(iii) If you hold ownership or servicing rights to an individual's loan, the individual is your consumer, even if you hold those rights in conjunction with one or more financial institutions. The individual is also a consumer with respect to the other financial institutions involved. This applies even if you, or another financial institution with those rights, hire an agent to collect on the loan or to provide processing or other services.

(iv) An individual who is a consumer of another financial institution is not your consumer solely because you act as agent for, or provide processing or other services to, that financial institution.

(v) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

(f) *Consumer reporting agency* has the same meaning as in section 603(f) of the

Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(g) *Control* of a company means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company as determined by the applicable prudential regulator (as defined in 12 U.S.C. 5481(24)), if any.

(4) *Example in the case of credit unions.* A credit union is presumed to have a controlling influence over the management or policies of a CUSO, if the CUSO is 67% owned by credit unions.

(h) *Credit union* means a Federal or state-chartered credit union that the National Credit Union Share Insurance Fund insures.

(i) *Customer* means a consumer who has a customer relationship with you.

(j)(1) *Customer relationship* means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes. As noted in the examples, and for purposes of this part only, in the case of a credit union, a customer relationship will exist between a credit union and certain consumers that are not the credit union's members.

(2) *Examples in the case of financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (j)(2), ''you'' is limited to financial institutions other than credit unions and financial institutions described in paragraph (l)(3) of this section.

(i) *Continuing relationship.* A consumer has a continuing relationship with you if the consumer:

(A) Has a deposit or investment account with you;

(B) Obtains a loan from you;

(C) Has a loan for which you own the servicing rights;

(D) Purchases an insurance product from you;

(E) Holds an investment product through you, such as when you act as a custodian for securities or for assets in an Individual Retirement Arrangement;

(F) Enters into an agreement or understanding with you whereby you undertake to arrange or broker a home mortgage loan for the consumer;

(G) Enters into a lease of personal property with you; or

(H) Obtains financial, investment, or economic advisory services from you for a fee.

(ii) *No continuing relationship.* A consumer does not, however, have a continuing relationship with you if:

(A) The consumer obtains a financial product or service only in isolated transactions, such as using your ATM to withdraw cash from an account at another financial institution or purchasing a cashier's check or money order;

(B) You sell the consumer's loan and do not retain the rights to service that loan; or

(C) You sell the consumer airline tickets, travel insurance, or traveler's checks in isolated transactions.

(3) *Examples in the case of covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (j)(3), ''you'' is limited to financial institutions described in paragraph (l)(3) of this section.

(i) *Continuing relationship.* A consumer has a continuing relationship with you if the consumer:

(A) Has a credit or investment account with you;

(B) Obtains a loan from you;

(C) Purchases an insurance product from you;

(D) Holds an investment product through you, such as when you act as a custodian for securities or for assets in an Individual Retirement Arrangement;

(E) Enters into an agreement or understanding with you whereby you undertake to arrange or broker a home mortgage loan, or credit to purchase a vehicle, for the consumer;

(F) Enters into a lease of personal property on a non-operating basis with you;

(G) Obtains financial, investment, or economic advisory services from you for a fee;

(H) Becomes your client for the purpose of obtaining tax preparation or credit counseling services from you;

(I) Obtains career counseling while seeking employment with a financial institution or the finance, accounting, or audit department of any company (or while employed by such a financial institution or department of any company);

(J) Is obligated on an account that you purchase from another financial institution, regardless of whether the account is in default when purchased, unless you do not locate the consumer or attempt to collect any amount from the consumer on the account;

(K) Obtains real estate settlement services from you; or

(L) Has a loan for which you own the servicing rights.

(ii) *No continuing relationship.* A consumer does not, however, have a continuing relationship with you if:

(A) The consumer obtains a financial product or service from you only in isolated transactions, such as using your ATM to withdraw cash from an account at another financial institution; purchasing a money order from you; cashing a check with you; or making a wire transfer through you;

(B) You sell the consumer's loan and do not retain the rights to service that loan;

(C) You sell the consumer airline tickets, travel insurance, or traveler's checks in isolated transactions;

(D) The consumer obtains one-time personal or real property appraisal services from you; or

(E) The consumer purchases checks for a personal checking account from you.

(4) *Examples in the case of a credit union.* (i) *Continuing relationship.* A consumer has a continuing relationship with a credit union if the consumer:

(A) Is a member as defined in the credit union's bylaws;

(B) Is a nonmember who has a share, share draft, or credit card account with the credit union jointly with a member;

(C) Is a nonmember who has a loan that the credit union services;

(D) Is a nonmember who has an account with a credit union that has been designated as a low-income credit union; or

(E) Is a nonmember who has an account in a federally-insured, state-chartered credit union pursuant to state law.

(ii) *No continuing relationship.* A consumer does not, however, have a continuing relationship with a credit union if the consumer is a nonmember and:

(A) The consumer only obtains a financial product or service in isolated transactions, such as using the credit union's ATM to withdraw cash from an account maintained at another financial institution or purchasing travelers checks; or

(B) The credit union sells the consumer's loan and does not retain the rights to service that loan.

(k) *Federal functional regulator* means:

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The National Credit Union Administration Board; and

(5) The Securities and Exchange Commission.

(l)(1) Except for entities described in paragraph (l)(3) of this section, *financial institution* means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) For purposes of paragraph (l)(1) of this section, *financial institution* does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*;)

(ii) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm

Credit Act of 1971 (12 U.S.C. 2001 *et seq.*;) or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights), or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(3)(i) *Special definition for entities subject to the Federal Trade Commission's enforcement jurisdiction.* In the case of an entity described in section 505(a)(7) of the GLB Act (other than such an entity described in section 504(a)(1)(C) of that Act), *financial institution* means any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). For purposes of this paragraph (l)(3), an institution that is significantly engaged in financial activities is a financial institution.

(ii) *Examples of financial institution.* For purposes of this paragraph (l)(3):

(A) A retailer that extends credit by issuing its own credit card directly to consumers is a financial institution because extending credit is a financial activity listed in 12 CFR 225.28(b)(1) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act and issuing that extension of credit through a proprietary credit card demonstrates that a retailer is significantly engaged in extending credit.

(B) A personal property or real estate appraiser is a financial institution because real and personal property appraisal is a financial activity listed in 12 CFR 225.28(b)(2)(i) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(C) An automobile dealership that is not described in section 1029(a) of the Dodd-Frank Act (12 U.S.C. 5519(a)) and that, as a usual part of its business, leases automobiles on a nonoperating basis for longer than 90 days is a financial institution with respect to its leasing business because leasing personal property on a nonoperating basis where the initial term of the lease is at least 90 days is a financial activity listed in 12 CFR 225.28(b)(3) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(D) A career counselor that specializes in providing career counseling services to individuals currently employed by or recently displaced from a financial organization, individuals who are seeking employment with a financial organization, or individuals who are currently employed by or seeking placement with the finance, accounting or audit departments of any company is a financial institution because such career counseling activities are financial activities listed in 12 CFR 225.28(b)(9)(iii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(E) A business that prints and sells checks for consumers, either as its sole business or as one of its product lines, is a financial institution because printing and selling checks is a financial activity that is listed in 12 CFR 225.28(b)(10)(ii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(F) A business that regularly wires money to and from consumers is a financial institution because transferring money is a financial activity referenced in section 4(k)(4)(A) of the Bank Holding Company Act and regularly providing that service demonstrates that the business is significantly engaged in that activity.

(G) A check cashing business is a financial institution because cashing a check is exchanging money, which is a financial activity listed in section 4(k)(4)(A) of the Bank Holding Company Act.

(H) An accountant or other tax preparation service that is in the business of completing income tax returns is a financial institution because tax preparation services is a financial activity listed in 12 CFR 225.28(b)(6)(vi) and referenced in section 4(k)(4)(G) of the Bank Holding Company Act.

(I) A business that operates a travel agency in connection with financial services is a financial institution because operating a travel agency in connection with financial services is a financial activity listed in 12 CFR 211.5(d)(15) and referenced in section 4(k)(4)(G) of the Bank Holding Company Act.

(J) An entity that provides real estate settlement services is a financial institution because providing real estate settlement services is a financial activity listed in 12 CFR 225.28(b)(2)(viii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(K) A mortgage broker is a financial institution because brokering loans is a financial activity listed in 12 CFR 225.28(b)(1) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(L) An investment advisory company and a credit counseling service are each financial institutions because providing financial and investment advisory services are financial activities referenced in section 4(k)(4)(C) of the Bank Holding Company Act.

(iii) For purposes of this paragraph (l)(3), *financial institution* does not include:

(A) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*;)

(B) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*;) or

(C) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party other than as permitted by §§1016.14 and 1016.15 of this part.

(D) Entities that engage in financial activities but that are not significantly engaged in those financial activities.

(iv) *Examples of entities that are not significantly engaged in financial activities.* (A) A retailer is not a financial institution if its only means of extending credit are occasional ''lay away'' and deferred payment plans or accepting payment by means of credit cards issued by others.

(B) A retailer is not a financial institution merely because it accepts payment in the form of cash, checks, or credit cards that it did not issue.

(C) A merchant is not a financial institution merely because it allows an individual to ''run a tab.''

(D) A grocery store is not a financial institution merely because it allows individuals to whom it sells groceries to cash a check, or write a check for a higher amount than the grocery purchase and obtain cash in return.

(m)(1) *Financial product or service* means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Special definition for entities subject to the Federal Trade Commission's enforcement jurisdiction.* In the case of an entity described in section 505(a)(7) of the GLB Act (other than such an entity described in section 504(a)(1)(C) of that Act), *financial product or service* means any product or service that a financial holding company could offer by engaging in a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(3) *Financial service* includes your evaluation or brokerage of information that you collect in connection with a request or an application from a consumer for a financial product or service.

(n) *Member* means a consumer who is a member of a credit union, as defined in the credit union's bylaws.

(o)(1) *Nonaffiliated third party* means any person except:

(i) Your affiliate; or

(ii) A person employed jointly by you and any company that is not your affiliate (but *nonaffiliated third party* includes the other company that jointly employs the person).

(2) *Nonaffiliated third party* includes, for financial institutions other than credit unions, any company that is an affiliate solely by virtue of your or your affiliate's direct or indirect ownership or control of the company in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I)

of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(4)(H) and (I)).

(p)(1) *Nonpublic personal information* means:

(i) Personally identifiable financial information; and

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

(2) *Nonpublic personal information* does not include:

(i) Publicly available information, except as included on a list described in paragraph (p)(1)(ii) of this section; or

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

(3) *Examples of lists.* (i) Nonpublic personal information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(ii) Nonpublic personal information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(q)(1) *Personally identifiable financial information* means any information:

(i) A consumer provides to you to obtain a financial product or service from you;

(ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or

(iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.

(2) *Examples*—(i) *Information included.* Personally identifiable financial information includes:

(A) Information a consumer provides to you on an application to obtain a loan, a credit card, a credit union membership, or other financial product or service;

(B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(C) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you;

(D) Any information about your consumer if it is disclosed in a manner that indicates that the individual is or has been your consumer;

(E) Any information that a consumer provides to you or that you or your agent otherwise obtain in connection with collecting on, or servicing, a loan or a credit account;

(F) Any information you collect through an internet ''cookie'' (an information collecting device from a Web server); and

(G) Information from a consumer report.

(ii) *Information not included.* Personally identifiable financial information does not include:

(A) A list of names and addresses of customers of an entity that is not a financial institution; and

(B) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(r)(1) *Publicly available information* means any information that you have a reasonable basis to believe is lawfully made available to the general public from:

(i) Federal, state, or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by Federal, state, or local law.

(2) *Reasonable basis.* You have a reasonable basis to believe that information is lawfully made available to the general public if you have taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that your consumer has not done so.

(3) *Examples*—(i) *Government records.* Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) *Widely distributed media.* Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper, or a Web site that is available to the general public on an unrestricted basis. A Web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(iii) *Reasonable basis.* (A) You have a reasonable basis to believe that mortgage information is lawfully made available to the general public if you have determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) You have a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if you have located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

(s)(1) *You* means a financial institution or other person for which the Bureau has rulemaking authority under section 504(a)(1)(A) of the GLB Act (15 U.S.C. 6804(a)(1)(A)).

(2) *You* does not include:

(i) A financial institution that is a person described in section 1029(a) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5519(a));

(ii) A financial institution or other person subject to the jurisdiction on the Commodity Futures Trading Commission under 7 U.S.C. 7b–2;

(iii) A broker or dealer that is registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*;)

(iv) A registered investment adviser, properly registered by or on behalf of either the Securities Exchange Commission or any State, with respect to its investment advisory activities and its activities incidental to those investment advisory activities;

(v) An investment company that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*;) or

(vi) An insurance company, with respect to its insurance activities and its activities incidental to those insurance activities, that is subject to supervision by a State insurance regulator.

Subpart A—Privacy and Opt Out Notices

§ 1016.4 Initial privacy notice to consumers required.

(a) *Initial notice requirement.* You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices to:

(1) *Customer.* An individual who becomes your customer, not later than when you establish a customer relationship, except as provided in paragraph (e) of this section; and

(2) *Consumer.* A consumer, before you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by §§ 1016.14 and 1016.15 of this part.

(b) *When initial notice to a consumer is not required.* You are not required to provide an initial notice to a consumer under paragraph (a) of this section if:

(1) You do not disclose any nonpublic personal information about the consumer to any nonaffiliated third party, other than as authorized by §§ 1016.14 and 1016.15; and

(2) You do not have a customer relationship with the consumer.

(c) *When you establish a customer relationship*—(1) *General rule.* You establish a customer relationship when you and the consumer enter into a continuing relationship.

(2) *Special rule for loans.* You establish a customer relationship with a consumer when you originate or acquire the servicing rights to a loan to the consumer for personal, family, or household purposes. If you subsequently transfer the servicing rights to that loan to another financial institution, the customer relationship transfers with the servicing rights.

(3) *Examples*—(i) *Examples of establishing customer relationship by financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (c)(3)(i), ''you'' is limited to financial institutions other than credit unions and financial institutions described in §1016.3(l)(3). You establish a customer relationship when the consumer:

(A) Opens a credit card account with you;

(B) Executes the contract to open a deposit account with you, obtains credit from you, or purchases insurance from you;

(C) Agrees to obtain financial, economic, or investment advisory services from you for a fee; or

(D) Becomes your client for the purpose of your providing credit counseling or tax preparation services.

(ii) *Examples of establishing customer relationship by covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (c)(3)(ii), ''you'' is limited to financial institutions described in §1016.3(l)(3) of this part. You establish a customer relationship when the consumer:

(A) Opens a credit card account with you;

(B) Executes the contract to obtain credit from you or purchases insurance from you;

(C) Agrees to obtain financial, economic, or investment advisory services from you for a fee;

(D) Becomes your client for the purpose of your providing credit counseling or tax preparation services or to obtain career counseling while seeking employment with a financial institution or the finance, accounting, or audit department of any company (or while employed by such a company or financial institution);

(E) Provides any personally identifiable financial information to you in an effort to obtain a mortgage loan through you;

(F) Executes the lease for personal property with you;

(G) Is an obligor on an account that you purchased from another financial institution and whom you have located and begun attempting to collect amounts owed on the account; or

(H) Provides you with the information necessary for you to compile and provide access to all of the consumer's online financial accounts at your Web site.

(iii) *Examples of establishing customer relationship by credit unions.* For purposes of this paragraph (c)(3)(iii), ''you'' is limited to a credit union. You establish a customer relationship when the consumer:

(A) Becomes your member under your bylaws;

(B) Is a nonmember and opens a credit card account with you jointly with a member under your procedures;

(C) Is a nonmember and executes the contract to open a share or share draft account with you or obtains credit from you jointly with a member, including an individual acting as a guarantor;

(D) Is a nonmember and opens an account with you and you are a credit union designated as a low-income credit union;

(E) Is a nonmember and opens an account with you pursuant to State law and you are a State-chartered credit union.

(iv) *Examples of loan rule.* You establish a customer relationship with a consumer who obtains a loan for personal, family, or household purposes when you:

(A) Originate the loan to the consumer; or

(B) Purchase the servicing rights to the consumer's loan.

(d) *Existing customers.* When an existing customer obtains a new financial product or service from you that is to be used primarily for personal, family, or household purposes, you satisfy the initial notice requirements of paragraph (a) of this section as follows:

(1) You may provide a revised privacy notice, under §1016.8 of this part, that covers the customer's new financial product or service; or

(2) If the initial, revised, or annual notice that you most recently provided to that customer was accurate with respect to the new financial product or service, you do not need to provide a new privacy notice under paragraph (a) of this section.

(e) *Exceptions to allow subsequent delivery of notice.* (1) You may provide the

initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election; or

(ii) Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(2) *Examples of exceptions*—(i) *Not at customer's election.* (A) In the case of financial institutions other than credit unions and financial institutions described in §1016.3(l)(3), establishing a customer relationship is not at the customer's election if you acquire a customer's deposit liability or the servicing rights to a customer's loan from another financial institution and the customer does not have a choice about your acquisition.

(B) In the case of financial institutions described in §1016.3(l)(3), establishing a customer relationship is not at the customer's election if you acquire a customer's loan or the servicing rights from another financial institution and the customer does not have a choice about your acquisition.

(C) In the case of credit unions, establishing a customer relationship is not at the customer's election if you acquire a customer's deposit liability from another financial institution and the customer does not have a choice about your acquisition.

(ii) *Substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction when:

(A) You and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service; or

(B) You establish a customer relationship with an individual under a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) or similar student loan programs where loan proceeds are disbursed promptly without prior communication between you and the customer.

(iii) *No substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at your office or through other means by which the customer may view the notice, such as on a Web site.

(f) *Delivery.* When you are required to deliver an initial privacy notice by this section, you must deliver it according to §1016.9 of this part. If you use a short-form initial notice for non-customers according to §1016.6(d) of this part, you may deliver your privacy notice according to §1016.6(d)(3).

§1016.5 Annual privacy notice to customers required.

(a)(1) *General rule.* You must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the continuation of the customer relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the customer on a consistent basis.

(2) *Example.* You provide a notice annually if you define the 12-consecutive-month period as a calendar year and provide the annual notice to the customer once in each calendar year following the calendar year in which you provided the initial notice. For example, if a customer opens an account on any day of year 1, you must provide an annual notice to that customer by December 31 of year 2.

(b)(1) *Termination of customer relationship.* You are not required to provide an annual notice to a former customer.

(2) *Examples in the case of financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (b)(2), ''you'' is limited to financial institutions other than credit unions and financial institutions described in §1016.3(l)(3). Your customer becomes a former customer when:

(i) In the case of a deposit account, the account is inactive under your policies;

(ii) In the case of a closed-end loan, the customer pays the loan in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(iii) In the case of a credit card relationship or other open-end credit relationship, you no longer provide any statements or notices to the customer concerning that relationship or you sell the credit card receivables without retaining servicing rights; or

(iv) You have not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(3) *Examples in the case of covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (b)(3), ''you'' is limited to financial institutions described in §1016.3(l)(3) of this part. Your customer becomes a former customer when:

(i) In the case of a closed-end loan, the customer pays the loan in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(ii) In the case of a credit card relationship or other open-end credit relationship, you sell the receivables without retaining servicing rights;

(iii) In the case of credit counseling services, the customer has failed to make required payments under a debt management plan, has been notified that the plan is terminated, and you no longer provide any statements or notices to the customer concerning that relationship;

(iv) In the case of mortgage or vehicle loan brokering services, your customer has obtained a loan through you (and you no longer provide any statements or notices to the customer concerning that relationship), or has ceased using your services for such purposes;

(v) In the case of tax preparation services, you have provided and received payment for the service and no longer provide any statements or notices to the customer concerning that relationship;

(vi) In the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, you have received payment, or you have completed all of your responsibilities with respect to the settlement, including filing documents on the public record, whichever is later; or

(vii) In cases where there is no definitive time at which the customer relationship has terminated, you have not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(4) *Examples in the case of a credit union.* An individual becomes a former customer of a credit union when:

(i) The individual is no longer the credit union's member as defined in the credit union's bylaws;

(ii) In the case of a nonmember's share or share draft account, the account is inactive under the credit union's policies;

(iii) In the case of a nonmember's closed-end loan, the loan is paid in full, the credit union charges off the loan, or the credit union sells the loan without retaining servicing rights;

(iii) In the case of a credit card relationship or other open-end credit relationship with a nonmember, the credit union no longer provides any statements or notices to the nonmember concerning that relationship, or the credit union sells the credit card receivables without retaining servicing rights; or

(v) The credit union has not communicated with the nonmember about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(c) *Special rule for loans in the case of a financial institution other than a credit union.* If a financial institution other than a credit union does not have a customer relationship with a consumer under the special rule for loans in §1016.4(c)(2) of this part, then it need not provide an annual notice to that consumer under this section.

(d) *Delivery.* When you are required to deliver an annual privacy notice by this section, you must deliver it according to §1016.9 of this part.

§1016.6 Information to be included in privacy notices.

(a) *General rule.* The initial, annual, and revised privacy notices that you

provide under §§ 1016.4, 1016.5, and 1016.8 of this part must include each of the following items of information, in addition to any other information you wish to provide, that applies to you and to the consumers to whom you send your privacy notice:

(1) The categories of nonpublic personal information that you collect;

(2) The categories of nonpublic personal information that you disclose;

(3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under §§ 1016.14 and 1016.15 of this part;

(4) The categories of nonpublic personal information about your former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your former customers, other than those parties to whom you disclose information under §§ 1016.14 and 1016.15;

(5) If you disclose nonpublic personal information to a nonaffiliated third party under § 1016.13 (and no other exception in § 1016.14 or § 1016.15 applies to that disclosure), a separate statement of the categories of information you disclose and the categories of third parties with whom you have contracted;

(6) An explanation of the consumer's right under § 1016.10(a) of this part to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right at that time;

(7) Any disclosures that you make under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(8) Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosure that you make under paragraph (b) of this section.

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under §§ 1016.14 and 1016.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 1016.4 and 1016.5. When describing the categories with respect to those parties, it is sufficient to state that you make disclosures to other nonaffiliated companies:

(1) For your everyday business purposes, such as [*include all that apply*] to process transactions, maintain account(s), respond to court orders and legal investigations, or report to credit bureaus; or

(2) As permitted by law.

(c) *Examples*—(1) *Categories of nonpublic personal information that you collect.* You satisfy the requirement to categorize the nonpublic personal information that you collect if you list the following categories, as applicable:

(i) Information from the consumer;

(ii) Information about the consumer's transactions with you or your affiliates;

(iii) Information about the consumer's transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

(2) *Categories of nonpublic personal information you disclose.* (i) You satisfy the requirement to categorize the nonpublic personal information that you disclose if you list the categories described in paragraph (c)(1) of this section, as applicable, and a few examples to illustrate the types of information in each category.

(ii) If you reserve the right to disclose all of the nonpublic personal information about consumers that you collect, you may simply state that fact without describing the categories or examples of the nonpublic personal information you disclose.

(3) *Categories of affiliates and nonaffiliated third parties to whom you disclose.* You satisfy the requirement to categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information if you list the following categories, as applicable, and a few examples to illustrate the types of third parties in each category.

(i) Financial service providers, followed by illustrative examples such as mortgage bankers, securities broker-dealers, and insurance agents;

(ii) Non-financial companies, followed by illustrative examples such as retailers, magazine publishers, airlines, and direct marketers; and

(iii) Others, followed by examples such as nonprofit organizations.

(4) *Disclosures under exception for service providers and joint marketers.* If you disclose nonpublic personal information under the exception in §1016.13 of this part to a nonaffiliated third party to market products or services that you offer alone or jointly with another financial institution, you satisfy the disclosure requirement of paragraph (a)(5) of this section if you:

(i) List the categories of nonpublic personal information you disclose, using the same categories and examples you used to meet the requirements of paragraph (a)(2) of this section, as applicable; and

(ii) State whether the third party is:

(A) A service provider that performs marketing services on your behalf or on behalf of you and another financial institution; or

(B) A financial institution with whom you have a joint marketing agreement.

(5) *Simplified notices.* If you do not disclose, and do not wish to reserve the right to disclose, nonpublic personal information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under §§1016.14 and 1016.15, you may simply state that fact, in addition to the information you must provide under paragraphs (a)(1), (a)(8), (a)(9), and (b) of this section.

(6) *Confidentiality and security.* You describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information if you do both of the following:

(i) Describe in general terms who is authorized to have access to the information; and

(ii) State whether you have security practices and procedures in place to ensure the confidentiality of the information in accordance with your policy. You are not required to describe technical information about the safeguards you use.

(d) *Short-form initial notice with opt out notice for non-customers.* (1) You may satisfy the initial notice requirements in §§1016.4(a)(2), 1016.7(b), and 1016.7(c) of this part for a consumer who is not a customer by providing a short-form initial notice at the same time as you deliver an opt out notice as required in §1016.7.

(2) A short-form initial notice must:

(i) Be clear and conspicuous;

(ii) State that your privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(3) You must deliver your short-form initial notice according to §1016.9. You are not required to deliver your privacy notice with your short-form initial notice. You instead may simply provide the consumer a reasonable means to obtain your privacy notice. If a consumer who receives your short-form notice requests your privacy notice, you must deliver your privacy notice according to §1016.9.

(4) *Examples of obtaining privacy notice.* You provide a reasonable means by which a consumer may obtain a copy of your privacy notice if you:

(i) Provide a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at your office, maintain copies of the notice on hand that you provide to the consumer immediately upon request.

(e) *Future disclosures.* Your notice may include:

(1) Categories of nonpublic personal information that you reserve the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal information.

(f) *Model privacy form.* Pursuant to §1016.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in the appendix to this part.

§1016.7 Form of opt out notice to consumers; opt out methods.

(a)(1) *Form of opt out notice.* If you are required to provide an opt out notice

under §1016.10(a), you must provide a clear and conspicuous notice to each of your consumers that accurately explains the right to opt out under that section. The notice must state:

(i) That you disclose or reserve the right to disclose nonpublic personal information about your consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(2) *Examples*—(i) *Adequate opt out notice.* You provide adequate notice that the consumer can opt out of the disclosure of nonpublic personal information to a nonaffiliated third party if you:

(A) Identify all of the categories of nonpublic personal information that you disclose or reserve the right to disclose, and all of the categories of nonaffiliated third parties to which you disclose the information, as described in §1016.6(a)(2) and (3) of this part, and state that the consumer can opt out of the disclosure of that information; and

(B) Identify the financial products or services that the consumer obtains from you, either singly or jointly, to which the opt out direction would apply.

(ii) *Reasonable opt out means.* You provide a reasonable means to exercise an opt out right if you:

(A) Designate check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Include a reply form together with the opt out notice that, in the case of financial institutions described in §1016.3(l)(3) of this part, includes the address to which the form should be mailed;

(C) Provide an electronic means to opt out, such as a form that can be sent via electronic mail or a process at your Web site, if the consumer agrees to the electronic delivery of information; or

(D) Provide a toll-free telephone number that consumers may call to opt out.

(iii) *Unreasonable opt out means.* You *do not* provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that you provided with the initial notice but did not include with the subsequent notice.

(iv) *Specific opt out means.* You may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(b) *Same form as initial notice permitted.* You may provide the opt out notice together with or on the same written or electronic form as the initial notice you provide in accordance with §1016.4.

(c) *Initial notice required when opt out notice delivered subsequent to initial notice.* If you provide the opt out notice later than required for the initial notice in accordance with §1016.4 of this part, you must also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(d) *Joint relationships in the case of financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (d), ''you'' is limited to financial institutions other than credit unions and financial institutions described in §1016.3(l)(3) of this part.

(1) If two or more consumers jointly obtain a financial product or service from you, you may provide a single opt out notice. Your opt out notice must explain how you will treat an opt out direction by a joint consumer (as explained in paragraph (d)(5) of this section).

(2) Any of the joint consumers may exercise the right to opt out. You may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If you permit each joint consumer to opt out separately, you must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) You may not require *all* joint consumers to opt out before you implement *any* opt out direction.

(5) *Example.* If John and Mary have a joint checking account with you and arrange for you to send statements to John's address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow:

(i) Send a single opt out notice to John's address, but you must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If you do so, and John opts out, you may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If you do so:

(A) You must permit John and Mary to opt out for each other;

(B) If both opt out, you must permit both to notify you in a single response (such as on a form or through a telephone call); and

(C) If John opts out and Mary does not, you may only disclose nonpublic personal information about Mary, but not about John and not about John and Mary jointly.

(e) *Joint relationships in the case of credit unions.* (1) If two or more consumers jointly obtain a financial product or service, other than a loan, from a credit union, the credit union may provide only a single opt out notice. The opt out notice must explain how the credit union will treat an opt out direction by a joint consumer (as explained in the examples in paragraph (e)(5) of this section).

(2) Any of the joint consumers may exercise the right to opt out. A credit union may either:

(i) Treat an opt out direction by a joint consumer to apply to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If a credit union permits each joint consumer to opt out separately, the credit union must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) A credit union may not require all joint consumers to opt out before the credit union implements any opt out direction.

(5) *Example.* If John and Mary have a joint share account with a credit union and arrange for the credit union to send statements to John's address, the credit union may do any of the following, but it must explain in its opt out notice which opt out policy it will follow:

(i) Send a single opt out notice to John's address, but it must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If it does so, and John opts out, it may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If it does so, and if John and Mary both opt out, it must permit one or both of them to notify it in a single response (such as on a form or through a telephone call).

(6) *Special rule for loans.* (i) A credit union is required to provide an initial opt out notice to a borrower or guarantor on a loan if it shares his or her nonpublic personal information with nonaffiliated third parties other than for purposes under §§ 1016.13, 1016.14, and 1016.15.

(ii) A credit union may satisfy its annual opt out notice requirement by providing one notice to those borrowers and guarantors jointly.

(f) *Joint relationships in the case of covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (f), ''you'' is limited to the financial institutions described in § 1016.3(l)(3).

(1) If two or more consumers jointly obtain a financial product or service from you, you may provide a single opt out notice, unless one or more of those consumers requests a separate opt out notice. Your opt out notice must explain how you will treat an opt out direction by a joint consumer (as explained in paragraph (f)(5) of this section).

(2) Any of the joint consumers may exercise the right to opt out. You may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If you permit each joint consumer to opt out separately, you must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) You may not require *all* joint consumers to opt out before you implement *any* opt out direction.

(5) *Example.* If John and Mary have a joint credit card account with you and arrange for you to send statements to John's address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow:

(i) Send a single opt out notice to John's address, but you must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If you do so, and John opts out, you may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If you do so:

(A) You must permit John and Mary to opt out for each other;

(B) If both opt out, you must permit both to notify you in a single response (such as on a form or through a telephone call); and

(C) If John opts out and Mary does not, you may only disclose nonpublic personal information about Mary, but not about John and not about John and Mary jointly.

(g) *Time to comply with opt out.* You must comply with a consumer's opt out direction as soon as reasonably practicable after you receive it.

(h) *Continuing right to opt out.* A consumer may exercise the right to opt out at any time.

(i) *Duration of consumer's opt out direction.* (1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal information that you collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with you, the opt out direction that applied to the former relationship does not apply to the new relationship.

(j) *Delivery.* When you are required to deliver an opt out notice by this section, you must deliver it according to § 1016.9 of this part.

(k) *Model privacy form.* Pursuant to § 1016.2(a) of this part, a model privacy form that meets the notice content requirements of this section is included in the appendix to this part.

§ 1016.8 Revised privacy notices.

(a) *General rule.* Except as otherwise authorized in this part, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that you provided to that consumer under § 1016.4 of this part, unless:

(1) You have provided to the consumer a clear and conspicuous revised notice that accurately describes your policies and practices;

(2) You have provided to the consumer a new opt out notice;

(3) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) The consumer does not opt out.

(b) *Examples.* (1) Except as otherwise permitted by §§ 1016.13, 1016.14, and 1016.15 of this part, you must provide a revised notice before you:

(i) Disclose a new category of nonpublic personal information to any nonaffiliated third party;

(ii) Disclose nonpublic personal information to a new category of nonaffiliated third party; or

(iii) Disclose nonpublic personal information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if you disclose nonpublic personal information to a new nonaffiliated third

party that you adequately described in your prior notice.

(c) *Delivery*. When you are required to deliver a revised privacy notice by this section, you must deliver it according to §1016.9 of this part.

§ 1016.9 Delivering privacy and opt out notices.

(a) *How to provide notices.* You must provide any privacy notices and opt out notices, including short-form initial notices, that this part requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b)(1) *Examples of reasonable expectation of actual notice.* You may reasonably expect that a consumer will receive actual notice if you:

(i) Hand-deliver a printed copy of the notice to the consumer;

(ii) Mail a printed copy of the notice to the last known address of the consumer;

(iii) For the consumer who conducts transactions electronically:

(A) In the case of financial institutions other than those described in §1016.3(l)(3) of this part, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service; or

(B) In the case of financial institutions described in §1016.3(l)(3), clearly and conspicuously post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service;

(iv) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2) *Examples of unreasonable expectation of actual notice.* You may *not*, however, reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

(i) Only post a sign in your branch or office or generally publish advertisements of your privacy policies and practices; or

(ii) Send the notice via electronic mail to a consumer who does not obtain a financial product or service from you electronically.

(c) *Annual notices only*—(1) *Reasonable expectation.* You may reasonably expect that a customer will receive actual notice of your annual privacy notice if:

(i) The customer uses your Web site to access financial products and services electronically and agrees to receive notices at the Web site, and you post your current privacy notice continuously in a clear and conspicuous manner on the Web site; or

(ii) The customer has requested that you refrain from sending any information regarding the customer relationship, and your current privacy notice remains available to the customer upon request.

(2) *Alternative method for providing certain annual notices.* (i) Notwithstanding paragraph (a) of this section, you may use the alternative method described in paragraph (c)(2)(ii) of this section to satisfy the requirement in §1016.5(a)(1) to provide a notice if:

(A) You do not disclose the customer's nonpublic personal information to nonaffiliated third parties other than for purposes under §§1016.13, 1016.14, and 1016.15;

(B) You do not include on your annual privacy notice pursuant to §1016.6(a)(7) an opt out under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii));

(C) The requirements of section 624 of the Fair Credit Reporting Act (15 U.S.C. 1681s–3) and subpart C of part 1022 of this chapter, if applicable, have been satisfied previously or the annual privacy notice is not the only notice provided to satisfy such requirements;

(D) The information you are required to convey on your annual privacy notice pursuant to §1016.6(a)(1) through (5), (8), and (9) has not changed since you provided the immediately previous privacy notice (whether initial, annual, or revised) to the customer, other than to eliminate categories of information you disclose or categories of third parties to whom you disclose information; and

(E) You use the model privacy form in the appendix to this part for your annual privacy notice.

(ii) For an annual privacy notice that meets the requirements in paragraph (c)(2)(i) of this section, you satisfy the requirement in §1016.5(a)(1) to provide a notice if you:

(A) Convey in a clear and conspicuous manner not less than annually on an account statement, coupon book, or a notice or disclosure you are required or expressly and specifically permitted to issue to the customer under any other provision of law that your privacy notice is available on your Web site and will be mailed to the customer upon request by telephone. The statement must state that your privacy notice has not changed and must include a specific Web address that takes the customer directly to the page where the privacy notice is posted and a telephone number for the customer to request that it be mailed;

(B) Post your current privacy notice continuously and in clear and conspicuous manner on a page of your Web site on which the only content is the privacy notice, without requiring the customer to provide any information such as a login name or password or agree to any conditions to access the page; and

(C) Mail your current privacy notice to those customers who request it by telephone within ten days of the request.

(iii) An example of a statement that satisfies paragraph (c)(2)(ii)(A) of this section is as follows with the words ''Privacy Notice'' in boldface or otherwise emphasized: Privacy Notice—Federal law requires us to tell you how we collect, share, and protect your personal information. Our privacy policy has not changed and you may review our policy and practices with respect to your personal information at [Web address] or we will mail you a free copy upon request if you call us at [telephone number].

(d) *Oral description of notice insufficient.* You may not provide any notice required by this part solely by orally explaining the notice, either in person or over the telephone.

(e) *Retention or accessibility of notices for customers.* (1) For customers only, you must provide the initial notice required by §1016.4(a)(1), the annual notice required by §1016.5(a), and the revised notice required by §1016.8 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) *Examples of retention or accessibility.* You provide a privacy notice to the customer so that the customer can retain it or obtain it later if you:

(i) Hand-deliver a printed copy of the notice to the customer;

(ii) Mail a printed copy of the notice to the last known address of the customer, or, in the case of credit unions, mail a printed copy of the notice to the last known address of the customer upon request of the customer; or

(iii) Make your current privacy notice available on a Web site (or a link to another Web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the Web site.

(f) *Joint notice with other financial institutions.* You may provide a joint notice from you and one or more of your affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to you and the other institutions.

(g) *Joint relationships in the case of financial institutions other than credit unions and covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (g), ''you'' is limited to financial institutions other than credit unions and the financial institutions described in §1016.3(l)(3). If two or more consumers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of §§1016.4(a), 1016.5(a), and 1016.8(a), respectively, by providing one notice to those consumers jointly.

(h) *Joint relationships in the case of covered entities subject to FTC enforcement jurisdiction.* For purposes of this paragraph (h), ''you'' is limited to the financial institutions described in §1016.3(l)(3). If two or more consumers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of §§1016.4(a), 1016.5(a), and 1016.8(a) by providing one notice to those consumers jointly, unless one or

more of those consumers requests separate notices.

(i) *Joint relationships in the case of credit unions.* (1) If two or more consumers jointly obtain a financial product or service, other than a loan, from a credit union, the credit union may satisfy the requirements of §1016.4(a) by providing one initial notice to those consumers jointly.

(2) *Special rule for loans in the case of credit unions.* (i) A credit union is required to provide an initial notice to a borrower or guarantor on a loan if the credit union shares his or her nonpublic personal information with nonaffiliated third parties other than for purposes under §§1016.13, 1016.14, and 1016.15.

(ii) A credit union may satisfy the annual notice requirements of §1016.5 by providing one notice to those borrowers and guarantors jointly.

[76 FR 79028, Dec. 21, 2011, as amended at 79 FR 64081, Oct. 28, 2014]

Subpart B—Limits on Disclosures

§1016.10 Limits on disclosure of nonpublic personal information to nonaffiliated third parties.

(a)(1) *Conditions for disclosure.* Except as otherwise authorized in this part, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

(i) You have provided to the consumer an initial notice as required under §1016.4 of this part;

(ii) You have provided to the consumer an opt out notice as required in §1016.7 of this part;

(iii) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *Opt out definition.* Opt out means a direction by the consumer that you not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by §§1016.13, 1016.14, and 1016.15.

(3) *Examples of reasonable opportunity to opt out.* You provide a consumer with a reasonable opportunity to opt out if:

(i) *By mail.* You mail the notices required in paragraph (a)(1) of this section to the consumer and allow the consumer to opt out by mailing a form, calling a toll-free telephone number, or any other reasonable means within 30 days from the date you mailed the notices.

(ii) *By electronic means.* A customer opens an online account with you and agrees to receive the notices required in paragraph (a)(1) of this section electronically, and you allow the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) *Isolated transaction with consumer.* For an isolated transaction, such as the purchase of a cashier's check by a consumer, you provide the consumer with a reasonable opportunity to opt out if you provide the notices required in paragraph (a)(1) of this section at the time of the transaction and request that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(b) *Application of opt out to all consumers and all nonpublic personal information.* (1) You must comply with this section, regardless of whether you and the consumer have established a customer relationship.

(2) Unless you comply with this section, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that you have collected, regardless of whether you collected it before or after receiving the direction to opt out from the consumer.

(c) *Partial opt out.* You may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

§1016.11 Limits on redisclosure and reuse of information.

(a)(1) *Information you receive under an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution under an exception in §1016.14 or §1016.15 of this part, your disclosure and use of that information is limited as follows:

(i) You may disclose the information to the affiliates of the financial institution from which you received the information;

(ii) You may disclose the information to your affiliates, but your affiliates may, in turn, disclose and use the information only to the extent that you may disclose and use the information; and

(iii) You may disclose and use the information pursuant to an exception in §1016.14 or §1016.15 in the ordinary course of business to carry out the activity covered by the exception under which you received the information.

(2) *Example.* If you receive a customer list from a nonaffiliated financial institution in order to provide account processing services under the exception in §1016.14(a), you may disclose that information under any exception in §1016.14 or §1016.15 in the ordinary course of business in order to provide those services. For example, you could disclose the information in response to a properly authorized subpoena or, in the case of financial institutions other than those described in §1016.3(l)(3), to your attorneys, accountants, and auditors. You could not disclose that information to a third party for marketing purposes or use that information for your own marketing purposes.

(b)(1) *Information you receive outside of an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution other than under an exception in §1016.14 or §1016.15 of this part, you may disclose the information only:

(i) To the affiliates of the financial institution from which you received the information;

(ii) To your affiliates, but your affiliates may, in turn, disclose the information only to the extent that you can disclose the information; and

(iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which you received the information.

(2) *Example.* If you obtain a customer list from a nonaffiliated financial institution outside of the exceptions in §§1016.14 and 1016.15:

(i) You may use that list for your own purposes; and

(ii) You may disclose that list to another nonaffiliated third party only if the financial institution from which you purchased the list could have lawfully disclosed the list to that third party. That is, you may disclose the list in accordance with the privacy policy of the financial institution from which you received the list, as limited by the opt out direction of each consumer whose nonpublic personal information you intend to disclose, and you may disclose the list in accordance with an exception in §1016.14 or §1016.15, such as to your attorneys or accountants.

(c) *Information you disclose under an exception.* If you disclose nonpublic personal information to a nonaffiliated third party under an exception in §1016.14 or §1016.15 of this part, the third party may disclose and use that information only as follows:

(1) The third party may disclose the information to your affiliates;

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) The third party may disclose and use the information pursuant to an exception in §1016.14 or §1016.15 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(d) *Information you disclose outside of an exception.* If you disclose nonpublic personal information to a nonaffiliated third party other than under an exception in §1016.14 or §1016.15 of this part, the third party may disclose the information only:

(1) To your affiliates;

(2) To its affiliates, but its affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(3) To any other person, if the disclosure would be lawful if you made it directly to that person.

§ 1016.12 Limits on sharing account number information for marketing purposes.

(a) *General prohibition on disclosure of account numbers.* You must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a consumer's credit card account, deposit account, share account, or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(b) *Exceptions.* Paragraph (a) of this section does not apply if you disclose an account number or similar form of access number or access code:

(1) To your agent or service provider solely in order to perform marketing for your own products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; or

(2) To a participant in a private label credit card program or an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(c) *Examples*—(1) *Account number.* An account number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as you do not provide the recipient with a means to decode the number or code.

(2) *Transaction account.* A transaction account is an account other than a deposit account, a share account, or a credit card account. A transaction account does not include an account to which third parties cannot initiate charges.

Subpart C—Exceptions

§ 1016.13 Exception to opt out requirements for service providers and joint marketing.

(a) *General rule.* (1) The opt out requirements in §§ 1016.7 and 1016.10 of this part do not apply when you provide nonpublic personal information to a nonaffiliated third party to perform services for you or functions on your behalf, if you:

(i) Provide the initial notice in accordance with § 1016.4; and

(ii) Enter into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which you disclosed the information, including use under an exception in § 1016.14 or § 1016.15 in the ordinary course of business to carry out those purposes.

(2) *Example.* If you disclose nonpublic personal information under this section to a financial institution with which you perform joint marketing, your contractual agreement with that institution meets the requirements of paragraph (a)(1)(ii) of this section if it prohibits the institution from disclosing or using the nonpublic personal information except as necessary to carry out the joint marketing or under an exception in § 1016.14 or § 1016.15 in the ordinary course of business to carry out that joint marketing.

(b) *Service may include joint marketing.* The services a nonaffiliated third party performs for you under paragraph (a) of this section may include marketing of your own products or services or marketing of financial products or services offered pursuant to joint agreements between you and one or more financial institutions.

(c) *Definition of joint agreement.* For purposes of this section, joint agreement means a written contract pursuant to which you and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

§ 1016.14 Exceptions to notice and opt out requirements for processing and servicing transactions.

(a) *Exceptions for processing transactions at consumer's request.* The requirements for initial notice in § 1016.4(a)(2), for the opt out in §§ 1016.7 and 1016.10, and for service providers and joint marketing in § 1016.13 do not apply if you disclose nonpublic personal information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) Servicing or processing a financial product or service that a consumer requests or authorizes;

(2) Maintaining or servicing the consumer's account with you, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(3) A proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer.

(b) *Necessary to effect, administer, or enforce a transaction* means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the financial service or financial product;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;

(v) To underwrite insurance at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or state law; or

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or account number, or by other payment means;

(B) The transfer of receivables, accounts, or interests therein; or

(C) The audit of debit, credit, or other payment information.

§ 1016.15 Other exceptions to notice and opt out requirements.

(a) *Exceptions to opt out requirements.* The requirements for initial notice in § 1016.4(a)(2), for the opt out in §§ 1016.7 and 1016.10, and for service providers and joint marketing in § 1016.13 do not apply when you disclose nonpublic personal information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2)(i) To protect the confidentiality or security of your records pertaining to the consumer, service, product, or transaction;

(ii) To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants, and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*) to law enforcement agencies (including the Bureau, a Federal functional regulator, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a state insurance authority,

with respect to any person domiciled in that insurance authority's state that is engaged in providing insurance, and the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(5)(i) To a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*); or

(ii) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(7)(i) To comply with Federal, state, or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by Federal, state, or local authorities; or

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over you for examination, compliance, or other purposes as authorized by law.

(b) *Examples of consent and revocation of consent.* (1) A consumer may specifically consent to your disclosure to a nonaffiliated insurance company of the fact that the consumer has applied to you for a mortgage so that the insurance company can offer homeowner's insurance to the consumer.

(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 1016.7(h) of this part.

Subpart D—Relation to Other Laws

§ 1016.16 Protection of Fair Credit Reporting Act.

Nothing in this part shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under section 603 of that Act.

§ 1016.17 Relation to state laws.

(a) *In general.* This part shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any state, except to the extent that such state statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under state law.* For purposes of this section, a state statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this part, as determined by the Bureau, on its own motion or upon the petition of any interested party, after consultation with the agency or authority with jurisdiction under section 505(a) of the GLB Act (15 U.S.C. 6805(a)) over either the person that initiated the complaint or that is the subject of the complaint.

APPENDIX TO PART 1016—MODEL PRIVACY FORM

A. THE MODEL PRIVACY FORM

Version 1: Model Form With No Opt-Out.

Rev. [insert date]

FACTS **WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?**

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores] When you are *no longer* our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Questions?	Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]
What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] **OR** [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*
Other important information	
[insert other important information]	

Version 2: Model Form with Opt-Out by Telephone and/or Online.

Rev. [insert date]

FACTS	WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores]
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing	■ Call **[phone number]**—our menu will prompt you through your choice(s) or ■ Visit us online: **[website]** **Please note:** If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.
Questions?	Call [phone number] or go to [website]

Page 2

Who we are	
Who is providing this notice?	[insert]

What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] **OR** [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] **OR** [Your choices will apply to everyone on your account—unless you tell us otherwise.]

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*

Other important information
[insert other important information]

Version 3: Model Form with Mail-In Opt-Out Form.

Rev. [insert date]

FACTS	WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores]
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing	■ Call **[phone number]**—our menu will prompt you through your choice(s) ■ Visit us online: **[website]** or ■ Mail the form below **Please note:** If you are a *new* customer, we can begin sharing your information [30] days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.
Questions?	Call [phone number] or go to [website]

✂

Mail-in Form

Leave Blank OR
[If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below.

❑ Apply my choices only to me]

Mark any/all you want to limit:

❑ Do not share information about my creditworthiness with your affiliates for their everyday business purposes.

❑ Do not allow your affiliates to use my personal information to market to me.

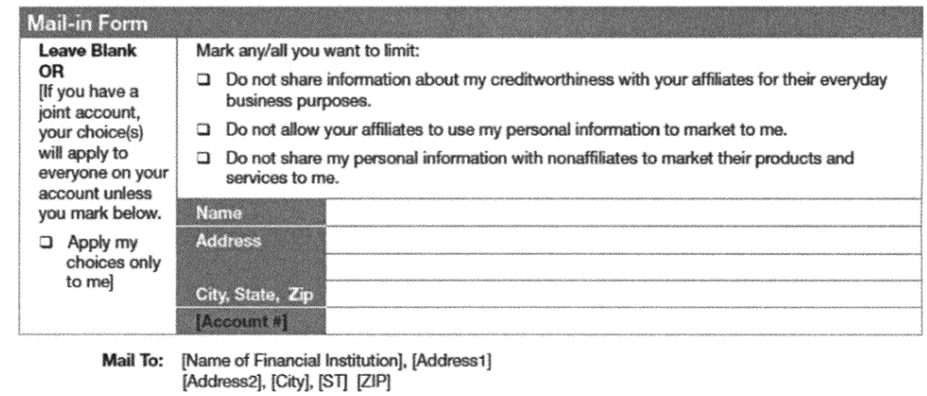
❑ Do not share my personal information with nonaffiliates to market their products and services to me.

		Mail to:
Name		[Name of Financial Institution]
Address		[Address1]
City, State, Zip		[Address2]
[Account #]		[City], [ST] [ZIP]

Page 2

Who we are	
Who is providing this notice?	[insert]
What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] **OR** [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] **OR** [Your choices will apply to everyone on your account—unless you tell us otherwise.]
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■ *[affiliate information]*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■ *[nonaffiliate information]*
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■ *[joint marketing information]*
Other important information	
[insert other important information]	

Version 4. Optional Mail-in Form.



Mail-in Form		
Leave Blank OR [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. ❑ Apply my choices only to me]	Mark any/all you want to limit: ❑ Do not share information about my creditworthiness with your affiliates for their everyday business purposes. ❑ Do not allow your affiliates to use my personal information to market to me. ❑ Do not share my personal information with nonaffiliates to market their products and services to me.	
	Name	
	Address	
	City, State, Zip	
	[Account #]	

Mail To: [Name of Financial Institution], [Address1] [Address2], [City], [ST] [ZIP]

B. GENERAL INSTRUCTIONS

1. How the Model Privacy Form Is Used

(a) The model form may be used, at the option of a financial institution, including a group of financial institutions that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in §§1016.6 and 1016.7 of this part.

(b) The model form is a standardized form, including page layout, content, format, style, pagination, and shading. Institutions seeking to obtain the safe harbor through use of the model form may modify it only as described in these Instructions.

(c) Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681–1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

(d) The word ''customer'' may be replaced by the word ''member'' whenever it appears in the model form, as appropriate.

2. The Contents of the Model Privacy Form

The model form consists of two pages, which may be printed on both sides of a single sheet of paper, or may appear on two separate pages. Where an institution provides a long list of institutions at the end of the model form in accordance with Instruction C.3(a)(1), or provides additional information in accordance with Instruction C.3(c), and such list or additional information exceeds the space available on page two of the model form, such list or additional information may extend to a third page.

(a) *Page One*. The first page consists of the following components:

(1) Date last revised (upper right-hand corner).

(2) Title.

(3) Key frame (Why?, What?, How?).

(4) Disclosure table (''Reasons we can share your personal information'').

(5) ''To limit our sharing'' box, as needed, for the financial institution's opt-out information.

(6) ''Questions'' box, for customer service contact information.

(7) Mail-in opt-out form, as needed.

(b) *Page Two*. The second page consists of the following components:

(1) Heading (Page 2).

(2) Frequently Asked Questions (''Who we are'' and ''What we do'').

(3) Definitions.

(4) ''Other important information'' box, as needed.

3. The Format of the Model Privacy Form

The format of the model form may be modified only as described below.

(a) *Easily readable type font*. Financial institutions that use the model form must use an easily readable type font. While a number of factors together produce easily readable type font, institutions are required to use a minimum of 10-point font (unless otherwise expressly permitted in these Instructions) and sufficient spacing between the lines of type.

(b) *Logo*. A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(c) *Page size and orientation.* Each page of the model form must be printed on paper in portrait orientation, the size of which must be sufficient to meet the layout and minimum font size requirements, with sufficient white space on the top, bottom, and sides of the content.

(d) *Color.* The model form must be printed on white or light color paper (such as cream) with black or other contrasting ink color. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form. Logos may also be printed in color.

(e) *Languages.* The model form may be translated into languages other than English.

C. INFORMATION REQUIRED IN THE MODEL PRIVACY FORM

The information in the model form may be modified only as described below:

1. Name of the Institution or Group of Affiliated Institutions Providing the Notice

Insert the name of the financial institution providing the notice or a common identity of affiliated institutions jointly providing the notice on the form wherever [name of financial institution] appears.

2. Page One

(a) *Last revised date.* The financial institution must insert in the upper right-hand corner the date on which the notice was last revised. The information shall appear in minimum 8-point font as ''rev. [month/year]'' using either the name or number of the month, such as ''rev. July 2009'' or ''rev. 7/09''.

(b) *General instructions for the ''What?'' box.*

(1) The bulleted list identifies the types of personal information that the institution collects and shares. All institutions must use the term ''Social Security number'' in the first bullet.

(2) Institutions must use five (5) of the following terms to complete the bulleted list: Income; account balances; payment history; transaction history; transaction or loss history; credit history; credit scores; assets; investment experience; credit-based insurance scores; insurance claim history; medical information; overdraft history; purchase history; account transactions; risk tolerance; medical-related debts; credit card or other debt; mortgage rates and payments; retirement assets; checking account information; employment information; wire transfer instructions.

(c) *General instructions for the disclosure table.* The left column lists reasons for sharing or using personal information. Each reason correlates to a specific legal provision described in paragraph C.2(d) of this Instruction. In the middle column, each institution must provide a ''Yes'' or ''No'' response that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. In the right column, each institution must provide in each box one of the following three (3) responses, as applicable, that reflects whether a consumer can limit such sharing: ''Yes'' if it is required to or voluntarily provides an opt-out; ''No'' if it does not provide an opt-out; or ''We don't share'' if it answers ''No'' in the middle column. Only the sixth row (''For our affiliates to market to you'') may be omitted at the option of the institution. *See* paragraph C.2(d)(6) of this Instruction.

(d) *Specific disclosures and corresponding legal provisions.*

(1) *For our everyday business purposes.* This reason incorporates sharing information under §§1016.14 and 1016.15 and with service providers pursuant to §1016.13 of this part other than the purposes specified in paragraphs C.2(d)(2) or C.2(d)(3) of these Instructions.

(2) *For our marketing purposes.* This reason incorporates sharing information with service providers by an institution for its own marketing pursuant to §1016.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(3) *For joint marketing with other financial companies.* This reason incorporates sharing information under joint marketing agreements between two or more financial institutions and with any service provider used in connection with such agreements pursuant to §1016.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(4) *For our affiliates' everyday business purposes—information about transactions and experiences.* This reason incorporates sharing information specified in sections 603(d)(2)(A)(i) and (ii) of the FCRA. An institution that shares for this reason may choose to provide an opt-out.

(5) *For our affiliates' everyday business purposes—information about creditworthiness.* This reason incorporates sharing information pursuant to section 603(d)(2)(A)(iii) of the FCRA. An institution that shares for this reason must provide an opt-out.

(6) *For our affiliates to market to you.* This reason incorporates sharing information specified in section 624 of the FCRA. This reason may be omitted from the disclosure table when: the institution does not have affiliates (or does not disclose personal information to its affiliates); the institution's affiliates do not use personal information in a manner that requires an opt-out; or the institution provides the affiliate marketing notice separately. Institutions that include this reason must provide an opt-out of indefinite duration. An institution that is required to provide an affiliate marketing opt-

out, but does not include that opt-out in the model form under this part, must comply with section 624 of the FCRA and 12 CFR part 1022, subpart C, with respect to the initial notice and opt-out and any subsequent renewal notice and opt-out. An institution not required to provide an opt-out under this subparagraph may elect to include this reason in the model form.

(7) *For nonaffiliates to market to you.* This reason incorporates sharing described in §§1016.7 and 1016.10(a) of this part. An institution that shares personal information for this reason must provide an opt-out.

(e) *To limit our sharing:* A financial institution must include this section of the model form *only* if it provides an opt-out. The word ''choice'' may be written in either the singular or plural, as appropriate. Institutions must select one or more of the applicable opt-out methods described: Telephone, such as by a toll-free number; a Web site; or use of a mail-in opt-out form. Institutions may include the words ''toll-free'' before telephone, as appropriate. An institution that allows consumers to opt out online must provide either a specific Web address that takes consumers directly to the opt-out page or a general Web address that provides a clear and conspicuous direct link to the opt-out page. The opt-out choices made available to the consumer who contacts the institution through these methods must correspond accurately to the ''Yes'' responses in the third column of the disclosure table. In the part titled ''Please note,'' institutions may insert a number that is 30 or greater in the space marked ''[30].'' Instructions on voluntary or state privacy law opt-out information are in paragraph C.2(g)(5) of these Instructions.

(f) *Questions box.* Customer service contact information must be inserted as appropriate, where [phone number] or [Web site] appear. Institutions may elect to provide either a phone number, such as a toll-free number, or a web address, or both. Institutions may include the words ''toll-free'' before the telephone number, as appropriate.

(g) *Mail-in opt-out form.* Financial institutions must include this mail-in form *only* if they state in the ''To limit our sharing'' box that consumers can opt out by mail. The mail-in form must provide opt-out options that correspond accurately to the ''Yes'' responses in the third column in the disclosure table. Institutions that require customers to provide only name and address may omit the section identified as ''[account #].'' Institutions that require additional or different information, such as a random opt-out number or a truncated account number, to implement an opt-out election should modify the ''[account #]'' reference accordingly. This includes institutions that require customers with multiple accounts to identify each account to which the opt-out should apply. An institution must enter its opt-out mailing address: in the far right of this form (*see* version 3); or below the form (*see* version 4). The reverse side of the mail-in opt-out form must not include any content of the model form.

(1) *Joint accountholder.* Only institutions that provide their joint accountholders the choice to opt out for only one accountholder, in accordance with paragraph C.3(a)(5) of these Instructions, must include in the far left column of the mail-in form the following statement: ''If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. Apply my choice(s) only to me.'' The word ''choice'' may be written in either the singular or plural, as appropriate. Financial institutions that provide insurance products or services, provide this option, and elect to use the model form may substitute the word ''policy'' for ''account'' in this statement. Institutions that do not provide this option may eliminate this left column from the mail-in form.

(2) *FCRA section 603(d)(2)(A)(iii) opt-out.* If the institution shares personal information pursuant to section 603(d)(2)(A)(iii) of the FCRA, it must include in the mail-in opt-out form the following statement: '' Do not share information about my creditworthiness with your affiliates for their everyday business purposes.''

(3) *FCRA section 624 opt-out.* If the institution incorporates section 624 of the FCRA in accord with paragraph C.2(d)(6) of these Instructions, it must include in the mail-in opt-out form the following statement: '' Do not allow your affiliates to use my personal information to market to me.''

(4) *Nonaffiliate opt-out.* If the financial institution shares personal information pursuant to §1016.10(a) of this part, it must include in the mail-in opt-out form the following statement: '' Do not share my personal information with nonaffiliates to market their products and services to me.''

(5) *Additional opt-outs.* Financial institutions that use the disclosure table to provide opt-out options beyond those required by Federal law must provide those opt-outs in this section of the model form. A financial institution that chooses to offer an opt-out for its own marketing in the mail-in opt-out form must include one of the two following statements: '' Do not share my personal information to market to me.'' *or* '' Do not use my personal information to market to me.'' A financial institution that chooses to offer an opt-out for joint marketing must include the following statement: '' Do not share my personal information with other financial institutions to jointly market to me.''

(h) *Barcodes.* A financial institution may elect to include a barcode and/or ''tagline'' (an internal identifier) in 6-point font at the bottom of page one, as needed for information internal to the institution, so long as

these do not interfere with the clarity or text of the form.

3. Page Two

(a) *General Instructions for the Questions.* Certain of the Questions may be customized as follows:

(1) ''*Who is providing this notice?*'' This question may be omitted where only one financial institution provides the model form and that institution is clearly identified in the title on page one. Two or more financial institutions that jointly provide the model form must use this question to identify themselves as required by §1016.9(f) of this part. Where the list of institutions exceeds four (4) lines, the institution must describe in the response to this question the general types of institutions jointly providing the notice and must separately identify those institutions, in minimum 8-point font, directly following the ''Other important information'' box, or, if that box is not included in the institution's form, directly following the ''Definitions.'' The list may appear in a multi-column format.

(2) ''*How does [name of financial institution] protect my personal information?*'' The financial institution may only provide additional information pertaining to its safeguards practices following the designated response to this question. Such information may include information about the institution's use of cookies or other measures it uses to safeguard personal information. Institutions are limited to a maximum of 30 additional words.

(3) ''*How does [name of financial institution] collect my personal information?*'' Institutions must use five (5) of the following terms to complete the bulleted list for this question: Open an account; deposit money; pay your bills; apply for a loan; use your credit or debit card; seek financial or tax advice; apply for insurance; pay insurance premiums; file an insurance claim; seek advice about your investments; buy securities from us; sell securities to us; direct us to buy securities; direct us to sell your securities; make deposits or withdrawals from your account; enter into an investment advisory contract; give us your income information; provide employment information; give us your employment history; tell us about your investment or retirement portfolio; tell us about your investment or retirement earnings; apply for financing; apply for a lease; provide account information; give us your contact information; pay us by check; give us your wage statements; provide your mortgage information; make a wire transfer; tell us who receives the money; tell us where to send the money; show your government-issued ID; show your driver's license; order a commodity futures or option trade. Institutions that collect personal information from their affiliates and/or credit bureaus must include after the bulleted list the following statement: ''We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.'' Institutions that do not collect personal information from their affiliates or credit bureaus but do collect information from other companies must include the following statement instead: ''We also collect your personal information from other companies.'' Only institutions that do not collect any personal information from affiliates, credit bureaus, or other companies can omit both statements.

(4) ''*Why can't I limit all sharing?*'' Institutions that describe state privacy law provisions in the ''*Other important information*'' box must use the bracketed sentence: ''See below for more on your rights under state law.'' Other institutions must omit this sentence.

(5) ''*What happens when I limit sharing for an account I hold jointly with someone else?*'' Only financial institutions that provide opt-out options must use this question. Other institutions must omit this question. Institutions must choose one of the following two statements to respond to this question: ''Your choices will apply to everyone on your account.'' or ''Your choices will apply to everyone on your account—unless you tell us otherwise.'' Financial institutions that provide insurance products or services and elect to use the model form may substitute the word ''policy'' for ''account'' in these statements.

(b) *General Instructions for the Definitions.* The financial institution must customize the space below the responses to the three definitions in this section. This specific information must be in italicized lettering to set off the information from the standardized definitions.

(1) *Affiliates.* As required by §1016.6(a)(3) of this part, where [*affiliate information*] appears, the financial institution must:

(i) If it has no affiliates, state: ''*[name of financial institution] has no affiliates*'';

(ii) If it has affiliates but does not share personal information, state: ''*[name of financial institution] does not share with our affiliates*''; or

(iii) If it shares with its affiliates, state, as applicable: ''*Our affiliates include companies with a [common corporate identity of financial institution] name; financial companies such as [insert illustrative list of companies]; nonfinancial companies, such as [insert illustrative list of companies]; and others, such as [insert illustrative list].*''

(2) *Nonaffiliates.* As required by §1016.6(c)(3) of this part, where [*nonaffiliate information*] appears, the financial institution must:

(i) If it does not share with nonaffiliated third parties, state: ''*[name of financial institution] does not share with nonaffiliates so they can market to you*''; or

(ii) If it shares with nonaffiliated third parties, state, as applicable: ''*Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations]*.''

(3) *Joint Marketing.* As required by §1016.13 of this part, where [*joint marketing*] appears, the financial institution must:

(i) If it does not engage in joint marketing, state: ''*[name of financial institution] doesn't jointly market*''; or

(ii) If it shares personal information for joint marketing, state, as applicable: ''*Our joint marketing partners include [list categories of companies such as credit card companies]*.''

(c) *General instructions for the ''Other important information box.''* This box is optional. The space provided for information in this box is not limited. Only the following types of information can appear in this box.

(1) State and/or international privacy law information; and/or

(2) Acknowledgment of receipt form.

PART 1022—FAIR CREDIT REPORTING (REGULATION V)

Subpart A—General Provisions

Sec.
1022.1 Purpose, scope, and model forms and disclosures.
1022.2 Examples.
1022.3 Definitions.

Subpart B [Reserved]

Subpart C—Affiliate Marketing

1022.20 Coverage and definitions.
1022.21 Affiliate marketing opt-out and exceptions.
1022.22 Scope and duration of opt-out.
1022.23 Contents of opt-out notice; consolidated and equivalent notices.
1022.24 Reasonable opportunity to opt out.
1022.25 Reasonable and simple methods of opting out.
1022.26 Delivery of opt-out notices.
1022.27 Renewal of opt-out.

Subpart D—Medical Information

1022.30 Obtaining or using medical information in connection with a determination of eligibility for credit.
1022.31 Limits on redisclosure of information.
1022.32 Sharing medical information with affiliates.

Subpart E—Duties of Furnishers of Information

1022.40 Scope.
1022.41 Definitions.
1022.42 Reasonable policies and procedures concerning the accuracy and integrity of furnished information.
1022.43 Direct disputes.

Subpart F—Duties of Users Regarding Obtaining and Using Consumer Reports

1022.50–1022.53 [Reserved]
1022.54 Duties of users making written firm offers of credit or insurance based on information contained in consumer files.

Subpart G [Reserved]

Subpart H—Duties of Users Regarding Risk-Based Pricing

1022.70 Scope.
1022.71 Definitions.
1022.72 General requirements for risk-based pricing notices.
1022.73 Content, form, and timing of risk-based pricing notices.
1022.74 Exceptions.
1022.75 Rules of construction.

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

1022.80–1022.81 [Reserved]
1022.82 Duties of users regarding address discrepancies.

Subparts J–L [Reserved]

Subpart M—Duties of Consumer Reporting Agencies Regarding Identity Theft

1022.120 [Reserved]
1022.121 Active duty alerts.
1022.122 [Reserved]
1022.123 Proof of identity.

Subpart N—Duties of Consumer Reporting Agencies Regarding Disclosures to Consumers

1022.130 Definitions
1022.131–1022.135 [Reserved]
1022.136 Centralized source for requesting annual file disclosures from nationwide consumer reporting agencies.
1022.137 Streamlined process for requesting annual file disclosures from nationwide specialty consumer reporting agencies.
1022.138 Prevention of deceptive marketing of free credit reports.

Subpart O—Miscellaneous Duties of Consumer Reporting Agencies

1022.140 Prohibition against circumventing or evading treatment as a consumer reporting agency.

APPENDIX A TO PART 1022 [RESERVED]

APPENDIX B TO PART 1022—MODEL NOTICES OF FURNISHING NEGATIVE INFORMATION
APPENDIX C TO PART 1022—MODEL FORMS FOR OPT-OUT NOTICES
APPENDIX D TO PART 1022—MODEL FORMS FOR FIRM OFFERS OF CREDIT OR INSURANCE
APPENDIX E TO PART 1022— INTERAGENCY GUIDELINES CONCERNING THE ACCURACY AND INTEGRITY OF INFORMATION FURNISHED TO CONSUMER REPORTING AGENCIES
APPENDIXES F–G TO PART 1022 [RESERVED]
APPENDIX H TO PART 1022—MODEL FORMS FOR RISK-BASED PRICING AND CREDIT SCORE DISCLOSURE EXCEPTION NOTICES
APPENDIX I TO PART 1022—SUMMARY OF CONSUMER IDENTITY THEFT RIGHTS
APPENDIX J TO PART 1022 [RESERVED]
APPENDIX K TO PART 1022—SUMMARY OF CONSUMER RIGHTS
APPENDIX L TO PART 1022—STANDARDIZED FORM FOR REQUESTING ANNUAL FILE DISCLOSURES
APPENDIX M TO PART 1022—NOTICE OF FURNISHER RESPONSIBILITIES
APPENDIX N TO PART 1022—NOTICE OF USER RESPONSIBILITIES

AUTHORITY: 12 U.S.C. 5512, 5581; 15 U.S.C. 1681a, 1681b, 1681c, 1681c–1, 1681e, 1681g, 1681i, 1681j, 1681m, 1681s, 1681s–2, 1681s–3, and 1681t; Sec. 214, Public Law 108–159, 117 Stat. 1952.

SOURCE: 76 FR 79312, Dec. 21, 2011, unless otherwise noted.

Subpart A—General Provisions

§ 1022.1 Purpose, scope, and model forms and disclosures.

(a) *Purpose.* The purpose of this part is to implement the Fair Credit Reporting Act (FCRA). This part generally applies to persons that obtain and use information about consumers to determine the consumer's eligibility for products, services, or employment, share such information among affiliates, and furnish information to consumer reporting agencies.

(b) *Scope.* (1) [Reserved]

(2) *Institutions covered.* (i) Except as otherwise provided in this part, this part applies to any person subject to the FCRA except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376.

(ii) For purposes of appendix B to this part, financial institutions as defined in section 509 of the Gramm-Leach-Bliley Act (12 U.S.C. 6809), may use the model notices in appendix B to this part to comply with the notice requirement in section 623(a)(7) of the FCRA (15 U.S.C. 1681s–2(a)(7)).

(c) *Model forms and disclosures*—(1) *Use.* Appendices D, H, I, K, L, M, and N contain model forms and disclosures. These appendices carry out the directive in FCRA that the Bureau prescribe such model forms and disclosures. Use or distribution of these model forms and disclosures, or substantially similar forms and disclosures, will constitute compliance with any section or subsection of the FCRA requiring that such forms and disclosures be used by or supplied to any person.

(2) *Definition. Substantially similar* means that all information in the Bureau's prescribed model is included in the document that is distributed, and that the document distributed is formatted in a way consistent with the format prescribed by the Bureau. The document that is distributed shall not include anything that interferes with, detracts from, or otherwise undermines the information contained in the Bureau's prescribed model. Until January 1, 2013, the model forms in appendices B, E, F, G, and H to 16 CFR part 698, as those appendices existed as of October 1, 2011, are deemed substantially similar to the corresponding model forms in appendices H, I, K, M, and N to this part, and the model forms in appendix H to 12 CFR part 222, as that appendix existed as of October 1, 2011, are deemed substantially similar to the corresponding model forms in appendix H to this part.

§ 1022.2 Examples.

The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.

§ 1022.3 Definitions.

For purposes of this part, unless explicitly stated otherwise:

(a) *Act* means the FCRA (15 U.S.C. 1681 *et seq.*).

(b) *Affiliate* means any company that is related by common ownership or common corporate control with another company. For example, an affiliate of a Federal credit union is a credit union service corporation, as provided in 12 CFR part 712, that is controlled by the Federal credit union.

(c) [Reserved]

(d) *Common ownership or common corporate control* means a relationship between two companies under which:

(1) One company has, with respect to the other company:

(i) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of a company, directly or indirectly, or acting through one or more other persons;

(ii) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of a company; or

(iii) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a company, as determined by the applicable prudential regulator (as defined in 12 U.S.C. 5481(24)) (a credit union is presumed to have a controlling influence over the management or policies of a credit union service corporation if the credit union service corporation is 67% owned by credit unions) or, where there is no prudential regulator, by the Bureau; or

(2) Any other person has, with respect to both companies, a relationship described in paragraphs (d)(1)(i) through (d)(1)(ii).

(e) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(f) *Consumer* means an individual.

(g) *Identifying information* means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any:

(1) Name, social security number, date of birth, official state or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number;

(2) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

(3) Unique electronic identification number, address, or routing code; or

(4) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)).

(h) *Identity theft* means a fraud committed or attempted using the identifying information of another person without authority.

(i)(1) *Identity theft report* means a report:

(i) That alleges identity theft with as much specificity as the consumer can provide;

(ii) That is a copy of an official, valid report filed by the consumer with a Federal, state, or local law enforcement agency, including the United States Postal Inspection Service, the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information, if, in fact, the information in the report is false; and

(iii) That may include additional information or documentation that an information furnisher or consumer reporting agency reasonably requests for the purpose of determining the validity of the alleged identity theft, provided that the information furnisher or consumer reporting agency:

(A) Makes such request not later than fifteen days after the date of receipt of the copy of the report form identified in Paragraph (i)(1)(ii) of this section or the request by the consumer for the particular service, whichever shall be the later;

(B) Makes any supplemental requests for information or documentation and final determination on the acceptance of the identity theft report within another fifteen days after its initial request for information or documentation; and

(C) Shall have five days to make a final determination on the acceptance of the identity theft report, in the event that the consumer reporting agency or information furnisher receives any such additional information or documentation on the eleventh day or later within the fifteen day period

set forth in Paragraph (i)(1)(iii)(B) of this section.

(2) Examples of the specificity referenced in Paragraph (i)(1)(i) of this section are provided for illustrative purposes only, as follows:

(i) Specific dates relating to the identity theft such as when the loss or theft of personal information occurred or when the fraud(s) using the personal information occurred, and how the consumer discovered or otherwise learned of the theft.

(ii) Identification information or any other information about the perpetrator, if known.

(iii) Name(s) of information furnisher(s), account numbers, or other relevant account information related to the identity theft.

(iv) Any other information known to the consumer about the identity theft.

(3) Examples of when it would or would not be reasonable to request additional information or documentation referenced in Paragraph (i)(1)(iii) of this section are provided for illustrative purposes only, as follows:

(i) A law enforcement report containing detailed information about the identity theft and the signature, badge number or other identification information of the individual law enforcement official taking the report should be sufficient on its face to support a victim's request. In this case, without an identifiable concern, such as an indication that the report was fraudulent, it would not be reasonable for an information furnisher or consumer reporting agency to request additional information or documentation.

(ii) A consumer might provide a law enforcement report similar to the report in Paragraph (i)(1) of this section but certain important information such as the consumer's date of birth or Social Security number may be missing because the consumer chose not to provide it. The information furnisher or consumer reporting agency could accept this report, but it would be reasonable to require that the consumer provide the missing information. The Bureau's Identity Theft Affidavit is available on the Bureau's Web site (*consumerfinance.gov/learnmore*). The version of this form developed by the Federal Trade Commission, available on the FTC's Web site (*ftc.gov/idtheft*), remains valid and sufficient for this purpose.

(iii) A consumer might provide a law enforcement report generated by an automated system with a simple allegation that an identity theft occurred to support a request for a tradeline block or cessation of information furnishing. In such a case, it would be reasonable for an information furnisher or consumer reporting agency to ask that the consumer fill out and have notarized the Bureau's Identity Theft Affidavit or a similar form and provide some form of identification documentation.

(iv) A consumer might provide a law enforcement report generated by an automated system with a simple allegation that an identity theft occurred to support a request for an extended fraud alert. In this case, it would not be reasonable for a consumer reporting agency to require additional documentation or information, such as a notarized affidavit.

(j) [Reserved]

(k) *Medical information* means:

(1) Information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to:

(i) The past, present, or future physical, mental, or behavioral health or condition of an individual;

(ii) The provision of health care to an individual; or

(iii) The payment for the provision of health care to an individual.

(2) The term does not include:

(i) The age or gender of a consumer;

(ii) Demographic information about the consumer, including a consumer's residence address or email address;

(iii) Any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy; or

(iv) Information that does not identify a specific consumer.

(l) *Person* means any individual, partnership, corporation, trust, estate cooperative, association, government or governmental subdivision or agency, or other entity.

Subpart B [Reserved]

Subpart C—Affiliate Marketing

§ 1022.20 Coverage and definitions.

(a) *Coverage.* Subpart C of this part applies to any person that uses information from its affiliates for the purpose of marketing solicitations, or provides information to its affiliates for that purpose, other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 137.

(b) *Definitions.* For purposes of this subpart:

(1) *Clear and conspicuous.* The term ''clear and conspicuous'' means reasonably understandable and designed to call attention to the nature and significance of the information presented.

(2) *Concise*—(i) *In general.* The term ''concise'' means a reasonably brief expression or statement.

(ii) *Combination with other required disclosures.* A notice required by this subpart may be concise even if it is combined with other disclosures required or authorized by Federal or state law.

(3) *Eligibility information.* The term ''eligibility information'' means any information the communication of which would be a consumer report if the exclusions from the definition of ''consumer report'' in section 603(d)(2)(A) of the Act did not apply. Eligibility information does not include aggregate or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(4) *Pre-existing business relationship*—(i) *In general.* The term ''pre-existing business relationship'' means a relationship between a person, or a person's licensed agent, and a consumer based on:

(A) A financial contract between the person and the consumer which is in force on the date on which the consumer is sent a solicitation covered by this subpart;

(B) The purchase, rental, or lease by the consumer of the person's goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and the person, during the 18-month period immediately preceding the date on which the consumer is sent a solicitation covered by this subpart; or

(C) An inquiry or application by the consumer regarding a product or service offered by that person during the three-month period immediately preceding the date on which the consumer is sent a solicitation covered by this subpart.

(ii) *Examples of pre-existing business relationships.* (A) If a consumer has a time deposit account, such as a certificate of deposit, at a financial institution that is currently in force, the financial institution has a pre-existing business relationship with the consumer and can use eligibility information it receives from its affiliates to make solicitations to the consumer about its products or services.

(B) If a consumer obtained a certificate of deposit from a financial institution, but did not renew the certificate at maturity, the financial institution has a pre-existing business relationship with the consumer and can use eligibility information it receives from its affiliates to make solicitations to the consumer about its products or services for 18 months after the date of maturity of the certificate of deposit.

(C) If a consumer obtains a mortgage, the mortgage lender has a pre-existing business relationship with the consumer. If the mortgage lender sells the consumer's entire loan to an investor, the mortgage lender has a pre-existing business relationship with the consumer and can use eligibility information it receives from its affiliates to make solicitations to the consumer about its products or services for 18 months after the date it sells the loan, and the investor has a pre-existing business relationship with the consumer upon purchasing the loan. If, however, the mortgage lender sells a fractional interest in the consumer's loan to an investor but also retains an ownership interest in the loan, the mortgage lender continues to have a pre-existing business relationship with the consumer, but the investor does

not have a pre-existing business relationship with the consumer. If the mortgage lender retains ownership of the loan, but sells ownership of the servicing rights to the consumer's loan, the mortgage lender continues to have a pre-existing business relationship with the consumer. The purchaser of the servicing rights also has a pre-existing business relationship with the consumer as of the date it purchases ownership of the servicing rights, but only if it collects payments from or otherwise deals directly with the consumer on a continuing basis.

(D) If a consumer applies to a financial institution for a product or service that it offers, but does not obtain a product or service from or enter into a financial contract or transaction with the institution, the financial institution has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services for three months after the date of the application.

(E) If a consumer makes a telephone inquiry to a financial institution about its products or services and provides contact information to the institution, but does not obtain a product or service from or enter into a financial contract or transaction with the institution, the financial institution has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services for three months after the date of the inquiry.

(F) If a consumer makes an inquiry to a financial institution by email about its products or services, but does not obtain a product or service from or enter into a financial contract or transaction with the institution, the financial institution has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services for three months after the date of the inquiry.

(G) If a consumer has an existing relationship with a financial institution that is part of a group of affiliated companies, makes a telephone call to the centralized call center for the group of affiliated companies to inquire about products or services offered by the insurance affiliate, and provides contact information to the call center, the call constitutes an inquiry to the insurance affiliate that offers those products or services. The insurance affiliate has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from its affiliated financial institution to make solicitations to the consumer about its products or services for three months after the date of the inquiry.

(iii) *Examples where no pre-existing business relationship is created.* (A) If a consumer makes a telephone call to a centralized call center for a group of affiliated companies to inquire about the consumer's existing account at a financial institution, the call does not constitute an inquiry to any affiliate other than the financial institution that holds the consumer's account and does not establish a pre-existing business relationship between the consumer and any affiliate of the account-holding financial institution.

(B) If a consumer who has a deposit account with a financial institution makes a telephone call to an affiliate of the institution to ask about the affiliate's retail locations and hours, but does not make an inquiry about the affiliate's products or services, the call does not constitute an inquiry and does not establish a pre-existing business relationship between the consumer and the affiliate. Also, the affiliate's capture of the consumer's telephone number does not constitute an inquiry and does not establish a pre-existing business relationship between the consumer and the affiliate.

(C) If a consumer makes a telephone call to a financial institution in response to an advertisement that offers a free promotional item to consumers who call a toll-free number, but the advertisement does not indicate that the financial institution's products or services will be marketed to consumers who call in response, the call does not

create a pre-existing business relationship between the consumer and the financial institution because the consumer has not made an inquiry about a product or service offered by the institution, but has merely responded to an offer for a free promotional item.

(5) *Solicitation*—(i) *In general.* The term ''solicitation'' means the marketing of a product or service initiated by a person to a particular consumer that is:

(A) Based on eligibility information communicated to that person by its affiliate as described in this subpart; and

(B) Intended to encourage the consumer to purchase or obtain such product or service.

(ii) *Exclusion of marketing directed at the general public.* A solicitation does not include marketing communications that are directed at the general public. For example, television, general circulation magazine, and billboard advertisements do not constitute solicitations, even if those communications are intended to encourage consumers to purchase products and services from the person initiating the communications.

(iii) *Examples of solicitations.* A solicitation would include, for example, a telemarketing call, direct mail, email, or other form of marketing communication directed to a particular consumer that is based on eligibility information received from an affiliate.

(6) *You* means a person described in paragraph (a) of this section.

§ 1022.21 Affiliate marketing opt-out and exceptions.

(a) *Initial notice and opt-out requirement*—(1) *In general.* You may not use eligibility information about a consumer that you receive from an affiliate to make a solicitation for marketing purposes to the consumer, unless:

(i) It is clearly and conspicuously disclosed to the consumer in writing or, if the consumer agrees, electronically, in a concise notice that you may use eligibility information about that consumer received from an affiliate to make solicitations for marketing purposes to the consumer;

(ii) The consumer is provided a reasonable opportunity and a reasonable and simple method to ''opt out,'' or prohibit you from using eligibility information to make solicitations for marketing purposes to the consumer; and

(iii) The consumer has not opted out.

(2) *Example.* A consumer has a homeowner's insurance policy with an insurance company. The insurance company furnishes eligibility information about the consumer to its affiliated creditor. Based on that eligibility information, the creditor wants to make a solicitation to the consumer about its home equity loan products. The creditor does not have a pre-existing business relationship with the consumer and none of the other exceptions apply. The creditor is prohibited from using eligibility information received from its insurance affiliate to make solicitations to the consumer about its home equity loan products unless the consumer is given a notice and opportunity to opt out and the consumer does not opt out.

(3) *Affiliates who may provide the notice.* The notice required by this paragraph must be provided:

(i) By an affiliate that has or has previously had a pre-existing business relationship with the consumer; or

(ii) As part of a joint notice from two or more members of an affiliated group of companies, provided that at least one of the affiliates on the joint notice has or has previously had a pre-existing business relationship with the consumer.

(b) *Making solicitations*—(1) *In general.* For purposes of this subpart, you make a solicitation for marketing purposes if:

(i) You receive eligibility information from an affiliate;

(ii) You use that eligibility information to do one or more of the following:

(A) Identify the consumer or type of consumer to receive a solicitation;

(B) Establish criteria used to select the consumer to receive a solicitation; or

(C) Decide which of your products or services to market to the consumer or tailor your solicitation to that consumer; and

(iii) As a result of your use of the eligibility information, the consumer is provided a solicitation.

(2) *Receiving eligibility information from an affiliate, including through a common database.* You may receive eligibility information from an affiliate in various ways, including when the affiliate places that information into a common database that you may access.

(3) *Receipt or use of eligibility information by your service provider.* Except as provided in paragraph (b)(5) of this section, you receive or use an affiliate's eligibility information if a service provider acting on your behalf (whether an affiliate or a nonaffiliated third party) receives or uses that information in the manner described in paragraphs (b)(1)(i) or (b)(1)(ii) of this section. All relevant facts and circumstances will determine whether a person is acting as your service provider when it receives or uses an affiliate's eligibility information in connection with marketing your products and services.

(4) *Use by an affiliate of its own eligibility information.* Unless you have used eligibility information that you receive from an affiliate in the manner described in paragraph (b)(1)(ii) of this section, you do not make a solicitation subject to this subpart if your affiliate:

(i) Uses its own eligibility information that it obtained in connection with a pre-existing business relationship it has or had with the consumer to market your products or services to the consumer; or

(ii) Directs its service provider to use the affiliate's own eligibility information that it obtained in connection with a pre-existing business relationship it has or had with the consumer to market your products or services to the consumer, and you do not communicate directly with the service provider regarding that use.

(5) *Use of eligibility information by a service provider*—(i) *In general.* You do not make a solicitation subject to subpart C of this part if a service provider (including an affiliated or third-party service provider that maintains or accesses a common database that you may access) receives eligibility information from your affiliate that your affiliate obtained in connection with a pre-existing business relationship it has or had with the consumer and uses that eligibility information to market your products or services to the consumer, so long as:

(A) Your affiliate controls access to and use of its eligibility information by the service provider (including the right to establish the specific terms and conditions under which the service provider may use such information to market your products or services);

(B) Your affiliate establishes specific terms and conditions under which the service provider may access and use the affiliate's eligibility information to market your products and services (or those of affiliates generally) to the consumer, such as the identity of the affiliated companies whose products or services may be marketed to the consumer by the service provider, the types of products or services of affiliated companies that may be marketed, and the number of times the consumer may receive marketing materials, and periodically evaluates the service provider's compliance with those terms and conditions;

(C) Your affiliate requires the service provider to implement reasonable policies and procedures designed to ensure that the service provider uses the affiliate's eligibility information in accordance with the terms and conditions established by the affiliate relating to the marketing of your products or services;

(D) Your affiliate is identified on or with the marketing materials provided to the consumer; and

(E) You do not directly use your affiliate's eligibility information in the manner described in paragraph (b)(1)(ii) of this section.

(ii) *Writing requirements.* (A) The requirements of paragraphs (b)(5)(i)(A) and (C) of this section must be set forth in a written agreement between your affiliate and the service provider; and

(B) The specific terms and conditions established by your affiliate as provided in paragraph (b)(5)(i)(B) of this section must be set forth in writing.

(6) *Examples of making solicitations.* (i) A consumer has a deposit account with a financial institution, which is affiliated with an insurance company. The insurance company receives eligibility information about the consumer from

the financial institution. The insurance company uses that eligibility information to identify the consumer to receive a solicitation about insurance products, and, as a result, the insurance company provides a solicitation to the consumer about its insurance products. Pursuant to paragraph (b)(1) of this section, the insurance company has made a solicitation to the consumer.

(ii) The same facts as in the example in paragraph (b)(6)(i) of this section, except that after using the eligibility information to identify the consumer to receive a solicitation about insurance products, the insurance company asks the financial institution to send the solicitation to the consumer and the financial institution does so. Pursuant to paragraph (b)(1) of this section, the insurance company has made a solicitation to the consumer because it used eligibility information about the consumer that it received from an affiliate to identify the consumer to receive a solicitation about its products or services, and, as a result, a solicitation was provided to the consumer about the insurance company's products.

(iii) The same facts as in the example in paragraph (b)(6)(i) of this section, except that eligibility information about consumers that have deposit accounts with the financial institution is placed into a common database that all members of the affiliated group of companies may independently access and use. Without using the financial institution's eligibility information, the insurance company develops selection criteria and provides those criteria, marketing materials, and related instructions to the financial institution. The financial institution reviews eligibility information about its own consumers using the selection criteria provided by the insurance company to determine which consumers should receive the insurance company's marketing materials and sends marketing materials about the insurance company's products to those consumers. Even though the insurance company has received eligibility information through the common database as provided in paragraph (b)(2) of this section, it did not use that information to identify consumers or establish selection criteria; instead, the financial institution used its own eligibility information. Therefore, pursuant to paragraph (b)(4)(i) of this section, the insurance company has not made a solicitation to the consumer.

(iv) The same facts as in the example in paragraph (b)(6)(iii) of this section, except that the financial institution provides the insurance company's criteria to the financial institution's service provider and directs the service provider to use the financial institution's eligibility information to identify financial institution consumers who meet the criteria and to send the insurance company's marketing materials to those consumers. The insurance company does not communicate directly with the service provider regarding the use of the financial institution's information to market its products to the financial institution's consumers. Pursuant to paragraph (b)(4)(ii) of this section, the insurance company has not made a solicitation to the consumer.

(v) An affiliated group of companies includes a financial institution, an insurance company, and a service provider. Each affiliate in the group places information about its consumers into a common database. The service provider has access to all information in the common database. The financial institution controls access to and use of its eligibility information by the service provider. This control is set forth in a written agreement between the financial institution and the service provider. The written agreement also requires the service provider to establish reasonable policies and procedures designed to ensure that the service provider uses the financial institution's eligibility information in accordance with specific terms and conditions established by the financial institution relating to the marketing of the products and services of all affiliates, including the insurance company. In a separate written communication, the financial institution specifies the terms and conditions under which the service provider may use the financial institution's eligibility information to

market the insurance company's products and services to the financial institution's consumers. The specific terms and conditions are: a list of affiliated companies (including the insurance company) whose products or services may be marketed to the financial institution's consumers by the service provider; the specific products or types of products that may be marketed to the financial institution's consumers by the service provider; the categories of eligibility information that may be used by the service provider in marketing products or services to the financial institution's consumers; the types or categories of the financial institution's consumers to whom the service provider may market products or services of financial institution affiliates; the number and/or types of marketing communications that the service provider may send to the financial institution's consumers; and the length of time during which the service provider may market the products or services of the financial institution's affiliates to its consumers. The financial institution periodically evaluates the service provider's compliance with these terms and conditions. The insurance company asks the service provider to market insurance products to certain consumers who have deposit accounts with the financial institution. Without using the financial institution's eligibility information, the insurance company develops selection criteria and provides those criteria, marketing materials, and related instructions to the service provider. The service provider uses the financial institution's eligibility information from the common database to identify the financial institution's consumers to whom insurance products will be marketed. When the insurance company's marketing materials are provided to the identified consumers, the name of the financial institution is displayed on the insurance marketing materials, an introductory letter that accompanies the marketing materials, an account statement that accompanies the marketing materials, or the envelope containing the marketing materials. The requirements of paragraph (b)(5) of this section have been satisfied, and the insurance company has not made a solicitation to the consumer.

(vi) The same facts as in the example in paragraph (b)(6)(v) of this section, except that the terms and conditions permit the service provider to use the financial institution's eligibility information to market the products and services of other affiliates to the financial institution's consumers whenever the service provider deems it appropriate to do so. The service provider uses the financial institution's eligibility information in accordance with the discretion afforded to it by the terms and conditions. Because the terms and conditions are not specific, the requirements of paragraph (b)(5) of this section have not been satisfied.

(c) *Exceptions.* The provisions of this subpart do not apply to you if you use eligibility information that you receive from an affiliate:

(1) To make a solicitation for marketing purposes to a consumer with whom you have a pre-existing business relationship;

(2) To facilitate communications to an individual for whose benefit you provide employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship or status of the individual as a participant or beneficiary of an employee benefit plan;

(3) To perform services on behalf of an affiliate, except that this subparagraph shall not be construed as permitting you to send solicitations on behalf of an affiliate if the affiliate would not be permitted to send the solicitation as a result of the election of the consumer to opt out under this subpart;

(4) In response to a communication about your products or services initiated by the consumer;

(5) In response to an authorization or request by the consumer to receive solicitations; or

(6) If your compliance with this subpart would prevent you from complying with any provision of state insurance laws pertaining to unfair discrimination in any state in which you are lawfully doing business.

(d) *Examples of exceptions*—(1) *Example of the pre-existing business relationship*

exception. A consumer has a deposit account with a financial institution. The consumer also has a relationship with the financial institution's securities affiliate for management of the consumer's securities portfolio. The financial institution receives eligibility information about the consumer from its securities affiliate and uses that information to make a solicitation to the consumer about the financial institution's wealth management services. The financial institution may make this solicitation even if the consumer has not been given a notice and opportunity to opt out because the financial institution has a pre-existing business relationship with the consumer.

(2) *Examples of service provider exception.* (i) A consumer has an insurance policy issued by an insurance company. The insurance company furnishes eligibility information about the consumer to its affiliated financial institution. Based on that eligibility information, the financial institution wants to make a solicitation to the consumer about its deposit products. The financial institution does not have a pre-existing business relationship with the consumer and none of the other exceptions in paragraph (c) of this section apply. The consumer has been given an opt-out notice and has elected to opt out of receiving such solicitations. The financial institution asks a service provider to send the solicitation to the consumer on its behalf. The service provider may not send the solicitation on behalf of the financial institution because, as a result of the consumer's opt-out election, the financial institution is not permitted to make the solicitation.

(ii) The same facts as in paragraph (d)(2)(i) of this section, except the consumer has been given an opt-out notice, but has not elected to opt out. The financial institution asks a service provider to send the solicitation to the consumer on its behalf. The service provider may send the solicitation on behalf of the financial institution because, as a result of the consumer's not opting out, the financial institution is permitted to make the solicitation.

(3) *Examples of consumer-initiated communications.* (i) A consumer who has a deposit account with a financial institution initiates a communication with the financial institution's credit card affiliate to request information about a credit card. The credit card affiliate may use eligibility information about the consumer it obtains from the financial institution or any other affiliate to make solicitations regarding credit card products in response to the consumer-initiated communication.

(ii) A consumer who has a deposit account with a financial institution contacts the institution to request information about how to save and invest for a child's college education without specifying the type of product in which the consumer may be interested. Information about a range of different products or services offered by the financial institution and one or more affiliates of the institution may be responsive to that communication. Such products or services may include the following: mutual funds offered by the institution's mutual fund affiliate; section 529 plans offered by the institution, its mutual fund affiliate, or another securities affiliate; or trust services offered by a different financial institution in the affiliated group. Any affiliate offering investment products or services that would be responsive to the consumer's request for information about saving and investing for a child's college education may use eligibility information to make solicitations to the consumer in response to this communication.

(iii) A credit card issuer makes a marketing call to the consumer without using eligibility information received from an affiliate. The issuer leaves a voice-mail message that invites the consumer to call a toll-free number to apply for the issuer's credit card. If the consumer calls the toll-free number to inquire about the credit card, the call is a consumer-initiated communication about a product or service and the credit card issuer may now use eligibility information it receives from its affiliates to make solicitations to the consumer.

(iv) A consumer calls a financial institution to ask about retail locations and hours, but does not request information about products or services. The institution may not use eligibility information it receives from an affiliate

to make solicitations to the consumer about its products or services because the consumer-initiated communication does not relate to the financial institution's products or services. Thus, the use of eligibility information received from an affiliate would not be responsive to the communication and the exception does not apply.

(v) A consumer calls a financial institution to ask about retail locations and hours. The customer service representative asks the consumer if there is a particular product or service about which the consumer is seeking information. The consumer responds that the consumer wants to stop in and find out about certificates of deposit. The customer service representative offers to provide that information by telephone and mail additional information and application materials to the consumer. The consumer agrees and provides or confirms contact information for receipt of the materials to be mailed. The financial institution may use eligibility information it receives from an affiliate to make solicitations to the consumer about certificates of deposit because such solicitations would respond to the consumer-initiated communication about products or services.

(4) *Examples of consumer authorization or request for solicitations.* (i) A consumer who obtains a mortgage from a mortgage lender authorizes or requests information about homeowner's insurance offered by the mortgage lender's insurance affiliate. Such authorization or request, whether given to the mortgage lender or to the insurance affiliate, would permit the insurance affiliate to use eligibility information about the consumer it obtains from the mortgage lender or any other affiliate to make solicitations to the consumer about homeowner's insurance.

(ii) A consumer completes an online application to apply for a credit card from a credit card issuer. The issuer's online application contains a blank check box that the consumer may check to authorize or request information from the credit card issuer's affiliates. The consumer checks the box. The consumer has authorized or requested solicitations from the card issuer's affiliates.

(iii) A consumer completes an online application to apply for a credit card from a credit card issuer. The issuer's online application contains a pre-selected check box indicating that the consumer authorizes or requests information from the issuer's affiliates. The consumer does not deselect the check box. The consumer has not authorized or requested solicitations from the card issuer's affiliates.

(iv) The terms and conditions of a credit card account agreement contain preprinted boilerplate language stating that by applying to open an account the consumer authorizes or requests to receive solicitations from the credit card issuer's affiliates. The consumer has not authorized or requested solicitations from the card issuer's affiliates.

(e) *Relation to affiliate-sharing notice and opt-out.* Nothing in this subpart limits the responsibility of a person to comply with the notice and opt-out provisions of section 603(d)(2)(A)(iii) of the Act where applicable.

§ 1022.22 Scope and duration of opt-out.

(a) *Scope of opt-out*—(1) *In general.* Except as otherwise provided in this section, the consumer's election to opt out prohibits any affiliate covered by the opt-out notice from using eligibility information received from another affiliate as described in the notice to make solicitations to the consumer.

(2) *Continuing relationship.* (i) *In general.* If the consumer establishes a continuing relationship with you or your affiliate, an opt-out notice may apply to eligibility information obtained in connection with:

(A) A single continuing relationship or multiple continuing relationships that the consumer establishes with you or your affiliates, including continuing relationships established subsequent to delivery of the opt-out notice, so long as the notice adequately describes the continuing relationships covered by the opt-out; or

(B) Any other transaction between the consumer and you or your affiliates as described in the notice.

(ii) *Examples of continuing relationships.* A consumer has a continuing relationship with you or your affiliate if the consumer:

(A) Opens a deposit or investment account with you or your affiliate;

(B) Obtains a loan for which you or your affiliate owns the servicing rights;

(C) Purchases an insurance product from you or your affiliate;

(D) Holds an investment product through you or your affiliate, such as when you act or your affiliate acts as a custodian for securities or for assets in an individual retirement arrangement;

(E) Enters into an agreement or understanding with you or your affiliate whereby you or your affiliate undertakes to arrange or broker a home mortgage loan for the consumer;

(F) Enters into a lease of personal property with you or your affiliate; or

(G) Obtains financial, investment, or economic advisory services from you or your affiliate for a fee.

(3) *No continuing relationship.* (i) *In general.* If there is no continuing relationship between a consumer and you or your affiliate, and you or your affiliate obtain eligibility information about a consumer in connection with a transaction with the consumer, such as an isolated transaction or a credit application that is denied, an opt-out notice provided to the consumer only applies to eligibility information obtained in connection with that transaction.

(ii) *Examples of isolated transactions.* An isolated transaction occurs if:

(A) The consumer uses your or your affiliate's ATM to withdraw cash from an account at another financial institution; or

(B) You or your affiliate sells the consumer a cashier's check or money order, airline tickets, travel insurance, or traveler's checks in isolated transactions.

(4) *Menu of alternatives.* A consumer may be given the opportunity to choose from a menu of alternatives when electing to prohibit solicitations, such as by electing to prohibit solicitations from certain types of affiliates covered by the opt-out notice but not other types of affiliates covered by the notice, electing to prohibit solicitations based on certain types of eligibility information but not other types of eligibility information, or electing to prohibit solicitations by certain methods of delivery but not other methods of delivery. However, one of the alternatives must allow the consumer to prohibit all solicitations from all of the affiliates that are covered by the notice.

(5) *Special rule for a notice following termination of all continuing relationships*—(i) *In general.* A consumer must be given a new opt-out notice if, after all continuing relationships with you or your affiliate(s) are terminated, the consumer subsequently establishes another continuing relationship with you or your affiliate(s) and the consumer's eligibility information is to be used to make a solicitation. The new opt-out notice must apply, at a minimum, to eligibility information obtained in connection with the new continuing relationship. Consistent with paragraph (b) of this section, the consumer's decision not to opt out after receiving the new opt-out notice would not override a prior opt-out election by the consumer that applies to eligibility information obtained in connection with a terminated relationship, regardless of whether the new opt-out notice applies to eligibility information obtained in connection with the terminated relationship.

(ii) *Example.* A consumer has a checking account with a financial institution that is part of an affiliated group. The consumer closes the checking account. One year after closing the checking account, the consumer opens a savings account with the same financial institution. The consumer must be given a new notice and opportunity to opt out before the financial institution's affiliates may make solicitations to the consumer using eligibility information obtained by the financial institution in connection with the new savings account relationship, regardless of whether the consumer opted out in connection with the checking account.

(b) *Duration of opt-out.* The election of a consumer to opt out must be effective for a period of at least five years (the ''opt-out period'') beginning when the consumer's opt-out election is received and implemented, unless the

consumer subsequently revokes the opt-out in writing or, if the consumer agrees, electronically. An opt-out period of more than five years may be established, including an opt-out period that does not expire unless revoked by the consumer.

(c) *Time of opt-out.* A consumer may opt out at any time.

§ 1022.23 Contents of opt-out notice; consolidated and equivalent notices.

(a) *Contents of opt-out notice*—(1) *In general.* A notice must be clear, conspicuous, and concise, and must accurately disclose:

(i) The name of the affiliate(s) providing the notice. If the notice is provided jointly by multiple affiliates and each affiliate shares a common name, such as ''ABC,'' then the notice may indicate that it is being provided by multiple companies with the ABC name or multiple companies in the ABC group or family of companies, for example, by stating that the notice is provided by ''all of the ABC companies,'' ''the ABC banking, credit card, insurance, and securities companies,'' or by listing the name of each affiliate providing the notice. But if the affiliates providing the joint notice do not all share a common name, then the notice must either separately identify each affiliate by name or identify each of the common names used by those affiliates, for example, by stating that the notice is provided by ''all of the ABC and XYZ companies'' or by ''the ABC banking and credit card companies and the XYZ insurance companies;''

(ii) A list of the affiliates or types of affiliates whose use of eligibility information is covered by the notice, which may include companies that become affiliates after the notice is provided to the consumer. If each affiliate covered by the notice shares a common name, such as ''ABC,'' then the notice may indicate that it applies to multiple companies with the ABC name or multiple companies in the ABC group or family of companies, for example, by stating that the notice is provided by ''all of the ABC companies,'' ''the ABC banking, credit card, insurance, and securities companies,'' or by listing the name of each affiliate providing the notice. But if the affiliates covered by the notice do not all share a common name, then the notice must either separately identify each covered affiliate by name or identify each of the common names used by those affiliates, for example, by stating that the notice applies to ''all of the ABC and XYZ companies'' or to ''the ABC banking and credit card companies and the XYZ insurance companies;''

(iii) A general description of the types of eligibility information that may be used to make solicitations to the consumer;

(iv) That the consumer may elect to limit the use of eligibility information to make solicitations to the consumer;

(v) That the consumer's election will apply for the specified period of time stated in the notice and, if applicable, that the consumer will be allowed to renew the election once that period expires;

(vi) If the notice is provided to consumers who may have previously opted out, such as if a notice is provided to consumers annually, that the consumer who has chosen to limit solicitations does not need to act again until the consumer receives a renewal notice; and

(vii) A reasonable and simple method for the consumer to opt out.

(2) *Joint relationships.* (i) If two or more consumers jointly obtain a product or service, a single opt-out notice may be provided to the joint consumers. Any of the joint consumers may exercise the right to opt out.

(ii) The opt-out notice must explain how an opt-out direction by a joint consumer will be treated. An opt-out direction by a joint consumer may be treated as applying to all of the associated joint consumers, or each joint consumer may be permitted to opt out separately. If each joint consumer is permitted to opt out separately, one of the joint consumers must be permitted to opt out on behalf of all of the joint consumers and the joint consumers must be permitted to exercise their separate rights to opt out in a single response.

(iii) It is impermissible to require *all* joint consumers to opt out before implementing *any* opt-out direction.

(3) *Alternative contents.* If the consumer is afforded a broader right to opt out of receiving marketing than is required by this subpart, the requirements of this section may be satisfied by providing the consumer with a clear, conspicuous, and concise notice that accurately discloses the consumer's opt-out rights.

(4) *Model notices.* Model notices are provided in appendix C of this part.

(b) *Coordinated and consolidated notices.* A notice required by this subpart may be coordinated and consolidated with any other notice or disclosure required to be issued under any other provision of law by the entity providing the notice, including but not limited to the notice described in section 603(d)(2)(A)(iii) of the Act and the Gramm-Leach-Bliley Act privacy notice.

(c) *Equivalent notices.* A notice or other disclosure that is equivalent to the notice required by this subpart, and that is provided to a consumer together with disclosures required by any other provision of law, satisfies the requirements of this section.

§ 1022.24 Reasonable opportunity to opt out.

(a) *In general.* You must not use eligibility information about a consumer that you receive from an affiliate to make a solicitation to the consumer about your products or services, unless the consumer is provided a reasonable opportunity to opt out, as required by § 1022.21(a)(1)(ii) of this part.

(b) *Examples of a reasonable opportunity to opt out.* The consumer is given a reasonable opportunity to opt out if:

(1) *By mail.* The opt-out notice is mailed to the consumer. The consumer is given 30 days from the date the notice is mailed to elect to opt out by any reasonable means.

(2) *By electronic means.* (i) The opt-out notice is provided electronically to the consumer, such as by posting the notice at a Web site at which the consumer has obtained a product or service. The consumer acknowledges receipt of the electronic notice. The consumer is given 30 days after the date the consumer acknowledges receipt to elect to opt out by any reasonable means.

(ii) The opt-out notice is provided to the consumer by email where the consumer has agreed to receive disclosures by email from the person sending the notice. The consumer is given 30 days after the email is sent to elect to opt out by any reasonable means.

(3) *At the time of an electronic transaction.* The opt-out notice is provided to the consumer at the time of an electronic transaction, such as a transaction conducted on a Web site. The consumer is required to decide, as a necessary part of proceeding with the transaction, whether to opt out before completing the transaction. There is a simple process that the consumer may use to opt out at that time using the same mechanism through which the transaction is conducted.

(4) *At the time of an in-person transaction.* The opt-out notice is provided to the consumer in writing at the time of an in-person transaction. The consumer is required to decide, as a necessary part of proceeding with the transaction, whether to opt out before completing the transaction, and is not permitted to complete the transaction without making a choice. There is a simple process that the consumer may use during the course of the in-person transaction to opt out, such as completing a form that requires consumers to write a ''yes'' or ''no'' to indicate their opt-out preference or that requires the consumer to check one of two blank check boxes; one that allows consumers to indicate that they want to opt out and one that allows consumers to indicate that they do not want to opt out.

(5) *By including in a privacy notice.* The opt-out notice is included in a Gramm-Leach-Bliley Act privacy notice. The consumer is allowed to exercise the opt-out within a reasonable period of time and in the same manner as the opt-out under that privacy notice.

§ 1022.25 Reasonable and simple methods of opting out.

(a) *In general.* You must not use eligibility information about a consumer that you receive from an affiliate to make a solicitation to the consumer about your products or services, unless the consumer is provided a reasonable

and simple method to opt out, as required by §1022.21(a)(1)(ii) of this part.

(b) *Examples*—(1) *Reasonable and simple opt-out methods.* Reasonable and simple methods for exercising the opt-out right include:

(i) Designating a check-off box in a prominent position on the opt-out form;

(ii) Including a reply form and a self-addressed envelope together with the opt-out notice;

(iii) Providing an electronic means to opt out, such as a form that can be electronically mailed or processed at a Web site, if the consumer agrees to the electronic delivery of information;

(iv) Providing a toll-free telephone number that consumers may call to opt out; or

(v) Allowing consumers to exercise all of their opt-out rights described in a consolidated opt-out notice that includes the privacy opt-out under the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 *et seq.*, the affiliate sharing opt-out under the Act, and the affiliate marketing opt-out under the Act, by a single method, such as by calling a single toll-free telephone number.

(2) *Opt-out methods that are not reasonable and simple.* Reasonable and simple methods for exercising an opt-out right *do not* include—

(i) Requiring the consumer to write his or her own letter;

(ii) Requiring the consumer to call or write to obtain a form for opting out, rather than including the form with the opt-out notice;

(iii) Requiring the consumer who receives the opt-out notice in electronic form only, such as through posting at a Web site, to opt out solely by paper mail or by visiting a different Web site without providing a link to that site.

(c) *Specific opt-out means.* Each consumer may be required to opt out through a specific means, as long as that means is reasonable and simple for that consumer.

§1022.26 Delivery of opt-out notices.

(a) *In general.* The opt-out notice must be provided so that each consumer can reasonably be expected to receive actual notice. For opt-out notices provided electronically, the notice may be provided in compliance with either the electronic disclosure provisions in this subpart or the provisions in section 101 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.*

(b) *Examples of reasonable expectation of actual notice.* A consumer may reasonably be expected to receive actual notice if the affiliate providing the notice:

(1) Hand-delivers a printed copy of the notice to the consumer;

(2) Mails a printed copy of the notice to the last known mailing address of the consumer;

(3) Provides a notice by email to a consumer who has agreed to receive electronic disclosures by email from the affiliate providing the notice; or

(4) Posts the notice on the Web site at which the consumer obtained a product or service electronically and requires the consumer to acknowledge receipt of the notice.

(c) *Examples of no reasonable expectation of actual notice.* A consumer may *not* reasonably be expected to receive actual notice if the affiliate providing the notice:

(1) Only posts the notice on a sign in a branch or office or generally publishes the notice in a newspaper;

(2) Sends the notice via email to a consumer who has not agreed to receive electronic disclosures by email from the affiliate providing the notice; or

(3) Posts the notice on a Web site without requiring the consumer to acknowledge receipt of the notice.

§1022.27 Renewal of opt-out.

(a) *Renewal notice and opt-out requirement*—(1) *In general.* After the opt-out period expires, you may not make solicitations based on eligibility information you receive from an affiliate to a consumer who previously opted out, unless:

(i) The consumer has been given a renewal notice that complies with the requirements of this section and §§1022.24 through 1022.26 of this part, and a reasonable opportunity and a reasonable and simple method to renew the opt-out, and the consumer does not renew the opt-out; or

(ii) An exception in §1022.21(c) of this part applies.

(2) *Renewal period.* Each opt-out renewal must be effective for a period of at least five years as provided in §1022.22(b) of this part.

(3) *Affiliates who may provide the notice.* The notice required by this paragraph must be provided:

(i) By the affiliate that provided the previous opt-out notice, or its successor; or

(ii) As part of a joint renewal notice from two or more members of an affiliated group of companies, or their successors, that jointly provided the previous opt-out notice.

(b) *Contents of renewal notice.* The renewal notice must be clear, conspicuous, and concise, and must accurately disclose:

(1) The name of the affiliate(s) providing the notice. If the notice is provided jointly by multiple affiliates and each affiliate shares a common name, such as ''ABC,'' then the notice may indicate that it is being provided by multiple companies with the ABC name or multiple companies in the ABC group or family of companies, for example, by stating that the notice is provided by ''all of the ABC companies,'' ''the ABC banking, credit card, insurance, and securities companies,'' or by listing the name of each affiliate providing the notice. But if the affiliates providing the joint notice do not all share a common name, then the notice must either separately identify each affiliate by name or identify each of the common names used by those affiliates, for example, by stating that the notice is provided by ''all of the ABC and XYZ companies'' or by ''the ABC banking and credit card companies and the XYZ insurance companies'';

(2) A list of the affiliates or types of affiliates whose use of eligibility information is covered by the notice, which may include companies that become affiliates after the notice is provided to the consumer. If each affiliate covered by the notice shares a common name, such as ''ABC,'' then the notice may indicate that it applies to multiple companies with the ABC name or multiple companies in the ABC group or family of companies, for example, by stating that the notice is provided by ''all of the ABC companies,'' ''the ABC banking, credit card, insurance, and securities companies,'' or by listing the name of each affiliate providing the notice. But if the affiliates covered by the notice do not all share a common name, then the notice must either separately identify each covered affiliate by name or identify each of the common names used by those affiliates, for example, by stating that the notice applies to ''all of the ABC and XYZ companies'' or to ''the ABC banking and credit card companies and the XYZ insurance companies;''

(3) A general description of the types of eligibility information that may be used to make solicitations to the consumer;

(4) That the consumer previously elected to limit the use of certain information to make solicitations to the consumer;

(5) That the consumer's election has expired or is about to expire;

(6) That the consumer may elect to renew the consumer's previous election;

(7) If applicable, that the consumer's election to renew will apply for the specified period of time stated in the notice and that the consumer will be allowed to renew the election once that period expires; and

(8) A reasonable and simple method for the consumer to opt out.

(c) *Timing of the renewal notice*—(1) *In general.* A renewal notice may be provided to the consumer either:

(i) A reasonable period of time before the expiration of the opt-out period; or

(ii) Any time after the expiration of the opt-out period but before solicitations that would have been prohibited by the expired opt-out are made to the consumer.

(2) *Combination with annual privacy notice.* If you provide an annual privacy notice under the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 *et seq.*, providing a renewal notice with the last annual privacy notice provided to the consumer before expiration of the opt-out period is a reasonable period of time before expiration of the opt-out in all cases.

(d) *No effect on opt-out period.* An opt-out period may not be shortened by sending a renewal notice to the consumer before expiration of the opt-out

period, even if the consumer does not renew the opt out.

Subpart D—Medical Information

§ 1022.30 Obtaining or using medical information in connection with a determination of eligibility for credit.

(a) *Scope.* This section applies to any person that participates as a creditor in a transaction, except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 137.

(b) *General prohibition on obtaining or using medical information*—(1) *In general.* A creditor may not obtain or use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit, except as provided in this section.

(2) *Definitions.* (i) *Credit* has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(ii) *Creditor* has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(iii) *Eligibility, or continued eligibility, for credit* means the consumer's qualification or fitness to receive, or continue to receive, credit, including the terms on which credit is offered. The term does not include:

(A) Any determination of the consumer's qualification or fitness for employment, insurance (other than a credit insurance product), or other non-credit products or services;

(B) Authorizing, processing, or documenting a payment or transaction on behalf of the consumer in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit; or

(C) Maintaining or servicing the consumer's account in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit.

(c) *Rule of construction for obtaining and using unsolicited medical information*—(1) *In general.* A creditor does not obtain medical information in violation of the prohibition if it receives medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit without specifically requesting medical information.

(2) *Use of unsolicited medical information.* A creditor that receives unsolicited medical information in the manner described in paragraph (c)(1) of this section may use that information in connection with any determination of the consumer's eligibility, or continued eligibility, for credit to the extent the creditor can rely on at least one of the exceptions in §1022.30(d) or (e).

(3) *Examples.* A creditor does not obtain medical information in violation of the prohibition if, for example:

(i) In response to a general question regarding a consumer's debts or expenses, the creditor receives information that the consumer owes a debt to a hospital.

(ii) In a conversation with the creditor's loan officer, the consumer informs the creditor that the consumer has a particular medical condition.

(iii) In connection with a consumer's application for an extension of credit, the creditor requests a consumer report from a consumer reporting agency and receives medical information in the consumer report furnished by the agency even though the creditor did not specifically request medical information from the consumer reporting agency.

(d) *Financial information exception for obtaining and using medical information*—(1) *In general.* A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit so long as:

(i) The information is the type of information routinely used in making credit eligibility determinations, such as information relating to debts, expenses, income, benefits, assets, collateral, or the purpose of the loan, including the use of proceeds;

(ii) The creditor uses the medical information in a manner and to an extent that is no less favorable than it would use comparable information that is not medical information in a credit transaction; and

(iii) The creditor does not take the consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account as part of any such determination.

(2) *Examples*—(i) *Examples of the types of information routinely used in making credit eligibility determinations.* Paragraph (d)(1)(i) of this section permits a creditor, for example, to obtain and use information about:

(A) The dollar amount, repayment terms, repayment history, and similar information regarding medical debts to calculate, measure, or verify the repayment ability of the consumer, the use of proceeds, or the terms for granting credit;

(B) The value, condition, and lien status of a medical device that may serve as collateral to secure a loan;

(C) The dollar amount and continued eligibility for disability income, workers' compensation income, or other benefits related to health or a medical condition that is relied on as a source of repayment; or

(D) The identity of creditors to whom outstanding medical debts are owed in connection with an application for credit, including but not limited to, a transaction involving the consolidation of medical debts.

(ii) *Examples of uses of medical information consistent with the exception.* (A) A consumer includes on an application for credit information about two $20,000 debts. One debt is to a hospital; the other debt is to a retailer. The creditor contacts the hospital and the retailer to verify the amount and payment status of the debts. The creditor learns that both debts are more than 90 days past due. Any two debts of this size that are more than 90 days past due would disqualify the consumer under the creditor's established underwriting criteria. The creditor denies the application on the basis that the consumer has a poor repayment history on outstanding debts. The creditor has used medical information in a manner and to an extent no less favorable than it would use comparable non-medical information.

(B) A consumer indicates on an application for a $200,000 mortgage loan that she receives $15,000 in long-term disability income each year from her former employer and has no other income. Annual income of $15,000, regardless of source, would not be sufficient to support the requested amount of credit. The creditor denies the application on the basis that the projected debt-to-income ratio of the consumer does not meet the creditor's underwriting criteria. The creditor has used medical information in a manner and to an extent that is no less favorable than it would use comparable non-medical information.

(C) A consumer includes on an application for a $10,000 home equity loan that he has a $50,000 debt to a medical facility that specializes in treating a potentially terminal disease. The creditor contacts the medical facility to verify the debt and obtain the repayment history and current status of the loan. The creditor learns that the debt is current. The applicant meets the income and other requirements of the creditor's underwriting guidelines. The creditor grants the application. The creditor has used medical information in accordance with the exception.

(iii) *Examples of uses of medical information inconsistent with the exception.* (A) A consumer applies for $25,000 of credit and includes on the application information about a $50,000 debt to a hospital. The creditor contacts the hospital to verify the amount and payment status of the debt, and learns that the debt is current and that the consumer has no delinquencies in her repayment history. If the existing debt were instead owed to a retail department store, the creditor would approve the application and extend credit based on the amount and repayment history of the outstanding debt. The creditor, however, denies the application because the consumer is indebted to a hospital. The creditor has used medical information, here the identity of the medical creditor, in a manner and to an extent that is less favorable than it would use comparable non-medical information.

(B) A consumer meets with a loan officer of a creditor to apply for a mortgage loan. While filling out the loan application, the consumer informs the loan officer orally that she has a potentially terminal disease. The consumer

meets the creditor's established requirements for the requested mortgage loan. The loan officer recommends to the credit committee that the consumer be denied credit because the consumer has that disease. The credit committee follows the loan officer's recommendation and denies the application because the consumer has a potentially terminal disease. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis as part of a determination of eligibility or continued eligibility for credit.

(C) A consumer who has an apparent medical condition, such as a consumer who uses a wheelchair or an oxygen tank, meets with a loan officer to apply for a home equity loan. The consumer meets the creditor's established requirements for the requested home equity loan and the creditor typically does not require consumers to obtain a debt cancellation contract, debt suspension agreement, or credit insurance product in connection with such loans. However, based on the consumer's apparent medical condition, the loan officer recommends to the credit committee that credit be extended to the consumer only if the consumer obtains a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party. The credit committee agrees with the loan officer's recommendation. The loan officer informs the consumer that the consumer must obtain a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party to qualify for the loan. The consumer obtains one of these products and the creditor approves the loan. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis in setting conditions on the consumer's eligibility for credit.

(e) *Specific exceptions for obtaining and using medical information*—(1) *In general.* A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit:

(i) To determine whether the use of a power of attorney or legal representative that is triggered by a medical condition or event is necessary and appropriate or whether the consumer has the legal capacity to contract when a person seeks to exercise a power of attorney or act as legal representative for a consumer based on an asserted medical condition or event;

(ii) To comply with applicable requirements of local, state, or Federal laws;

(iii) To determine, at the consumer's request, whether the consumer qualifies for a legally permissible special credit program or credit-related assistance program that is:

(A) Designed to meet the special needs of consumers with medical conditions; and

(B) Established and administered pursuant to a written plan that:

(*1*) Identifies the class of persons that the program is designed to benefit; and

(*2*) Sets forth the procedures and standards for extending credit or providing other credit-related assistance under the program;

(iv) To the extent necessary for purposes of fraud prevention or detection;

(v) In the case of credit for the purpose of financing medical products or services, to determine and verify the medical purpose of a loan and the use of proceeds;

(vi) Consistent with safe and sound practices, if the consumer or the consumer's legal representative specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit, to accommodate the consumer's particular circumstances, and such request is documented by the creditor;

(vii) Consistent with safe and sound practices, to determine whether the provisions of a forbearance practice or program that is triggered by a medical condition or event apply to a consumer;

(viii) To determine the consumer's eligibility for, the triggering of, or the

reactivation of a debt cancellation contract or debt suspension agreement if a medical condition or event is a triggering event for the provision of benefits under the contract or agreement; or

(ix) To determine the consumer's eligibility for, the triggering of, or the reactivation of a credit insurance product if a medical condition or event is a triggering event for the provision of benefits under the product.

(2) *Example of determining eligibility for a special credit program or credit assistance program.* A not-for-profit organization establishes a credit assistance program pursuant to a written plan that is designed to assist disabled veterans in purchasing homes by subsidizing the down payment for the home purchase mortgage loans of qualifying veterans. The organization works through mortgage lenders and requires mortgage lenders to obtain medical information about the disability of any consumer that seeks to qualify for the program, use that information to verify the consumer's eligibility for the program, and forward that information to the organization. A consumer who is a veteran applies to a creditor for a home purchase mortgage loan. The creditor informs the consumer about the credit assistance program for disabled veterans and the consumer seeks to qualify for the program. Assuming that the program complies with all applicable law, including applicable fair lending laws, the creditor may obtain and use medical information about the medical condition and disability, if any, of the consumer to determine whether the consumer qualifies for the credit assistance program.

(3) *Examples of verifying the medical purpose of the loan or the use of proceeds.* (i) If a consumer applies for $10,000 of credit for the purpose of financing vision correction surgery, the creditor may verify with the surgeon that the procedure will be performed. If the surgeon reports that surgery will not be performed on the consumer, the creditor may use that medical information to deny the consumer's application for credit, because the loan would not be used for the stated purpose.

(ii) If a consumer applies for $10,000 of credit for the purpose of financing cosmetic surgery, the creditor may confirm the cost of the procedure with the surgeon. If the surgeon reports that the cost of the procedure is $5,000, the creditor may use that medical information to offer the consumer only $5,000 of credit.

(iii) A creditor has an established medical loan program for financing particular elective surgical procedures. The creditor receives a loan application from a consumer requesting $10,000 of credit under the established loan program for an elective surgical procedure. The consumer indicates on the application that the purpose of the loan is to finance an elective surgical procedure not eligible for funding under the guidelines of the established loan program. The creditor may deny the consumer's application because the purpose of the loan is not for a particular procedure funded by the established loan program.

(4) *Examples of obtaining and using medical information at the request of the consumer.* (i) If a consumer applies for a loan and specifically requests that the creditor consider the consumer's medical disability at the relevant time as an explanation for adverse payment history information in his credit report, the creditor may consider such medical information in evaluating the consumer's willingness and ability to repay the requested loan to accommodate the consumer's particular circumstances, consistent with safe and sound practices. The creditor may also decline to consider such medical information to accommodate the consumer, but may evaluate the consumer's application in accordance with its otherwise applicable underwriting criteria. The creditor may not deny the consumer's application or otherwise treat the consumer less favorably because the consumer specifically requested a medical accommodation, if the creditor would have extended the credit or treated the consumer more favorably under the creditor's otherwise applicable underwriting criteria.

(ii) If a consumer applies for a loan by telephone and explains that his income has been and will continue to be interrupted on account of a medical condition and that he expects to repay the loan by liquidating assets, the

creditor may, but is not required to, evaluate the application using the sale of assets as the primary source of repayment, consistent with safe and sound practices, provided that the creditor documents the consumer's request by recording the oral conversation or making a notation of the request in the consumer's file.

(iii) If a consumer applies for a loan and the application form provides a space where the consumer may provide any other information or special circumstances, whether medical or nonmedical, that the consumer would like the creditor to consider in evaluating the consumer's application, the creditor may use medical information provided by the consumer in that space on that application to accommodate the consumer's application for credit, consistent with safe and sound practices, or may disregard that information.

(iv) If a consumer specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit and provides the creditor with medical information for that purpose, and the creditor determines that it needs additional information regarding the consumer's circumstances, the creditor may request, obtain, and use additional medical information about the consumer as necessary to verify the information provided by the consumer or to determine whether to make an accommodation for the consumer. The consumer may decline to provide additional information, withdraw the request for an accommodation, and have the application considered under the creditor's otherwise applicable underwriting criteria.

(v) If a consumer completes and signs a credit application that is not for medical purpose credit and the application contains boilerplate language that routinely requests medical information from the consumer or that indicates that by applying for credit the consumer authorizes or consents to the creditor obtaining and using medical information in connection with a determination of the consumer's eligibility, or continued eligibility, for credit, the consumer has not specifically requested that the creditor obtain and use medical information to accommodate the consumer's particular circumstances.

(5) *Example of a forbearance practice or program.* After an appropriate safety and soundness review, a creditor institutes a program that allows consumers who are or will be hospitalized to defer payments as needed for up to three months, without penalty, if the credit account has been open for more than one year and has not previously been in default, and the consumer provides confirming documentation at an appropriate time. A consumer is hospitalized and does not pay her bill for a particular month. This consumer has had a credit account with the creditor for more than one year and has not previously been in default. The creditor attempts to contact the consumer and speaks with the consumer's adult child, who is not the consumer's legal representative. The adult child informs the creditor that the consumer is hospitalized and is unable to pay the bill at that time. The creditor defers payments for up to three months, without penalty, for the hospitalized consumer and sends the consumer a letter confirming this practice and the date on which the next payment will be due. The creditor has obtained and used medical information to determine whether the provisions of a medically-triggered forbearance practice or program apply to a consumer.

§ 1022.31 Limits on redisclosure of information.

(a) *Scope.* This section applies to any person, except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 137.

(b) *Limits on redisclosure.* If a person described in paragraph (a) of this section receives medical information about a consumer from a consumer reporting agency or its affiliate, the person must not disclose that information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

§ 1022.32 Sharing medical information with affiliates.

(a) *Scope*. This section applies to any person, except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 137.

(b) *In general*. The exclusions from the term ''consumer report'' in section 603(d)(2) of the Act that allow the sharing of information with affiliates do not apply to a person described in paragraph (a) of this section if that person communicates to an affiliate:

(1) Medical information;

(2) An individualized list or description based on the payment transactions of the consumer for medical products or services; or

(3) An aggregate list of identified consumers based on payment transactions for medical products or services.

(c) *Exceptions*. A person described in paragraph (a) of this section may rely on the exclusions from the term ''consumer report'' in section 603(d)(2) of the Act to communicate the information in paragraph (b) of this section to an affiliate:

(1) In connection with the business of insurance or annuities (including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners, as in effect on January 1, 2003);

(2) For any purpose permitted without authorization under the regulations promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

(3) For any purpose referred to in section 1179 of HIPAA;

(4) For any purpose described in section 502(e) of the Gramm-Leach-Bliley Act;

(5) In connection with a determination of the consumer's eligibility, or continued eligibility, for credit consistent with § 1022.30 of this part; or

(6) As otherwise permitted by order of the Bureau.

Subpart E—Duties of Furnishers of Information

§ 1022.40 Scope.

Subpart E of this part applies to any person that furnishes information to a consumer reporting agency, except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376.

§ 1022.41 Definitions.

For purposes of this subpart and appendix E of this part, the following definitions apply:

(a) *Accuracy* means that information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer correctly:

(1) Reflects the terms of and liability for the account or other relationship;

(2) Reflects the consumer's performance and other conduct with respect to the account or other relationship; and

(3) Identifies the appropriate consumer.

(b) *Direct dispute* means a dispute submitted directly to a furnisher (including a furnisher that is a debt collector) by a consumer concerning the accuracy of any information contained in a consumer report and pertaining to an account or other relationship that the furnisher has or had with the consumer.

(c) *Furnisher* means an entity that furnishes information relating to consumers to one or more consumer reporting agencies for inclusion in a consumer report. An entity is not a furnisher when it:

(1) Provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 604(a) and (f) of the FCRA;

(2) Is acting as a ''consumer reporting agency'' as defined in section 603(f) of the FCRA;

(3) Is a consumer to whom the furnished information pertains; or

(4) Is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the

consumer, and who provides information about the consumer's character, general reputation, personal characteristics, or mode of living in response to a specific request from a consumer reporting agency.

(d) *Integrity* means that information that a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer:

(1) Is substantiated by the furnisher's records at the time it is furnished;

(2) Is furnished in a form and manner that is designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; and

(3) Includes the information in the furnisher's possession about the account or other relationship that the Bureau has:

(i) Determined that the absence of which would likely be materially misleading in evaluating a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and

(ii) Listed in section I(b)(2)(iii) of appendix E of this part.

§ 1022.42 Reasonable policies and procedures concerning the accuracy and integrity of furnished information.

(a) *Policies and procedures.* Each furnisher must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency. The policies and procedures must be appropriate to the nature, size, complexity, and scope of each furnisher's activities.

(b) *Guidelines.* Each furnisher must consider the guidelines in appendix E of this part in developing its policies and procedures required by this section, and incorporate those guidelines that are appropriate.

(c) *Reviewing and updating policies and procedures.* Each furnisher must review its policies and procedures required by this section periodically and update them as necessary to ensure their continued effectiveness.

§ 1022.43 Direct disputes.

(a) *General rule.* Except as otherwise provided in this section, a furnisher must conduct a reasonable investigation of a direct dispute if it relates to:

(1) The consumer's liability for a credit account or other debt with the furnisher, such as direct disputes relating to whether there is or has been identity theft or fraud against the consumer, whether there is individual or joint liability on an account, or whether the consumer is an authorized user of a credit account;

(2) The terms of a credit account or other debt with the furnisher, such as direct disputes relating to the type of account, principal balance, scheduled payment amount on an account, or the amount of the credit limit on an open-end account;

(3) The consumer's performance or other conduct concerning an account or other relationship with the furnisher, such as direct disputes relating to the current payment status, high balance, date a payment was made, the amount of a payment made, or the date an account was opened or closed; or

(4) Any other information contained in a consumer report regarding an account or other relationship with the furnisher that bears on the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(b) *Exceptions.* The requirements of paragraph (a) of this section do not apply to a furnisher if:

(1) The direct dispute relates to:

(i) The consumer's identifying information (other than a direct dispute relating to a consumer's liability for a credit account or other debt with the furnisher, as provided in paragraph (a)(1) of this section) such as name(s), date of birth, Social Security number, telephone number(s), or address(es);

(ii) The identity of past or present employers;

(iii) Inquiries or requests for a consumer report;

(iv) Information derived from public records, such as judgments, bankruptcies, liens, and other legal matters (unless provided by a furnisher with an account or other relationship with the consumer);

(v) Information related to fraud alerts or active duty alerts; or

(vi) Information provided to a consumer reporting agency by another furnisher; or

(2) The furnisher has a reasonable belief that the direct dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization, as defined in 15 U.S.C. 1679a(3), or an entity that would be a credit repair organization, but for 15 U.S.C. 1679a(3)(B)(i).

(c) *Direct dispute address.* A furnisher is required to investigate a direct dispute only if a consumer submits a dispute notice to the furnisher at:

(1) The address of a furnisher provided by a furnisher and set forth on a consumer report relating to the consumer;

(2) An address clearly and conspicuously specified by the furnisher for submitting direct disputes that is provided to the consumer in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher); or

(3) Any business address of the furnisher if the furnisher has not so specified and provided an address for submitting direct disputes under paragraphs (c)(1) or (2) of this section.

(d) *Direct dispute notice contents.* A dispute notice must include:

(1) Sufficient information to identify the account or other relationship that is in dispute, such as an account number and the name, address, and telephone number of the consumer, if applicable;

(2) The specific information that the consumer is disputing and an explanation of the basis for the dispute; and

(3) All supporting documentation or other information reasonably required by the furnisher to substantiate the basis of the dispute. This documentation may include, for example: a copy of the relevant portion of the consumer report that contains the allegedly inaccurate information; a police report; a fraud or identity theft affidavit; a court order; or account statements.

(e) *Duty of furnisher after receiving a direct dispute notice.* After receiving a dispute notice from a consumer pursuant to paragraphs (c) and (d) of this section, the furnisher must:

(1) Conduct a reasonable investigation with respect to the disputed information;

(2) Review all relevant information provided by the consumer with the dispute notice;

(3) Complete its investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) of the FCRA (15 U.S.C. 1681i(a)(1)) within which a consumer reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and

(4) If the investigation finds that the information reported was inaccurate, promptly notify each consumer reporting agency to which the furnisher provided inaccurate information of that determination and provide to the consumer reporting agency any correction to that information that is necessary to make the information provided by the furnisher accurate.

(f) *Frivolous or irrelevant disputes.* (1) A furnisher is not required to investigate a direct dispute if the furnisher has reasonably determined that the dispute is frivolous or irrelevant. A dispute qualifies as frivolous or irrelevant if:

(i) The consumer did not provide sufficient information to investigate the disputed information as required by paragraph (d) of this section;

(ii) The direct dispute is substantially the same as a dispute previously submitted by or on behalf of the consumer, either directly to the furnisher or through a consumer reporting agency, with respect to which the furnisher has already satisfied the applicable requirements of the Act or this section; provided, however, that a direct dispute is not substantially the same as a dispute previously submitted if the dispute includes information listed in paragraph (d) of this section that had not previously been provided to the furnisher; or

(iii) The furnisher is not required to investigate the direct dispute because one or more of the exceptions listed in paragraph (b) of this section applies.

(2) *Notice of determination.* Upon making a determination that a dispute is frivolous or irrelevant, the furnisher must notify the consumer of the determination not later than five business days after making the determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the furnisher.

(3) *Contents of notice of determination that a dispute is frivolous or irrelevant.* A notice of determination that a dispute is frivolous or irrelevant must include the reasons for such determination and identify any information required to investigate the disputed information, which notice may consist of a standardized form describing the general nature of such information.

Subpart F—Duties of Users Regarding Obtaining and Using Consumer Reports

§§ 1022.50–1022.53 [Reserved]

§ 1022.54 Duties of users making written firm offers of credit or insurance based on information contained in consumer files

(a) *Scope.* This subpart applies to any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, and that is provided to that person under section 604(c)(1)(B) of the FCRA (15 U.S.C. 1681b(c)(1)(B)), except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 137.

(b) *Definitions.* For purposes of this section and appendix D of this part, the following definitions apply:

(1) *Simple and easy to understand* means:

(i) A layered format as described in paragraph (c) of this section;

(ii) Plain language designed to be understood by ordinary consumers; and

(iii) Use of clear and concise sentences, paragraphs, and sections.

(iv) Examples. For purposes of this part, examples of factors to be considered in determining whether a statement is in plain language and uses clear and concise sentences, paragraphs, and sections include:

(A) Use of short explanatory sentences;

(B) Use of definite, concrete, everyday words;

(C) Use of active voice;

(D) Avoidance of multiple negatives;

(E) Avoidance of legal and technical business terminology;

(F) Avoidance of explanations that are imprecise and reasonably subject to different interpretations; and

(G) Use of language that is not misleading.

(2) *Principal promotional document* means the document designed to be seen first by the consumer, such as the cover letter.

(c) *Prescreen opt-out notice.* Any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, and that is provided to that person under section 604(c)(1)(B) of the FCRA (15 U.S.C. 1681b(c)(1)(B)), shall, with each written solicitation made to the consumer about the transaction, provide the consumer with the following statement, consisting of a short portion and a long portion, which shall be in the same language as the offer of credit or insurance:

(1) *Short notice.* The short notice shall be a clear and conspicuous, and simple and easy to understand statement as follows:

(i) *Content.* The short notice shall state that the consumer has the right to opt out of receiving prescreened solicitations, and shall provide the toll-free number the consumer can call to exercise that right. The short notice also shall direct the consumer to the existence and location of the long notice, and shall state the heading for the long notice. The short notice shall not contain any other information.

(ii) *Form.* The short notice shall be:

(A) In a type size that is larger than the type size of the principal text on the same page, but in no event smaller than 12 point type, or if provided by electronic means, then reasonable steps shall be taken to ensure that the type size is larger than the type size of the principal text on the same page;

(B) On the front side of the first page of the principal promotional document in the solicitation, or, if provided electronically, on the same page and in close proximity to the principal marketing message;

(C) Located on the page and in a format so that the statement is distinct from other text, such as inside a border; and

(D) In a type style that is distinct from the principal type style used on the same page, such as bolded, italicized, underlined, and/or in a color that contrasts with the color of the principal text on the page, if the solicitation is in more than one color.

(2) *Long notice.* The long notice shall be a clear and conspicuous, and simple and easy to understand statement as follows:

(i) *Content.* The long notice shall state the information required by section 615(d) of the Fair Credit Reporting Act (15 U.S.C. 1681m(d)). The long notice shall not include any other information that interferes with, detracts from, contradicts, or otherwise undermines the purpose of the notice.

(ii) *Form.* The long notice shall:

(A) Appear in the solicitation;

(B) Be in a type size that is no smaller than the type size of the principal text on the same page, and, for solicitations provided other than by electronic means, the type size shall in no event be smaller than 8 point type;

(C) Begin with a heading in capital letters and underlined, and identifying the long notice as the ''PRESCREEN&OPT-OUT NOTICE;''

(D) Be in a type style that is distinct from the principal type style used on the same page, such as bolded, italicized, underlined, and/or in a color that contrasts with the color of the principal text on the page, if the solicitation is in more than one color; and

(E) Be set apart from other text on the page, such as by including a blank line above and below the statement, and by indenting both the left and right margins from other text on the page.

§§ 1022.55–1022.59 [Reserved]

Subpart G [Reserved]

Subpart H—Duties of Users Regarding Risk-Based Pricing

§ 1022.70 Scope.

(a) *Coverage*—(1) *In general.* This subpart applies to any person, except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 137, that both:

(i) Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer that is primarily for personal, family, or household purposes; and

(ii) Based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to the consumer on material terms that are materially less favorable than the most favorable material terms available to a substantial proportion of consumers from or through that person.

(2) *Business credit excluded.* This subpart does not apply to an application for, or a grant, extension, or other provision of, credit to a consumer or to any other applicant primarily for a business purpose.

(b) *Enforcement.* The provisions of this subpart will be enforced in accordance with the enforcement authority set forth in sections 621(a) and (b) of the FCRA.

§ 1022.71 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Adverse action* has the same meaning as in 15 U.S.C. 1681a(k)(1)(A).

(b) *Annual percentage rate* has the same meaning as in 12 CFR 1026.14(b) with respect to an open-end credit plan and as in 12 CFR 1026.22 with respect to closed-end credit.

(c) *Closed-end credit* has the same meaning as in 12 CFR 1026.2(a)(10).

(d) *Consumer* has the same meaning as in 15 U.S.C. 1681a(c).

(e) *Consummation* has the same meaning as in 12 CFR 1026.2(a)(13).

(f) *Consumer report* has the same meaning as in 15 U.S.C. 1681a(d).

(g) *Consumer reporting agency* has the same meaning as in 15 U.S.C. 1681a(f).

(h) *Credit* has the same meaning as in 15 U.S.C. 1681a(r)(5).

(i) *Creditor* has the same meaning as in 15 U.S.C. 1681a(r)(5).

(j) *Credit card* has the same meaning as in 15 U.S.C. 1681a(r)(2).

(k) *Credit card issuer* has the same meaning as *card issuer*, as defined in 15 U.S.C. 1681a(r)(1)(A).

(l) *Credit score* has the same meaning as in 15 U.S.C. 1681g(f)(2)(A).

(m) *Firm offer of credit* has the same meaning as in 15 U.S.C. 1681a(l).

(n) *Material terms* means:

(1)(i) Except as otherwise provided in paragraphs (n)(1)(ii) and (n)(3) of this section, in the case of credit extended under an open-end credit plan, the annual percentage rate required to be disclosed under 12 CFR 1026.6(a)(1)(ii) or 12 CFR 1026.6(b)(2)(i), excluding any temporary initial rate that is lower than the rate that will apply after the temporary rate expires, any penalty rate that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, and any fixed annual percentage rate option for a home equity line of credit;

(ii) In the case of a credit card (other than a credit card that is used to access a home equity line of credit or a charge card), the annual percentage rate required to be disclosed under 12 CFR 1026.6(b)(2)(i) that applies to purchases (''purchase annual percentage rate'') and no other annual percentage rate, or in the case of a credit card that has no purchase annual percentage rate, the annual percentage rate that varies based on information in a consumer report and that has the most significant financial impact on consumers;

(2) In the case of closed-end credit, the annual percentage rate required to be disclosed under 12 CFR 1026.17(c) and 1026.18(e); and

(3) In the case of credit for which there is no annual percentage rate, the financial term that varies based on information in a consumer report and that has the most significant financial impact on consumers, such as a deposit required in connection with credit extended by a telephone company or utility or an annual membership fee for a charge card.

(o) *Materially less favorable* means, when applied to material terms, that the terms granted, extended, or otherwise provided to a consumer differ from the terms granted, extended, or otherwise provided to another consumer from or through the same person such that the cost of credit to the first consumer would be significantly greater than the cost of credit granted, extended, or otherwise provided to the other consumer. For purposes of this definition, factors relevant to determining the significance of a difference in cost include the type of credit product, the term of the credit extension, if any, and the extent of the difference between the material terms granted, extended, or otherwise provided to the two consumers.

(p) *Open-end credit plan* has the same meaning as in 15 U.S.C. 1602(i), as interpreted by the Bureau in Regulation Z (12 CFR part 1026) and the Official Interpretations to Regulation Z (Supplement I to 12 CFR part 1026).

(q) *Person* has the same meaning as in 15 U.S.C. 1681a(b).

§ 1022.72 General requirements for risk-based pricing notices.

(a) *In general.* Except as otherwise provided in this subpart, a person must provide to a consumer a notice (''risk-based pricing notice'') in the form and manner required by this subpart if the person both:

(1) Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to that consumer that is primarily for personal, family, or household purposes; and

(2) Based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to that consumer on material terms that are materially less favorable than the most favorable material terms available to a substantial proportion of consumers from or through that person.

(b) *Determining which consumers must receive a notice.* A person may determine whether paragraph (a) of this section applies by directly comparing the material terms offered to each consumer and the material terms offered to other consumers for a specific type of credit product. For purposes of this

section, a ''specific type of credit product'' means one or more credit products with similar features that are designed for similar purposes. Examples of a specific type of credit product include student loans, unsecured credit cards, secured credit cards, new automobile loans, used automobile loans, fixed-rate mortgage loans, and variable-rate mortgage loans. As an alternative to making this direct comparison, a person may make the determination by using one of the following methods:

(1) *Credit score proxy method*—(i) *In general.* A person that sets the material terms of credit granted, extended, or otherwise provided to a consumer, based in whole or in part on a credit score, may comply with the requirements of paragraph (a) of this section by:

(A) Determining the credit score (hereafter referred to as the ''cutoff score'') that represents the point at which approximately 40 percent of the consumers to whom it grants, extends, or provides credit have higher credit scores and approximately 60 percent of the consumers to whom it grants, extends, or provides credit have lower credit scores; and

(B) Providing a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit whose credit score is lower than the cutoff score.

(ii) *Alternative to the 40/60 cutoff score determination.* In the case of credit that has been granted, extended, or provided on the most favorable material terms to more than 40 percent of consumers, a person may, at its option, set its cutoff score at a point at which the approximate percentage of consumers who historically have been granted, extended, or provided credit on material terms other than the most favorable terms would receive risk-based pricing notices under this section.

(iii) *Determining the cutoff score*—(A) *Sampling approach.* A person that currently uses risk-based pricing with respect to the credit products it offers must calculate the cutoff score by considering the credit scores of all or a representative sample of the consumers to whom it has granted, extended, or provided credit for a specific type of credit product.

(B) *Secondary source approach in limited circumstances.* A person that is a new entrant into the credit business, introduces new credit products, or starts to use risk-based pricing with respect to the credit products it currently offers may initially determine the cutoff score based on information derived from appropriate market research or relevant third-party sources for a specific type of credit product, such as research or data from companies that develop credit scores. A person that acquires a credit portfolio as a result of a merger or acquisition may determine the cutoff score based on information from the party which it acquired, with which it merged, or from which it acquired the portfolio.

(C) *Recalculation of cutoff scores.* A person using the credit score proxy method must recalculate its cutoff score(s) no less than every two years in the manner described in paragraph (b)(1)(iii)(A) of this section. A person using the credit score proxy method using market research, third-party data, or information from a party which it acquired, with which it merged, or from which it acquired the portfolio as permitted by paragraph (b)(1)(iii)(B) of this section generally must calculate a cutoff score(s) based on the scores of its own consumers in the manner described in paragraph (b)(1)(iii)(A) of this section within one year after it begins using a cutoff score derived from market research, third-party data, or information from a party which it acquired, with which it merged, or from which it acquired the portfolio. If such a person does not grant, extend, or provide credit to new consumers during that one-year period such that it lacks sufficient data with which to recalculate a cutoff score based on the credit scores of its own consumers, the person may continue to use a cutoff score derived from market research, third-party data, or information from a party which it acquired, with which it merged, or from which it acquired the portfolio as provided in paragraph (b)(1)(iii)(B) until it obtains sufficient data on which to base the recalculation. However, the person must recalculate its cutoff score(s) in the

manner described in paragraph (b)(1)(iii)(A) of this section within two years, if it has granted, extended, or provided credit to some new consumers during that two-year period.

(D) *Use of two or more credit scores.* A person that generally uses two or more credit scores in setting the material terms of credit granted, extended, or provided to a consumer must determine the cutoff score using the same method the person uses to evaluate multiple scores when making credit decisions. These evaluation methods may include, but are not limited to, selecting the low, median, high, most recent, or average credit score of each consumer to whom it grants, extends, or provides credit. If a person that uses two or more credit scores does not consistently use the same method for evaluating multiple credit scores (*e.g.*, if the person sometimes chooses the median score and other times calculates the average score), the person must determine the cutoff score using a reasonable means. In such cases, use of any one of the methods that the person regularly uses or the average credit score of each consumer to whom it grants, extends, or provides credit is deemed to be a reasonable means of calculating the cutoff score.

(iv) *Credit score not available.* For purposes of this section, a person using the credit score proxy method who grants, extends, or provides credit to a consumer for whom a credit score is not available must assume that the consumer receives credit on material terms that are materially less favorable than the most favorable credit terms offered to a substantial proportion of consumers from or through that person and must provide a risk-based pricing notice to the consumer.

(v) *Examples.* (A) A credit card issuer engages in risk-based pricing and the annual percentage rates it offers to consumers are based in whole or in part on a credit score. The credit card issuer takes a representative sample of the credit scores of consumers to whom it issued credit cards within the preceding three months. The credit card issuer determines that approximately 40 percent of the sampled consumers have a credit score at or above 720 (on a scale of 350 to 850) and approximately 60 percent of the sampled consumers have a credit score below 720. Thus, the card issuer selects 720 as its cutoff score. A consumer applies to the credit card issuer for a credit card. The card issuer obtains a credit score for the consumer. The consumer's credit score is 700. Since the consumer's 700 credit score falls below the 720 cutoff score, the credit card issuer must provide a risk-based pricing notice to the consumer.

(B) A credit card issuer engages in risk-based pricing, and the annual percentage rates it offers to consumers are based in whole or in part on a credit score. The credit card issuer takes a representative sample of the consumers to whom it issued credit cards over the preceding six months. The credit card issuer determines that approximately 80 percent of the sampled consumers received credit at its lowest annual percentage rate, and 20 percent received credit at a higher annual percentage rate. Approximately 80 percent of the sampled consumers have a credit score at or above 750 (on a scale of 350 to 850), and 20 percent have a credit score below 750. Thus, the card issuer selects 750 as its cutoff score. A consumer applies to the credit card issuer for a credit card. The card issuer obtains a credit score for the consumer. The consumer's credit score is 740. Since the consumer's 740 credit score falls below the 750 cutoff score, the credit card issuer must provide a risk-based pricing notice to the consumer.

(C) An auto lender engages in risk-based pricing, obtains credit scores from one of the nationwide consumer reporting agencies, and uses the credit score proxy method to determine which consumers must receive a risk-based pricing notice. A consumer applies to the auto lender for credit to finance the purchase of an automobile. A credit score about that consumer is not available from the consumer reporting agency from which the lender obtains credit scores. The lender nevertheless grants, extends, or provides credit to the consumer. The lender must provide a risk-based pricing notice to the consumer.

(2) *Tiered pricing method*—(i) *In general.* A person that sets the material terms of credit granted, extended, or provided to a consumer by placing the

consumer within one of a discrete number of pricing tiers for a specific type of credit product, based in whole or in part on a consumer report, may comply with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer who is not placed within the top pricing tier or tiers, as described below.

(ii) *Four or fewer pricing tiers.* If a person using the tiered pricing method has four or fewer pricing tiers, the person complies with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit who does not qualify for the top tier (that is, the lowest-priced tier). For example, a person that uses a tiered pricing structure with annual percentage rates of 8, 10, 12, and 14 percent would provide the risk-based pricing notice to each consumer to whom it grants, extends, or provides credit at annual percentage rates of 10, 12, and 14 percent.

(iii) *Five or more pricing tiers.* If a person using the tiered pricing method has five or more pricing tiers, the person complies with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit who does not qualify for the top two tiers (that is, the two lowest-priced tiers) and any other tier that, together with the top tiers, comprise no less than the top 30 percent but no more than the top 40 percent of the total number of tiers. Each consumer placed within the remaining tiers must receive a risk-based pricing notice. For example, if a person has nine pricing tiers, the top three tiers (that is, the three lowest-priced tiers) comprise no less than the top 30 percent but no more than the top 40 percent of the tiers. Therefore, a person using this method would provide a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit who is placed within the bottom six tiers.

(c) *Application to credit card issuers*—(1) *In general.* A credit card issuer subject to the requirements of paragraph (a) of this section may use one of the methods set forth in paragraph (b) of this section to identify consumers to whom it must provide a risk-based pricing notice. Alternatively, a credit card issuer may satisfy its obligations under paragraph (a) of this section by providing a risk-based pricing notice to a consumer when:

(i) A consumer applies for a credit card either in connection with an application program, such as a direct-mail offer or a take-one application, or in response to a solicitation under 12 CFR 1026.60, and more than a single possible purchase annual percentage rate may apply under the program or solicitation; and

(ii) Based in whole or in part on a consumer report, the credit card issuer provides a credit card to the consumer with an annual percentage rate referenced in §1022.71(n)(1)(ii) that is greater than the lowest annual percentage rate referenced in §1022.71(n)(1)(ii) available in connection with the application or solicitation.

(2) *No requirement to compare different offers.* A credit card issuer is not subject to the requirements of paragraph (a) of this section and is not required to provide a risk-based pricing notice to a consumer if:

(i) The consumer applies for a credit card for which the card issuer provides a single annual percentage rate referenced in §1022.71(n)(1)(ii), excluding a temporary initial rate that is lower than the rate that will apply after the temporary rate expires and a penalty rate that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit; or

(ii) The credit card issuer offers the consumer the lowest annual percentage rate referenced in §1022.71(n)(1)(ii) available under the credit card offer for which the consumer applied, even if a lower annual percentage rate referenced in §1022.71(n)(1)(ii) is available under a different credit card offer issued by the card issuer.

(3) *Examples.* (i) A credit card issuer sends a solicitation to the consumer that discloses several possible purchase annual percentage rates that may apply, such as 10, 12, or 14 percent, or a range of purchase annual percentage

rates from 10 to 14 percent. The consumer applies for a credit card in response to the solicitation. The card issuer provides a credit card to the consumer with a purchase annual percentage rate of 12 percent based in whole or in part on a consumer report. Unless an exception applies under §1022.74, the card issuer may satisfy its obligations under paragraph (a) of this section by providing a risk-based pricing notice to the consumer because the consumer received credit at a purchase annual percentage rate greater than the lowest purchase annual percentage rate available under that solicitation.

(ii) The same facts as in the example in paragraph (c)(3)(i) of this section, except that the card issuer provides a credit card to the consumer at a purchase annual percentage rate of 10 percent. The card issuer is not required to provide a risk-based pricing notice to the consumer even if, under a different credit card solicitation, that consumer or other consumers might qualify for a purchase annual percentage rate of 8 percent.

(d) *Account review*—(1) *In general.* Except as otherwise provided in this subpart, a person is subject to the requirements of paragraph (a) of this section and must provide a risk-based pricing notice to a consumer in the form and manner required by this subpart if the person:

(i) Uses a consumer report in connection with a review of credit that has been extended to the consumer; and

(ii) Based in whole or in part on the consumer report, increases the annual percentage rate (the annual percentage rate referenced in §1022.71(n)(1)(ii) in the case of a credit card).

(2) *Example.* A credit card issuer periodically obtains consumer reports for the purpose of reviewing the terms of credit it has extended to consumers in connection with credit cards. As a result of this review, the credit card issuer increases the purchase annual percentage rate applicable to a consumer's credit card based in whole or in part on information in a consumer report. The credit card issuer is subject to the requirements of paragraph (a) of this section and must provide a risk-based pricing notice to the consumer.

§1022.73 Content, form, and timing of risk-based pricing notices.

(a) *Content of the notice*—(1) *In general.* The risk-based pricing notice required by §1022.72(a) or (c) must include:

(i) A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;

(ii) A statement that the terms offered, such as the annual percentage rate, have been set based on information from a consumer report;

(iii) A statement that the terms offered may be less favorable than the terms offered to consumers with better credit histories;

(iv) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

(v) The identity of each consumer reporting agency that furnished a consumer report used in the credit decision;

(vi) A statement that Federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;

(vii) A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;

(viii) A statement directing consumers to the Web site of the Bureau to obtain more information about consumer reports; and

(ix) If a credit score of the consumer to whom a person grants, extends, or otherwise provides credit is used in setting the material terms of credit:

(A) A statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;

(B) The credit score used by the person in making the credit decision;

(C) The range of possible credit scores under the model used to generate the credit score;

(D) All of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquiries made with respect to the consumer report, the number of key factors shall not exceed five;

(E) The date on which the credit score was created; and

(F) The name of the consumer reporting agency or other person that provided the credit score.

(2) *Account review.* The risk-based pricing notice required by §1022.72(d) must include:

(i) A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that credit history;

(ii) A statement that the person has conducted a review of the account using information from a consumer report;

(iii) A statement that as a result of the review, the annual percentage rate on the account has been increased based on information from a consumer report;

(iv) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

(v) The identity of each consumer reporting agency that furnished a consumer report used in the account review;

(vi) A statement that Federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;

(vii) A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;

(viii) A statement directing consumers to the Web site of the Bureau to obtain more information about consumer reports; and

(ix) If a credit score of the consumer whose extension of credit is under review is used in increasing the annual percentage rate:

(A) A statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;

(B) The credit score used by the person in making the credit decision;

(C) The range of possible credit scores under the model used to generate the credit score;

(D) All of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquires made with respect to the consumer report, the number of key factors shall not exceed five;

(E) The date on which the credit score was created; and

(F) The name of the consumer reporting agency or other person that provided the credit score.

(b) *Form of the notice*—(1) *In general.* The risk-based pricing notice required by §1022.72(a), (c), or (d) must be:

(i) Clear and conspicuous; and

(ii) Provided to the consumer in oral, written, or electronic form.

(2) *Model forms.* Model forms of the risk-based pricing notice required by §1022.72(a) and (c) are contained in appendices H–1 and H–6 of this part. Appropriate use of Model Form H–1 or H–6 is deemed to comply with the requirements of §1022.72(a) and (c). Model forms of the risk-based pricing notice required by §1022.72(d) are contained in appendices H–2 and H–7 of this part. Appropriate use of Model Form H–2 or H–7 is deemed to comply with the requirements of §1022.72(d). Use of the model forms is optional.

(c) *Timing*—(1) *General.* Except as provided in paragraph (c)(3) of this section, a risk-based pricing notice must be provided to the consumer:

(i) In the case of a grant, extension, or other provision of closed-end credit,

before consummation of the transaction, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit, is communicated to the consumer by the person required to provide the notice;

(ii) In the case of credit granted, extended, or provided under an open-end credit plan, before the first transaction is made under the plan, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit is communicated to the consumer by the person required to provide the notice; or

(iii) In the case of a review of credit that has been extended to the consumer, at the time the decision to increase the annual percentage rate (annual percentage rate referenced in §1022.71(n)(1)(ii) in the case of a credit card) based on a consumer report is communicated to the consumer by the person required to provide the notice, or if no notice of the increase in the annual percentage rate is provided to the consumer prior to the effective date of the change in the annual percentage rate (to the extent permitted by law), no later than five days after the effective date of the change in the annual percentage rate.

(2) *Application to certain automobile lending transactions.* When a person to whom a credit obligation is initially payable grants, extends, or provides credit to a consumer for the purpose of financing the purchase of an automobile from an auto dealer or other party that is not affiliated with the person, any requirement to provide a risk-based pricing notice pursuant to this subpart is satisfied if the person:

(i) Provides a notice described in §§1022.72(a), 1022.74(e), or 1022.74(f) to the consumer within the time periods set forth in paragraph (c)(1)(i) of this section, §1022.74(e)(3), or §1022.74(f)(4), as applicable; or

(ii) Arranges to have the auto dealer or other party provide a notice described in §§1022.72(a), 1022.74(e), or 1022.74(f) to the consumer on its behalf within the time periods set forth in paragraph (c)(1)(i) of this section, §1022.74(e)(3), or §1022.74(f)(4), as applicable, and maintains reasonable policies and procedures to verify that the auto dealer or other party provides such notice to the consumer within the applicable time periods. If the person arranges to have the auto dealer or other party provide a notice described in §1022.74(e), the person's obligation is satisfied if the consumer receives a notice containing a credit score obtained by the dealer or other party, even if a different credit score is obtained and used by the person on whose behalf the notice is provided.

(3) *Timing requirements for contemporaneous purchase credit.* When credit under an open-end credit plan is granted, extended, or provided to a consumer in person or by telephone for the purpose of financing the contemporaneous purchase of goods or services, any risk-based pricing notice required to be provided pursuant to this subpart (or the disclosures permitted under §1022.74(e) or (f)) may be provided at the earlier of:

(i) The time of the first mailing by the person to the consumer after the decision is made to approve the grant, extension, or other provision of open-end credit, such as in a mailing containing the account agreement or a credit card; or

(ii) Within 30 days after the decision to approve the grant, extension, or other provision of credit.

(d) *Multiple credit scores*—(1) *In general.* When a person obtains or creates two or more credit scores and uses one of those credit scores in setting the material terms of credit, for example, by using the low, middle, high, or most recent score, the notices described in paragraphs (a)(1) and (2) of this section must include that credit score and information relating to that credit score required by paragraphs (a)(1)(ix) and (a)(2)(ix). When a person obtains or creates two or more credit scores and uses multiple credit scores in setting the material terms of credit by, for example, computing the average of all the credit scores obtained or created, the notices described in paragraphs (a)(1) and (2) of this section must include one of those credit scores and information relating to credit scores required by paragraphs (a)(1)(ix) and (a)(2)(ix). The notice may, at the person's option, include more than one credit score, along

with the additional information specified in paragraphs (a)(1)(ix) and (a)(2)(ix) of this section for each credit score disclosed.

(2) *Examples.* (i) A person that uses consumer reports to set the material terms of credit cards granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies and uses the low score when determining the material terms it will offer to the consumer. That person must disclose the low score in the notices described in paragraphs (a)(1) and (2) of this section.

(ii) A person that uses consumer reports to set the material terms of automobile loans granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies, each of which it uses in an underwriting program in order to determine the material terms it will offer to the consumer. That person may choose one of these scores to include in the notices described in paragraph (a)(1) and (2) of this section.

§ 1022.74 Exceptions.

(a) *Application for specific terms*—(1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 1022.72(a) or (c) if the consumer applies for specific material terms and is granted those terms, unless those terms were specified by the person using a consumer report after the consumer applied for or requested credit and after the person obtained the consumer report. For purposes of this section, ''specific material terms'' means a single material term, or set of material terms, such as an annual percentage rate of 10 percent, and not a range of alternatives, such as an annual percentage rate that may be 8, 10, or 12 percent, or between 8 and 12 percent.

(2) *Example.* A consumer receives a firm offer of credit from a credit card issuer. The terms of the firm offer are based in whole or in part on information from a consumer report that the credit card issuer obtained under the FCRA's firm offer of credit provisions. The solicitation offers the consumer a credit card with a single purchase annual percentage rate of 12 percent. The consumer applies for and receives a credit card with an annual percentage rate of 12 percent. Other customers with the same credit card have a purchase annual percentage rate of 10 percent. The exception applies because the consumer applied for specific material terms and was granted those terms. Although the credit card issuer specified the annual percentage rate in the firm offer of credit based in whole or in part on a consumer report, the credit card issuer specified that material term *before*, not *after*, the consumer applied for or requested credit.

(b) *Adverse action notice.* A person is not required to provide a risk-based pricing notice to the consumer under § 1022.72(a), (c), or (d) if the person provides an adverse action notice to the consumer under section 615(a) of the FCRA.

(c) *Prescreened solicitations*—(1) *In general.* A person is not required to provide a risk-based pricing notice to the consumer under § 1022.72(a) or (c) if the person:

(i) Obtains a consumer report that is a prescreened list as described in section 604(c)(2) of the FCRA; and

(ii) Uses the consumer report for the purpose of making a firm offer of credit to the consumer.

(2) *More favorable material terms.* This exception applies to any firm offer of credit offered by a person to a consumer, even if the person makes other firm offers of credit to other consumers on more favorable material terms.

(3) *Example.* A credit card issuer obtains two prescreened lists from a consumer reporting agency. One list includes consumers with high credit scores. The other list includes consumers with low credit scores. The issuer mails a firm offer of credit to the high credit score consumers with a single purchase annual percentage rate of 10 percent. The issuer also mails a firm offer of credit to the low credit score consumers with a single purchase annual percentage rate of 14 percent. The credit card issuer is not required to provide a risk-based pricing notice to the low credit score consumers who receive the 14 percent offer because use of a consumer report to make a firm offer of credit does not trigger the risk-based pricing notice requirement.

(d) *Loans secured by residential real property—credit score disclosure*—(1) *In general.* A person is not required to provide a risk-based pricing notice to a consumer under §1022.72(a) or (c) if:

(i) The consumer requests from the person an extension of credit that is or will be secured by one to four units of residential real property; and

(ii) The person provides to each consumer described in paragraph (d)(1)(i) of this section a notice that contains the following:

(A) A statement that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;

(B) A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;

(C) A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(D) The information required to be disclosed to the consumer pursuant to section 609(g) of the FCRA;

(E) The distribution of credit scores among consumers who are scored under the same scoring model that is used to generate the consumer's credit score using the same scale as that of the credit score that is provided to the consumer, presented in the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar or by other clear and readily understandable graphical means, or a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers. Use of a graph or statement obtained from the person providing the credit score that meets the requirements of this paragraph (d)(1)(ii)(E) is deemed to comply with this requirement;

(F) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

(G) A statement that Federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free report from each of the nationwide consumer reporting agencies once during any 12-month period;

(H) Contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

(I) A statement directing consumers to the Web site of the Bureau to obtain more information about consumer reports.

(2) *Form of the notice.* The notice described in paragraph (d)(1)(ii) of this section must be:

(i) Clear and conspicuous;

(ii) Provided on or with the notice required by section 609(g) of the FCRA;

(iii) Segregated from other information provided to the consumer, except for the notice required by section 609(g) of the FCRA; and

(iv) Provided to the consumer in writing and in a form that the consumer may keep.

(3) *Timing.* The notice described in paragraph (d)(1)(ii) of this section must be provided to the consumer at the time the disclosure required by section 609(g) of the FCRA is provided to the consumer, but in any event at or before consummation in the case of closed-end credit or before the first transaction is made under an open-end credit plan.

(4) *Multiple credit scores*—(i) *In general.* When a person obtains two or more credit scores from consumer reporting agencies and uses one of those credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer, for example, by using the low, middle, high, or most recent score, the notice described in paragraph (d)(1)(ii) of this section must include that credit score and the other information required by that paragraph. When a person obtains two or more credit scores from consumer reporting agencies and uses multiple credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer,

for example, by computing the average of all the credit scores obtained, the notice described in paragraph (d)(1)(ii) of this section must include one of those credit scores and the other information required by that paragraph. The notice may, at the person's option, include more than one credit score, along with the additional information specified in paragraph (d)(1)(ii) of this section for each credit score disclosed.

(ii) *Examples.* (A) A person that uses consumer reports to set the material terms of mortgage credit granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies and uses the low score when determining the material terms it will offer to the consumer. That person must disclose the low score in the notice described in paragraph (d)(1)(ii) of this section.

(B) A person that uses consumer reports to set the material terms of mortgage credit granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies, each of which it uses in an underwriting program in order to determine the material terms it will offer to the consumer. That person may choose one of these scores to include in the notice described in paragraph (d)(1)(ii) of this section.

(5) *Model form.* A model form of the notice described in paragraph (d)(1)(ii) of this section consolidated with the notice required by section 609(g) of the FCRA is contained in appendix H–3 of this part. Appropriate use of Model Form H–3 is deemed to comply with the requirements of § 1022.74(d). Use of the model form is optional.

(e) *Other extensions of credit—credit score disclosure*—(1) *In general.* A person is not required to provide a risk-based pricing notice to a consumer under § 1022.72(a) or (c) if:

(i) The consumer requests from the person an extension of credit other than credit that is or will be secured by one to four units of residential real property; and

(ii) The person provides to each consumer described in paragraph (e)(1)(i) of this section a notice that contains the following:

(A) A statement that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;

(B) A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;

(C) A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(D) The current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the consumer reporting agency for a purpose related to the extension of credit;

(E) The range of possible credit scores under the model used to generate the credit score;

(F) The distribution of credit scores among consumers who are scored under the same scoring model that is used to generate the consumer's credit score using the same scale as that of the credit score that is provided to the consumer, presented in the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar, or by other clear and readily understandable graphical means, or a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers. Use of a graph or statement obtained from the person providing the credit score that meets the requirements of this paragraph (e)(1)(ii)(F) is deemed to comply with this requirement;

(G) The date on which the credit score was created;

(H) The name of the consumer reporting agency or other person that provided the credit score;

(I) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

(J) A statement that Federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free report from each of the nationwide consumer reporting agencies once during any 12-month period;

(K) Contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

(L) A statement directing consumers to the Web site of the Bureau to obtain more information about consumer reports.

(2) *Form of the notice.* The notice described in paragraph (e)(1)(ii) of this section must be:

(i) Clear and conspicuous;

(ii) Segregated from other information provided to the consumer; and

(iii) Provided to the consumer in writing and in a form that the consumer may keep.

(3) *Timing.* The notice described in paragraph (e)(1)(ii) of this section must be provided to the consumer as soon as reasonably practicable after the credit score has been obtained, but in any event at or before consummation in the case of closed-end credit or before the first transaction is made under an open-end credit plan.

(4) *Multiple credit scores.* (i) *In general.* When a person obtains two or more credit scores from consumer reporting agencies and uses one of those credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer, for example, by using the low, middle, high, or most recent score, the notice described in paragraph (e)(1)(ii) of this section must include that credit score and the other information required by that paragraph. When a person obtains two or more credit scores from consumer reporting agencies and uses multiple credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer, for example, by computing the average of all the credit scores obtained, the notice described in paragraph (e)(1)(ii) of this section must include one of those credit scores and the other information required by that paragraph. The notice may, at the person's option, include more than one credit score, along with the additional information specified in paragraph (e)(1)(ii) of this section for each credit score disclosed.

(ii) *Examples.* The manner in which multiple credit scores are to be disclosed under this section are substantially identical to the manner set forth in the examples contained in paragraph (d)(4)(ii) of this section.

(5) *Model form.* A model form of the notice described in paragraph (e)(1)(ii) of this section is contained in appendix H–4 of this part. Appropriate use of Model Form H–4 is deemed to comply with the requirements of §1022.74(e). Use of the model form is optional.

(f) *Credit score not available*—(1) *In general.* A person is not required to provide a risk-based pricing notice to a consumer under §1022.72(a) or (c) if the person:

(i) Regularly obtains credit scores from a consumer reporting agency and provides credit score disclosures to consumers in accordance with paragraphs (d) or (e) of this section, but a credit score is not available from the consumer reporting agency from which the person regularly obtains credit scores for a consumer to whom the person grants, extends, or provides credit;

(ii) Does not obtain a credit score from another consumer reporting agency in connection with granting, extending, or providing credit to the consumer; and

(iii) Provides to the consumer a notice that contains the following:

(A) A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;

(B) A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time in response to changes in the consumer's credit history;

(C) A statement that credit scores are important because consumers with higher credit scores generally obtain more favorable credit terms;

(D) A statement that not having a credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(E) A statement that a credit score about the consumer was not available from a consumer reporting agency, which must be identified by name, generally due to insufficient information regarding the consumer's credit history;

(F) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report;

(G) A statement that Federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period;

(H) The contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

(I) A statement directing consumers to the Web site of the Bureau to obtain more information about consumer reports.

(2) *Example.* A person that uses consumer reports to set the material terms of non-mortgage credit granted, extended, or provided to consumers regularly requests credit scores from a particular consumer reporting agency and provides those credit scores and additional information to consumers to satisfy the requirements of paragraph (e) of this section. That consumer reporting agency provides to the person a consumer report on a particular consumer that contains one trade line, but does not provide the person with a credit score on that consumer. If the person does not obtain a credit score from another consumer reporting agency and, based in whole or in part on information in a consumer report, grants, extends, or provides credit to the consumer, the person may provide the notice described in paragraph (f)(1)(iii) of this section. If, however, the person obtains a credit score from another consumer reporting agency, the person may not rely upon the exception in paragraph (f) of this section, but may satisfy the requirements of paragraph (e) of this section.

(3) *Form of the notice.* The notice described in paragraph (f)(1)(iii) of this section must be:

(i) Clear and conspicuous;

(ii) Segregated from other information provided to the consumer; and

(iii) Provided to the consumer in writing and in a form that the consumer may keep.

(4) *Timing.* The notice described in paragraph (f)(1)(iii) of this section must be provided to the consumer as soon as reasonably practicable after the person has requested the credit score, but in any event not later than consummation of a transaction in the case of closed-end credit or when the first transaction is made under an open-end credit plan.

(5) *Model form.* A model form of the notice described in paragraph (f)(1)(iii) of this section is contained in appendix H–5 of this part. Appropriate use of Model Form H–5 is deemed to comply with the requirements of § 1022.74(f). Use of the model form is optional.

§ 1022.75 Rules of construction.

For purposes of this subpart, the following rules of construction apply:

(a) *One notice per credit extension.* A consumer is entitled to no more than one risk-based pricing notice under § 1022.72(a) or (c), or one notice under § 1022.74(d), (e), or (f), for each grant, extension, or other provision of credit. Notwithstanding the foregoing, even if a consumer has previously received a risk-based pricing notice in connection with a grant, extension, or other provision of credit, another risk-based pricing notice is required if the conditions set forth in § 1022.72(d) have been met.

(b) *Multi-party transactions*—(1) *Initial creditor.* The person to whom a credit obligation is initially payable must provide the risk-based pricing notice described in § 1022.72(a) or (c), or satisfy the requirements for and provide the notice required under one of the exceptions in § 1022.74(d), (e), or (f), even if that person immediately assigns the credit agreement to a third party and is not the source of funding for the credit.

(2) *Purchasers or assignees.* A purchaser or assignee of a credit contract with a consumer is not subject to the requirements of this subpart and is not

required to provide the risk-based pricing notice described in §1022.72(a) or (c), or satisfy the requirements for and provide the notice required under one of the exceptions in §1022.74(d), (e), or (f).

(3) *Example.* A consumer obtains credit to finance the purchase of an automobile. If a bank or finance company is the person to whom the loan obligation is initially payable, the bank or finance company must provide the risk-based pricing notice to the consumer (or satisfy the requirements for and provide the notice required under one of the exceptions noted above) based on the terms offered by that bank or finance company only. The auto dealer has no duty to provide a risk-based pricing notice to the consumer. However, the bank or finance company may comply with this rule if the auto dealer has agreed to provide notices to consumers before consummation pursuant to an arrangement with the bank or finance company, as permitted under §1022.73(c).

(c) *Multiple consumers*—(1) *Risk-based pricing notices.* In a transaction involving two or more consumers who are granted, extended, or otherwise provided credit, a person must provide a notice to each consumer to satisfy the requirements of §1022.72(a) or (c). Whether the consumers have the same address or not, the person must provide a separate notice to each consumer if a notice includes a credit score(s). Each separate notice that includes a credit score(s) must contain only the credit score(s) of the consumer to whom the notice is provided, and not the credit score(s) of the other consumer. If the consumers have the same address, and the notice does not include a credit score(s), a person may satisfy the requirements by providing a single notice addressed to both consumers.

(2) *Credit score disclosure notices.* In a transaction involving two or more consumers who are granted, extended, or otherwise provided credit, a person must provide a separate notice to each consumer to satisfy the exceptions in §1022.74(d), (e), or (f). Whether the consumers have the same address or not, the person must provide a separate notice to each consumer. Each separate notice must contain only the credit score(s) of the consumer to whom the notice is provided, and not the credit score(s) of the other consumer.

(3) *Examples.* (i) Two consumers jointly apply for credit with a creditor. The creditor obtains credit scores on both consumers. Based in part on the credit scores, the creditor grants credit to the consumers on material terms that are materially less favorable than the most favorable terms available to other consumers from the creditor. The creditor provides risk-based pricing notices to satisfy its obligations under this subpart. The creditor must provide a separate risk-based pricing notice to each consumer whether the consumers have the same address or not. Each risk-based pricing notice must contain only the credit score(s) of the consumer to whom the notice is provided.

(ii) Two consumers jointly apply for credit with a creditor. The two consumers reside at the same address. The creditor obtains credit scores on each of the two consumer applicants. The creditor grants credit to the consumers. The creditor provides credit score disclosure notices to satisfy its obligations under this subpart. Even though the two consumers reside at the same address, the creditor must provide a separate credit score disclosure notice to each of the consumers. Each notice must contain only the credit score of the consumer to whom the notice is provided.

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

§§ 1022.80–1022.81 [Reserved]

§ 1022.82 Duties of users regarding address discrepancies.

(a) *Scope.* This section applies to a user of consumer reports (user) that receives a notice of address discrepancy from a consumer reporting agency described in 15 U.S.C. 1681a(p), except for a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 137.

(b) *Definition.* For purposes of this section, a *notice of address discrepancy*

means a notice sent to a user by a consumer reporting agency described in 15 U.S.C. 1681a(p) pursuant to 15 U.S.C. 1681c(h)(1), that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency's file for the consumer.

(c) *Reasonable belief*—(1) *Requirement to form a reasonable belief.* A user must develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it has requested the report, when the user receives a notice of address discrepancy.

(2) *Examples of reasonable policies and procedures.* (i) Comparing the information in the consumer report provided by the consumer reporting agency with information the user:

(A) Obtains and uses to verify the consumer's identity in accordance with the requirements of the Customer Identification Program (CIP) rules implementing 31 U.S.C. 5318(l) (31 CFR 1020.220);

(B) Maintains in its own records, such as applications, change of address notifications, other customer account records, or retained CIP documentation; or

(C) Obtains from third-party sources; or

(ii) Verifying the information in the consumer report provided by the consumer reporting agency with the consumer.

(d) *Consumer's address*—(1) *Requirement to furnish consumer's address to a consumer reporting agency.* A user must develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed is accurate to the consumer reporting agency described in 15 U.S.C. 1681a(p) from whom it received the notice of address discrepancy when the user:

(i) Can form a reasonable belief that the consumer report relates to the consumer about whom the user requested the report;

(ii) Establishes a continuing relationship with the consumer; and

(iii) Regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of address discrepancy relating to the consumer was obtained.

(2) *Examples of confirmation methods.* The user may reasonably confirm an address is accurate by:

(i) Verifying the address with the consumer about whom it has requested the report;

(ii) Reviewing its own records to verify the address of the consumer;

(iii) Verifying the address through third-party sources; or

(iv) Using other reasonable means.

(3) Timing. The policies and procedures developed in accordance with paragraph (d)(1) of this section must provide that the user will furnish the consumer's address that the user has reasonably confirmed is accurate to the consumer reporting agency described in 15 U.S.C. 1681a(p) as part of the information it regularly furnishes for the reporting period in which it establishes a relationship with the consumer.

Subparts J–L [Reserved]

Subpart M—Duties of Consumer Reporting Agencies Regarding Identity Theft

§ 1022.120 [Reserved]

§ 1022.121 Active duty alerts.

(a) *Duration.* The duration of an active duty alert shall be twelve months.

§ 1022.122 [Reserved]

§ 1022.123 Appropriate proof of identity.

(a) Consumer reporting agencies shall develop and implement reasonable requirements for what information consumers shall provide to constitute proof of identity for purposes of sections 605A, 605B, and 609(a)(1) of the FCRA. In developing these requirements, the consumer reporting agencies must:

(1) Ensure that the information is sufficient to enable the consumer reporting agency to match consumers with their files; and

(2) Adjust the information to be commensurate with an identifiable risk of

harm arising from misidentifying the consumer.

(b) Examples of information that might constitute reasonable information requirements for proof of identity are provided for illustrative purposes only, as follows:

(1) *Consumer file match.* The identification information of the consumer including his or her full name (first, middle initial, last, suffix), any other or previously used names, current and/or recent full address (street number and name, apt. no., city, state, and zip code), full nine digits of Social Security number, and/or date of birth.

(2) *Additional proof of identity.* Copies of government issued identification documents, utility bills, and/or other methods of authentication of a person's identity which may include, but would not be limited to, answering questions to which only the consumer might be expected to know the answer.

§§ 1022.124–1022.129 [Reserved]

Subpart N—Duties of Consumer Reporting Agencies Regarding Disclosures to Consumers

§ 1022.130 Definitions

For purposes of this subpart, the following definitions apply:

(a) *Annual file disclosure* means a file disclosure that is provided to a consumer, upon consumer request and without charge, once in any twelve month period, in compliance with section 612(a) of the FCRA, 15 U.S.C. 1681j(a).

(b) *Associated consumer reporting agency* means a consumer reporting agency that owns or maintains consumer files housed within systems operated by one or more nationwide consumer reporting agencies.

(c) *Consumer report* has the meaning provided in section 603(d) of the FCRA, 15 U.S.C. 1681a(d).

(d) *Consumer reporting agency* has the meaning provided in section 603(f) of the FCRA, 15 U.S.C. 1681a(f).

(e) *Extraordinary request volume* occurs when the number of consumers requesting or attempting to request file disclosures during any twenty-four hour period is more than 175 percent of the rolling ninety-day daily average of consumers requesting or attempting to request file disclosures. For example, if over the previous ninety days an average of one hundred consumers per day requested or attempted to request file disclosures, then extraordinary request volume would be any volume greater than 175 percent of one hundred, *i.e.*, 176 or more requests in a single twenty-four hour period.

(f) *File disclosure* means a disclosure by a consumer reporting agency pursuant to section 609 of the FCRA, 15 U.S.C. 1681g.

(g) *High request volume* occurs when the number of consumers requesting or attempting to request file disclosures during any twenty-four hour period is more than 125 percent of the rolling ninety-day daily average of consumers requesting or attempting to request file disclosures. For example, if over the previous ninety days an average of one hundred consumers per day requested or attempted to request file disclosures, then high request volume would be any volume greater than 125 percent of one hundred, *i.e.*, 126 or more requests in a single twenty-four hour period.

(h) *Nationwide consumer reporting agency* means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis as defined in section 603(p) of the FCRA, 15 U.S.C. 1681a(p).

(i) *Nationwide specialty consumer reporting agency* has the meaning provided in section 603(w) of the FCRA, 15 U.S.C. 1681a(w).

(j) *Request method* means the method by which a consumer chooses to communicate a request for an annual file disclosure.

§§ 1022.131–1022.135 [Reserved]

§ 1022.136 Centralized source for requesting annual file disclosures from nationwide consumer reporting agencies.

(a) *Purpose.* The purpose of the centralized source is to enable consumers to make a single request to obtain annual file disclosures from all nationwide consumer reporting agencies, as required under section 612(a) of the FCRA, 15 U.S.C. 1681j(a).

(b) *Establishment and operation.* All nationwide consumer reporting agencies shall jointly design, fund, implement, maintain, and operate a centralized source for the purpose described in Paragraph (a) of this section. The centralized source required by this part shall:

(1) Enable consumers to request annual file disclosures by any of the following request methods, at the consumers' option:

(i) A single, dedicated Web site,

(ii) A single, dedicated toll-free telephone number; and

(iii) Mail directed to a single address;

(2) Be designed, funded, implemented, maintained, and operated in a manner that:

(i) Has adequate capacity to accept requests from the reasonably anticipated volume of consumers contacting the centralized source through each request method, as determined in accordance with Paragraph (c) of this section;

(ii) Collects only as much personally identifiable information as is reasonably necessary to properly identify the consumer as required under the FCRA, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, and to process the transaction(s) requested by the consumer;

(iii) Provides information through the centralized source Web site and telephone number regarding how to make a request by all request methods required under paragraph (b)(1) of this section; and

(iv) Provides clear and easily understandable information and instructions to consumers, including, but not necessarily limited to:

(A) Providing information on the progress of the consumer's request while the consumer is engaged in the process of requesting a file disclosure;

(B) For a Web site request method, providing access to a ''help'' or ''frequently asked questions'' screen, which includes specific information that consumers might reasonably need to request file disclosures, the answers to questions that consumers might reasonably ask, and instructions whereby a consumer may file a complaint with the centralized source and with the Bureau;

(C) In the event that a consumer requesting a file disclosure through the centralized source cannot be properly identified in accordance with the FCRA, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, providing a statement that the consumers' identity cannot be verified; and directions on how to complete the request, including what additional information or documentation will be required to complete the request, and how to submit such information; and

(D) A statement indicating that the consumer has reached the Web site or telephone number for ordering free annual credit reports as required by Federal law; and

(3) Make available to consumers a standardized form established jointly by the nationwide consumer reporting agencies, which consumers may use to make a request for an annual file disclosure, either by mail or on the Web site required under paragraph (b)(1) of this section, from the centralized source required by this part. The form provided at appendix L to part 1022, may be used to comply with this section.

(c) *Requirement to anticipate.* The nationwide consumer reporting agencies shall implement reasonable procedures to anticipate, and to respond to, the volume of consumers who will contact the centralized source through each request method, to request, or attempt to request, a file disclosure, including developing and implementing contingency plans to address circumstances that are reasonably likely to occur and that may materially and adversely impact the operation of the nationwide consumer reporting agency, a centralized source request method, or the centralized source.

(1) The contingency plans required by this section shall include reasonable measures to minimize the impact of such circumstances on the operation of the centralized source and on consumers contacting, or attempting to contact, the centralized source.

(i) Such reasonable measures to minimize impact shall include, but are not necessarily limited to:

(A) The extent reasonably practicable under the circumstances, providing information to consumers on how to use another available request method;

(B) The extent reasonably practicable under the circumstances, communicating, to a consumer who attempts but is unable to make a request, the fact that a condition exists that has precluded the centralized source from accepting all requests, and the period of time after which the centralized source is reasonably anticipated to be able to accept the consumers' request for an annual file disclosure; and

(C) Taking all reasonable steps to restore the centralized source to normal operating status as quickly as reasonably practicable under the circumstances.

(ii) Reasonable measures to minimize impact may also include, as appropriate, collecting request information but declining to accept the request for processing until a reasonable later time, provided that the consumer is clearly and prominently informed, to the extent reasonably practicable under the circumstances, of when the request will be accepted for processing.

(2) A nationwide consumer reporting agency shall not be deemed in violation of paragraph (b)(2)(i) of this section if a centralized source request method is unavailable to accept requests for a reasonable period of time for purposes of conducting maintenance on the request method, provided that the other required request methods remain available during such time.

(d) *Disclosures required.* If a nationwide consumer reporting agency has the ability to provide a consumer report to a third party relating to a consumer, regardless of whether the consumer report is owned by that nationwide consumer reporting agency or by an associated consumer reporting agency, that nationwide consumer reporting agency shall, upon proper identification in compliance with section 610(a)(1) of the FCRA, 15 U.S.C. 1681h(a)(1), provide an annual file disclosure to such consumer if the consumer makes a request through the centralized source.

(e) *High request volume and extraordinary request volume*—(1) *High request volume.* Provided that a nationwide consumer reporting agency has implemented reasonable procedures developed in accordance with Paragraph (c) of this section, entitled ''requirement to anticipate,'' the nationwide consumer reporting agency shall not be deemed in violation of Paragraph (b)(2)(i) of this section for any period of time in which a centralized source request method, the centralized source, or the nationwide consumer reporting agency experiences high request volume, if the nationwide consumer reporting agency:

(i) Collects all consumer request information and delays accepting the request for processing until a reasonable later time; and

(ii) Clearly and prominently informs the consumer of when the request will be accepted for processing.

(2) *Extraordinary request volume.* Provided that the nationwide consumer reporting agency has implemented reasonable procedures developed in compliance with Paragraph (c) of this section, entitled ''requirement to anticipate,'' the nationwide consumer reporting agency shall not be deemed in violation of Paragraph (b)(2)(i) of this section for any period of time during which a particular centralized source request method, the centralized source, or the nationwide consumer reporting agency experiences extraordinary request volume.

(f) *Information use and disclosure.* Any personally identifiable information collected from consumers as a result of a request for annual file disclosure, or other disclosure required by the FCRA, made through the centralized source, may be used or disclosed by the centralized source or a nationwide consumer reporting agency only:

(1) To provide the annual file disclosure or other disclosure required under the FCRA requested by the consumer;

(2) To process a transaction requested by the consumer at the same time as a request for annual file disclosure or other disclosure;

(3) To comply with applicable legal requirements, including those imposed by the FCRA and this part; and

(4) To update personally identifiable information already maintained by the nationwide consumer reporting agency for the purpose of providing consumer reports, provided that the nationwide consumer reporting agency uses and discloses the updated personally identifiable information subject to the same restrictions that would apply, under any applicable provision of law or regulation, to the information updated or replaced.

(g) *Communications provided through centralized source.* (1) Any advertising or marketing for products or services, any communications or instructions that advertise or market any products or services, or any request to establish an account through the centralized source must be delayed until after the consumer has obtained his or her annual file disclosure.

(i) In the case of requests made by mail or telephone, the consumer ''has obtained his or her annual file disclosure'' when the file disclosure is mailed, and the nationwide consumer reporting agency may include advertising for other products or services with the file disclosure.

(ii) In the case of requests made through the centralized source Web site, the consumer ''has obtained his or her annual file disclosure'' when the file disclosure is delivered to the consumer through the Internet, and the nationwide consumer reporting agency may include advertising for other products or services with the file disclosure.

(2) Any communications, instructions, or permitted advertising or marketing shall not interfere with, detract from, contradict, or otherwise undermine the purpose of the centralized source stated in Paragraph (a) of this section.

(3) Examples of interfering, detracting, inconsistent, and/or undermining communications include:

(i) Centralized source materials that represent, expressly or by implication, that a consumer must purchase a paid product or service in order to receive or to understand the annual file disclosure;

(ii) Centralized source materials that represent, expressly or by implication, that annual file disclosures are not free, or that obtaining an annual file disclosure will have a negative impact on the consumers' credit standing; and

(iii) Centralized source materials that falsely represent, expressly or by implication, that a product or service offered ancillary to receipt of a file disclosure, such as a credit score or credit monitoring service, is free, or fail to clearly and prominently disclose that consumers must cancel a service, advertised as free for an initial period of time, to avoid being charged, if such is the case.

(h) *Other practices prohibited through the centralized source.* The centralized source shall not:

(1) Contain hyperlinks to commercial or proprietary Web sites until after the consumer has obtained his or her annual file disclosure, except for technical transfers to a Web page on which consumers can request their free annual file disclosure; provided, however, that no hyperlinks to commercial Web sites shall appear on the initial page of the centralized source.

(2) Require consumers to set up an account in connection with obtaining an annual file disclosure; or

(3) Ask or require consumers to agree to terms or conditions in connection with obtaining an annual file disclosure.

§ 1022.137 Streamlined process for requesting annual file disclosures from nationwide specialty consumer reporting agencies.

(a) *Streamlined process requirements.* Any nationwide specialty consumer reporting agency shall have a streamlined process for accepting and processing consumer requests for annual file disclosures. The streamlined process required by this part shall:

(1) Enable consumers to request annual file disclosures by a toll-free telephone number that:

(i) Provides clear and prominent instructions for requesting disclosures by any additional available request methods, that do not interfere with, detract from, contradict, or otherwise undermine the ability of consumers to obtain annual file disclosures through the streamlined process required by this part;

(ii) Is published, in conjunction with all other published numbers for the nationwide specialty consumer reporting agency, in any telephone directory in which any telephone number for the nationwide specialty consumer reporting agency is published; and(iii) Is clearly and prominently posted on any Web site owned or maintained by the nationwide specialty consumer reporting agency that is related to consumer reporting, along with instructions for requesting disclosures by any additional available request methods; and

(2) Be designed, funded, implemented, maintained, and operated in a manner that:

(i) Has adequate capacity to accept requests from the reasonably anticipated volume of consumers contacting the nationwide specialty consumer reporting agency through the streamlined process, as determined in compliance with Paragraph (b) of this section;

(ii) Collects only as much personal information as is reasonably necessary to properly identify the consumer as required under the FCRA, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations; and

(iii) Provides clear and easily understandable information and instructions to consumers, including but not necessarily limited to:

(A) Providing information on the status of the consumers request while the consumer is in the process of making a request;

(B) For a Web site request method, providing access to a ''help'' or ''frequently asked questions'' screen, which includes more specific information that consumers might reasonably need to order their file disclosure, the answers to questions that consumers might reasonably ask, and instructions whereby a consumer may file a complaint with the nationwide specialty consumer reporting agency and with the Bureau; and

(C) In the event that a consumer requesting a file disclosure cannot be properly identified in accordance with the FCRA, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, providing a statement that the consumers identity cannot be verified; and directions on how to complete the request, including what additional information or documentation will be required to complete the request, and how to submit such information.

(b) *Requirement to anticipate.* A nationwide specialty consumer reporting agency shall implement reasonable procedures to anticipate, and respond to, the volume of consumers who will contact the nationwide specialty consumer reporting agency through the streamlined process to request, or attempt to request, file disclosures, including developing and implementing contingency plans to address circumstances that are reasonably likely to occur and that may materially and adversely impact the operation of the nationwide specialty consumer reporting agency, a request method, or the streamlined process.

(1) The contingency plans required by this section shall include reasonable measures to minimize the impact of such circumstances on the operation of the streamlined process and on consumers contacting, or attempting to contact, the nationwide specialty consumer reporting agency through the streamlined process.

(i) Such reasonable measures to minimize impact shall include, but are not necessarily limited to:

(A) To the extent reasonably practicable under the circumstances, providing information to consumers on how to use another available request method;

(B) To the extent reasonably practicable under the circumstances, communicating, to a consumer who attempts but is unable to make a request, the fact that a condition exists that has precluded the nationwide specialty consumer reporting agency from accepting all requests, and the period of time after which the agency is reasonably anticipated to be able to accept the consumers request for an annual file disclosure; and

(C) Taking all reasonable steps to restore the streamlined process to normal operating status as quickly as reasonably practicable under the circumstances.

(ii) Measures to minimize impact may also include, as appropriate, collecting request information but declining to accept the request for processing

until a reasonable later time, provided that the consumer is clearly and prominently informed, to the extent reasonably practicable under the circumstances, of when the request will be accepted for processing.

(2) A nationwide specialty consumer reporting agency shall not be deemed in violation of paragraph (a)(2)(i) of this section if the toll-free telephone number required by this part is unavailable to accept requests for a reasonable period of time for purposes of conducting maintenance on the request method, provided that the nationwide specialty consumer reporting agency makes other request methods available to consumers during such time.

(c) *High request volume and extraordinary request volume*—(1) *High request volume.* Provided that the nationwide specialty consumer reporting agency has implemented reasonable procedures developed in accordance with Paragraph (b) of this section, entitled ''requirement to anticipate,'' a nationwide specialty consumer reporting agency shall not be deemed in violation of Paragraph (a)(2)(i) of this section for any period of time during which a streamlined process request method or the nationwide specialty consumer reporting agency experiences high request volume, if the nationwide specialty consumer reporting agency:

(i) Collects all consumer request information and delays accepting the request for processing until a reasonable later time; and

(ii) Clearly and prominently informs the consumer of when the request will be accepted for processing.

(2) *Extraordinary request volume.* Provided that the nationwide specialty consumer reporting agency has implemented reasonable procedures developed in accordance with Paragraph (b) of this section, entitled ''requirement to anticipate,'' a nationwide specialty consumer reporting agency shall not be deemed in violation of Paragraph (a)(2)(i) of this section for any period of time during which a streamlined process request method or the nationwide specialty consumer reporting agency experiences extraordinary request volume.

(d) *Information use and disclosure.* Any personally identifiable information collected from consumers as a result of a request for annual file disclosure, or other disclosure required by the FCRA, made through the streamlined process, may be used or disclosed by the nationwide specialty consumer reporting agency only:

(1) To provide the annual file disclosure or other disclosure required under the FCRA requested by the consumer;

(2) To process a transaction requested by the consumer at the same time as a request for annual file disclosure or other disclosure;

(3) To comply with applicable legal requirements, including those imposed by the FCRA and this part; and

(4) To update personally identifiable information already maintained by the nationwide specialty consumer reporting agency for the purpose of providing consumer reports, provided that the nationwide specialty consumer reporting agency uses and discloses the updated personally identifiable information subject to the same restrictions that would apply, under any applicable provision of law or regulation, to the information updated or replaced.

(e) *Requirement to accept or redirect requests.* If a consumer requests an annual file disclosure through a method other than the streamlined process established by the nationwide specialty consumer reporting agency in compliance with this part, a nationwide specialty consumer reporting agency shall:

(1) Accept the consumers request; or

(2) Instruct the consumer how to make the request using the streamlined process required by this part.

§ 1022.138 Prevention of deceptive marketing of free credit reports.

(a) For purposes of this section:

(1) *AnnualCreditReport.com and (877) 322–8228* means the Uniform Resource Locator address ''AnnualCreditReport.com'' and toll-free telephone number, (877) 322–8228. These are the locator address and toll-free telephone number currently used by the centralized source. If the locator address or toll-free telephone number changes in the future, the new address or telephone number shall be substituted within a reasonable time.

(2) *Free credit report* means a file disclosure prepared by or obtained from, directly or indirectly, a nationwide consumer reporting agency (as defined in section 603(p) of the FCRA), that is represented, either expressly or impliedly, to be available to the consumer at no cost if the consumer purchases a product or service, or agrees to purchase a product or service subject to cancellation.

(3) *General requirements for disclosures.* The disclosures covered by Paragraph (b) of this section shall contain only the prescribed content and comply with the following requirements:

(i) All disclosures shall be prominent;

(ii) All disclosures shall be made in the same language as that principally used in the advertisement;

(iii) Visual disclosures shall be easily readable; in a high degree of contrast from the immediate background on which it appears; in a format so that the disclosure is distinct from other text, such as inside a border; in a distinct type style, such as bold; and parallel to the base of the advertisement or screen;

(iv) Audio disclosures shall be delivered in a slow and deliberate manner and in a reasonably understandable volume and pitch;

(v) Program-length television, radio, or Internet-hosted multimedia advertisement disclosures shall be made at the beginning, near the middle, and at the end of the advertisement; and

(vi) Nothing contrary to, inconsistent with, or that undermines the required disclosures shall be used in any advertisement in any medium, nor shall any audio, visual, or print technique be used that is likely to detract significantly from the communication of any disclosure.

(b) *Medium-specific disclosures.* All offers of free credit reports shall prominently include the disclosures required by this section.

(1) *Television advertisements.* (i) All advertisements for free credit reports broadcast on television shall include the following disclosure in close proximity to the first mention of a free credit report: ''This is not the free credit report provided for by Federal law.''

(ii) The disclosure shall appear at the same time in the audio and visual part of the advertisement. The visual disclosure shall be at least four percent of the vertical picture height and appear for a minimum of four seconds.

(2) *Radio advertisements.* All advertisements for free credit reports broadcast on radio shall include the following disclosure in close proximity to the first mention of a free credit report: ''This is not the free credit report provided for by Federal law.''

(3) *Print advertisements.* All advertisements for free credit reports in print shall include the following disclosure in the form specified below and in close proximity to the first mention of a free credit report. The first line of the disclosure shall be centered and contain only the following language: ''THIS NOTICE IS REQUIRED BY LAW.'' Immediately below the first line of the disclosure the following language shall appear: ''You have the right to a free credit report from *AnnualCreditReport.com* or (877) 322–8228, the ONLY authorized source under Federal law.'' Each letter of the disclosure text shall be, at minimum, one-half the size of the largest character used in the advertisement.

(4) *Web sites.* Any Web site offering free credit reports must display the disclosure set forth in paragraphs (b)(4)(i), (ii), and (v) of this section on each page that mentions a free credit report and on each page of the ordering process. This disclosure shall be visible across the top of each page where the disclosure is required to appear; shall appear inside a box; and shall appear in the form specified below:

(i) The first element of the disclosure shall be a header that is centered and shall consist of the following text: ''THIS NOTICE IS REQUIRED BY LAW. Read more at *consumerfinance.gov/learnmore*.'' Each letter of the header shall be one-half the size of the largest character of the disclosure text required by paragraph (b)(4)(ii) of this section. The reference to *consumerfinance.gov/learnmore* shall be an operational hyperlink, underlined, and in a color that is a high degree of contrast from the color of the other disclosure text and background color of the box. Until January 1, 2013,

''www.ftc.gov'' and the corresponding hyperlink may be substituted for ''consumerfinance.gov/learmore'' and the corresponding hyperlink;

(ii) The second element of the disclosure shall appear below the header required by paragraph (b)(4)(i) and shall consist of the following text: ''You have the right to a free credit report from *AnnualCreditReport.com* or (877) 322–8228, the ONLY authorized source under Federal law.'' The reference to *AnnualCreditReport.com* shall be an operational hyperlink to the centralized source, underlined, and in the same color as the hyperlink to *consumerfinance.gov/learnmore* required in § 1022.138(b)(4)(i);

(iii) The color of the text required by § 1022.138(b)(4)(i) and (ii) shall be in a high degree of contrast with the background color of the box;

(iv) The background of the box shall be a solid color in a high degree of contrast from the background of the page and the color shall not appear elsewhere on the page;

(v) The third element of the disclosure shall appear below the text required by paragraph (b)(4)(ii) and shall be an operational hyperlink to *AnnualCreditReport.com* that appears as a centered button containing the following language: ''Take me to the authorized source.'' The background of this button shall be the same color as the hyperlinks required by § 1022.138(b)(4)(i) and (ii) and the text shall be in a high degree of contrast to the background of the button;

(vi) Each character of the text required in paragraph (b)(4)(ii) and (v) of this section shall be, at minimum, the same size as the largest character on the page, including characters in an image or graphic banner;

(vii) Each character of the disclosure shall be displayed as plain text and in a sans serif font, such as Arial; and

(viii) The space between each element of the disclosure required in paragraph (b)(i), (ii), and (v) of this section shall be, at minimum, the same size as the largest character on the page, including characters in an image or graphic banner. The space between the boundaries of the box and the text or button required in § 1022.138(b)(i), (ii), and (v) shall be, at minimum, twice the size of the vertical height of the largest character on the page, including characters in an image or graphic banner.

(5) *Internet-hosted multimedia advertising.* All advertisements for free credit reports disseminated through Internet-hosted multimedia in both audio and visual formats shall include the following disclosure in the form specified below and in close proximity to the first mention of a free credit report. The first line of the disclosure shall be centered and contain only the following language: ''THIS NOTICE IS REQUIRED BY LAW.'' Immediately below the first line of the disclosure the following language shall appear: ''You have the right to a free credit report from *AnnualCreditReport.com* or (877) 322–8228, the ONLY authorized source under Federal law.'' The disclosure shall appear at the same time in the audio and visual part of the advertisement. If the advertisement contains characters, the visual disclosure shall be, at minimum, the same size as the largest character on the advertisement.

(6) *Telephone requests.* When consumers call any telephone number, other than the number of the centralized source, appearing in an advertisement that represents free credit reports are available at the number, consumers must receive the following audio disclosure at the first mention of a free credit report: ''The following notice is required by law. You have the right to a free credit report from AnnualCreditReport.com or (877) 322–8228, the only authorized source under Federal law.''

(7) *Telemarketing solicitations.* When telemarketing sales calls are made that include offers of free credit reports, the call must include at the first mention of a free credit report the following disclosure: ''The following notice is required by law. You have the right to a free credit report from AnnualCreditReport.com or (877) 322–8228, the only authorized source under Federal law.''

§ 1022.139 [Reserved]

Subpart O—Miscellaneous Duties of Consumer Reporting Agencies

§ 1022.140 Prohibition against circumventing or evading treatment as a consumer reporting agency

(a) A consumer reporting agency shall not circumvent or evade treatment as a ''consumer reporting agency that compiles and maintains files on consumers on a nationwide basis,'' as defined under section 603(p) of the FCRA, 15 U.S.C. 1681a(p), by any means, including, but not limited to:

(1) Corporate organization, reorganization, structure, or restructuring, including merger, acquisition, dissolution, divestiture, or asset sale of a consumer reporting agency; or

(2) Maintaining or merging public record and credit account information in a manner that is substantially equivalent to that described in Paragraphs (1) and (2) of section 603(p) of the FCRA, 15 U.S.C. 1681a(p).

(b) *Examples:*

(1) *Circumvention through reorganization by data type.* XYZ Inc. is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. It restructures its operations so that public record information is assembled and maintained only by its corporate affiliate, ABC Inc. XYZ continues operating as a consumer reporting agency but ceases to comply with the FCRA obligations of a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, asserting that it no longer meets the definition found in FCRA section 603(p), because it no longer maintains public record information. XYZ's conduct is a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, and thus violates this section.

(2) *Circumvention through reorganization by regional operations.* PDQ Inc. is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. It restructures its operations so that corporate affiliates separately assemble and maintain all information on consumers residing in each state. PDQ continues to operate as a consumer reporting agency but ceases to comply with the FCRA obligations of a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, asserting that it no longer meets the definition found in FCRA section 603(p), because it no longer operates on a nationwide basis. PDQ's conduct is a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, and thus violates this section.

(3) *Circumvention by a newly formed entity.* Smith Co. is a new entrant in the marketplace for consumer reports that bear on a consumer's credit worthiness, standing and capacity. Smith Co. organizes itself into two affiliated companies: Smith Credit Co. and Smith Public Records Co. Smith Credit Co. assembles and maintains credit account information from persons who furnish that information regularly and in the ordinary course of business on consumers residing nationwide. Smith Public Records Co. assembles and maintains public record information on consumers nationwide. Neither Smith Co. nor its affiliated organizations comply with FCRA obligations of consumer reporting agencies that compile and maintain files on consumers on a nationwide basis. Smith Co.'s conduct is a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, and thus violates this section.

(4) *Bona fide, arm's length transaction with unaffiliated party.* Foster Ltd. is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. Foster Ltd. sells its public record information business to an unaffiliated company in a bona fide, arm's length transaction. Foster Ltd. ceases to assemble, evaluate and maintain public record information on consumers residing nationwide, and ceases to offer reports containing public record information. Foster Ltd.'s conduct is not a circumvention or evasion of treatment as a consumer reporting agency that compiles and

maintains files on consumers on a nationwide basis. Foster Ltd.'s conduct does not violate this part.

(c) *Limitation on applicability.* Any person who is otherwise in violation of paragraph (a) of this section shall be deemed to be in compliance with this part if such person is in compliance with all obligations imposed upon consumer reporting agencies that compile and maintain files on consumers on a nationwide basis under the FCRA, 15 U.S.C. 1681 *et seq.*

APPENDIX A TO PART 1022 [RESERVED]

APPENDIX B TO PART 1022—MODEL NOTICES OF FURNISHING NEGATIVE INFORMATION

a. Although use of the model notices is not required, a financial institution that is subject to section 623(a)(7) of the FCRA shall be deemed to be in compliance with the notice requirement in section 623(a)(7) of the FCRA if the institution properly uses the model notices in this appendix (as applicable).

b. A financial institution may use Model Notice B–1 if the institution provides the notice prior to furnishing negative information to a nationwide consumer reporting agency.

c. A financial institution may use Model Notice B–2 if the institution provides the notice after furnishing negative information to a nationwide consumer reporting agency.

d. Financial institutions may make certain changes to the language or format of the model notices without losing the safe harbor from liability provided by the model notices. The changes to the model notices may not be so extensive as to affect the substance, clarity, or meaningful sequence of the language in the model notices. Financial institutions making such extensive revisions will lose the safe harbor from liability that this appendix provides. Acceptable changes include, for example,

1. Rearranging the order of the references to ''late payment(s),'' or ''missed payment(s).''

2. Pluralizing the terms ''credit bureau,'' ''credit report,'' and ''account.''

3. Specifying the particular type of account on which information may be furnished, such as ''credit card account.''

4. Rearranging in Model Notice B–1 the phrases ''information about your account'' and ''to credit bureaus'' such that it would read ''We may report to credit bureaus information about your account.''

MODEL NOTICE B–1

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

MODEL NOTICE B–2

We have told a credit bureau about a late payment, missed payment or other default on your account. This information may be reflected in your credit report.

APPENDIX C TO PART 1022—MODEL FORMS FOR OPT-OUT NOTICES

a. Although use of the model forms is not required, use of the model forms in this appendix (as applicable) complies with the requirement in section 624 of the Act for clear, conspicuous, and concise notices.

b. Certain changes may be made to the language or format of the model forms without losing the protection from liability afforded by use of the model forms. These changes may not be so extensive as to affect the substance, clarity, or meaningful sequence of the language in the model forms. Persons making such extensive revisions will lose the safe harbor that this appendix provides. Acceptable changes include, for example:

1. Rearranging the order of the references to ''your income,'' ''your account history,'' and ''your credit score.''

2. Substituting other types of information for ''income,'' ''account history,'' or ''credit score'' for accuracy, such as ''payment history,'' ''credit history,'' ''payoff status,'' or ''claims history.''

3. Substituting a clearer and more accurate description of the affiliates providing or covered by the notice for phrases such as ''the [ABC] group of companies,'' including without limitation a statement that the entity providing the notice recently purchased the consumer's account.

4. Substituting other types of affiliates covered by the notice for ''credit card,'' ''insurance,'' or ''securities'' affiliates.

5. Omitting items that are not accurate or applicable. For example, if a person does not limit the duration of the opt-out period, the notice may omit information about the renewal notice.

6. Adding a statement informing consumers how much time they have to opt out before shared eligibility information may be used to make solicitations to them.

7. Adding a statement that the consumer may exercise the right to opt out at any time.

8. Adding the following statement, if accurate: ''If you previously opted out, you do not need to do so again.''

9. Providing a place on the form for the consumer to fill in identifying information, such as his or her name and address.

10. Adding disclosures regarding the treatment of opt-outs by joint consumers to comply with §1022.23(a)(2) of this part.

C–1 Model Form for Initial Opt-out Notice (Single-Affiliate Notice)
C–2 Model Form for Initial Opt-out Notice (Joint Notice)
C–3 Model Form for Renewal Notice (Single-Affiliate Notice)
C–4 Model Form for Renewal Notice (Joint Notice)
C–5 Model Form for Voluntary ''No Marketing'' Notice

C–1—MODEL FORM FOR INITIAL OPT-OUT NOTICE (SINGLE-AFFILIATE NOTICE)—[YOUR CHOICE TO LIMIT MARKETING]/[MARKETING OPT-OUT]

• [Name of Affiliate] is providing this notice.

• [Optional: Federal law gives you the right to limit some but not all marketing from our affiliates. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from our affiliates.]

• You may limit our affiliates in the [ABC] group of companies, such as our [credit card, insurance, and securities] affiliates, from marketing their products or services to you based on your personal information that we collect and share with them. This information includes your [income], your [account history with us], and your [credit score].

• Your choice to limit marketing offers from our affiliates will apply [until you tell us to change your choice]/[for x years from when you tell us your choice]/[for at least 5 years from when you tell us your choice]. [Include if the opt-out period expires.] Once that period expires, you will receive a renewal notice that will allow you to continue to limit marketing offers from our affiliates for [another x years]/[at least another 5 years].

• [Include, if applicable, in a subsequent notice, including an annual notice, for consumers who may have previously opted out.] If you have already made a choice to limit marketing offers from our affiliates, you do not need to act again until you receive the renewal notice.

To limit marketing offers, contact us [include all that apply]:

• By telephone: 1–(877) ###–####
• On the Web: *www.—.com*
• By mail: Check the box and complete the form below, and send the form to:

[Company name]
[Company address]

—Do not allow your affiliates to use my personal information to market to me.

C–2—MODEL FORM FOR INITIAL OPT-OUT NOTICE (JOINT NOTICE)—[YOUR CHOICE TO LIMIT MARKETING]/[MARKETING OPT-OUT]

• The [ABC group of companies] is providing this notice.

• [Optional: Federal law gives you the right to limit some but not all marketing from the [ABC] companies. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from the [ABC] companies.]

• You may limit the [ABC] companies, such as the [ABC credit card, insurance, and securities] affiliates, from marketing their products or services to you based on your personal information that they receive from other [ABC] companies. This information includes your [income], your [account history], and your [credit score].

• Your choice to limit marketing offers from the [ABC] companies will apply [until you tell us to change your choice]/[for x years from when you tell us your choice]/[for at least 5 years from when you tell us your choice]. [Include if the opt-out period expires.] Once that period expires, you will receive a renewal notice that will allow you to continue to limit marketing offers from the [ABC] companies for [another x years]/[at least another 5 years].

• [Include, if applicable, in a subsequent notice, including an annual notice, for consumers who may have previously opted out.] If you have already made a choice to limit marketing offers from the [ABC] companies, you do not need to act again until you receive the renewal notice.

To limit marketing offers, contact us [include all that apply]:

• By telephone: 1–(877) ###–####
• On the Web: *www.—.com*
• By mail: Check the box and complete the form below, and send the form to:

[Company name]
[Company address]

—Do not allow any company [in the ABC group of companies] to use my personal information to market to me.

C–3—MODEL FORM FOR RENEWAL NOTICE (SINGLE-AFFILIATE NOTICE)—[RENEWING YOUR CHOICE TO LIMIT MARKETING]/[RENEWING YOUR MARKETING OPT-OUT]

• [Name of Affiliate] is providing this notice.

• [Optional: Federal law gives you the right to limit some but not all marketing from our affiliates. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from our affiliates.]

• You previously chose to limit our affiliates in the [ABC] group of companies, such as our [credit card, insurance, and securities] affiliates, from marketing their products or services to you based on your personal information that we share with them. This information includes your [income], your [account history with us], and your [credit score].

• Your choice has expired or is about to expire.

To renew your choice to limit marketing for [x] more years, contact us [include all that apply]:

• By telephone: 1–(877) ###–####
• On the Web: *www.—.com*
• By mail: Check the box and complete the form below, and send the form to:
[Company name]
[Company address]

—Renew my choice to limit marketing for [x] more years.

C–4—MODEL FORM FOR RENEWAL NOTICE (JOINT NOTICE)—[RENEWING YOUR CHOICE TO LIMIT MARKETING]/[RENEWING YOUR MARKETING OPT-OUT]

• The [ABC group of companies] is providing this notice.
• [Optional: Federal law gives you the right to limit some but not all marketing from the [ABC] companies. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from the [ABC] companies.]
• You previously chose to limit the [ABC] companies, such as the [ABC credit card, insurance, and securities] affiliates, from marketing their products or services to you based on your personal information that they receive from other ABC companies. This information includes your [income], your [account history], and your [credit score].
• Your choice has expired or is about to expire.

To renew your choice to limit marketing for [x] more years, contact us [include all that apply]:

• By telephone: 1–(877) ###–####
• On the Web: *www.—.com*
• By mail: Check the box and complete the form below, and send the form to:
[Company name]
[Company address]

—Renew my choice to limit marketing for [x] more years.

C–5—MODEL FORM FOR VOLUNTARY ''NO MARKETING'' NOTICE—[YOUR CHOICE TO STOP MARKETING]

• [Name of Affiliate] is providing this notice.
• You may choose to stop all marketing from us and our affiliates.
• [Your choice to stop marketing from us and our affiliates will apply until you tell us to change your choice.]

To stop all marketing, contact us [include all that apply]:

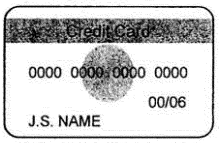
• By telephone: 1 (877) ###–####
• On the Web: *www.—.com*
• By mail: Check the box and complete the form below, and send the form to:
[Company name]
[Company address]

—Do not market to me.

APPENDIX D TO PART 1022—MODEL FORMS FOR FIRM OFFERS OF CREDIT OR INSURANCE

In order to comply with §1022.54, the following model notices may be used:

(a) *English language model notice*—(1) *Short notice.*



Here's a Line About Credit

J.S. Name
12345 Friendly Street
City, ST 12345

PFOR 00 MON
FIXED ABC

Dear Ms. Name,

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

BALANCE TR
FOR 00 MONTHS

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

NO MONTHS FEE

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way peop. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit a smart kind of credit card.

INTERNET SECURITY
SECURITY

So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way people. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card.

ONLINE FRAUD PRO
GUARANTEE

We saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology.

YOUR BALANCE
PAY YOUR BILL

Sincerely,

John W. Doe
President, Credit Card Company

FEE-FREE REWARDS
PROGRAM

You can choose to stop receiving "prescreened" offers of [credit or insurance] from this and other companies by calling toll-free [toll-free number]. See PRESCREEN & OPT-OUT NOTICE on other side [or other location] for more information about prescreened offers.

(2) *Long notice.*

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

HEADER

Percent Rate for	Other ABCs	Variable info material	Grace or repases Are placed here	Computing the balast	Annual Fee	Usual Place Finance Charge
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Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way.

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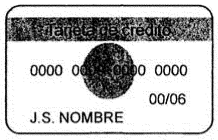
TERMS AND CONDITIONS

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way.



Aquí están líneas crédito

J.S. Nombre
1234 Calle Amistosa
Ciudad, ST 12345

Estimada Señora Nombre:

En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

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Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

Sinceramente,

John W. Doe
Presidente, Compañía

PFOR 00 MON FIJO ABC

TRANSFERENCIA DE BALANCE POR MESES

SIN CUOTA MENSUAL

PAGO ELECTRÓNICO SEGURO

PROTECCIÓN CONTRA FRAUDE EN LÍNEA GARANTIZADO

SU BALANCE PAGA SU CUENTA

PROGRAMA DE RECOMPENSAS SIN CUENTA

Usted puede elegir no recibir más "ofertas de [crédito o seguro] pre-investigadas" de esta y otras compañías llamando sin cargos al [número sin cargo]. Ver la NOTIFICACIÓN DE PRE-INVESTIGACIÓN Y EXCLUSIÓN VOLUNTARIA al otro lado de esta página [o en otro lugar] para más información sobre ofertas pre-investigadas.

(2) *Long notice.*

En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente.

AQUÍ ESTÁN

Protección Contra Fraude	Programa de Recompensas	Su Balance Paga	Sin Cuota Mensual	Protección Contra Fraude	Recompensas Sin Cuenta	Sin Cuota Mensual
En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.	Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.	En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la gente hace las cosas. Así que cremos.	Así que creamos una tarjeta de crédito inteligente.	En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.	Así que cremos.	Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

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TERMINOS Y CONDICIONA

En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. En el siglo pasado vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente, vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

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NOTIFICACIÓN DE PRE-INVESTIGACIÓN Y EXCLUSIÓN VOLUNTARIA: Esta oferta de [crédito o seguro] está basada en información contenida en su informe de crédito que indica que usted cumple con ciertos criterios [incluyendo la condición de tener propiedades aceptables como colateral]. Si usted no cumple con nuestros criterios, esta oferta no está garantizada. Si usted no desea recibir ofertas de [crédito o seguro] pre-investigadas de ésta y otras compañías, llame a las agencias de información del consumidor [o nombre de la agencia de información del consumidor] sin cargos, [número sin cargo]; o escriba a: [nombre de la agencia de información del consumidor y dirección de correo].

En el siglo pasado vimos como: la tecnología estaba cambiando la manera en que la gente hace las cosas. Así que creamos una tarjeta de crédito inteligente. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas. Vimos como la tecnología estaba cambiando la manera en que la gente hace las cosas.

APPENDIX E TO PART 1022—INTERAGENCY GUIDELINES CONCERNING THE ACCURACY AND INTEGRITY OF INFORMATION FURNISHED TO CONSUMER REPORTING AGENCIES

The Bureau encourages voluntary furnishing of information to consumer reporting agencies. Section 1022.42 of this part requires each furnisher to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of the information it furnishes to consumer reporting agencies. Under §1022.42(b) of this

part, a furnisher must consider the guidelines set forth below in developing its policies and procedures. In establishing these policies and procedures, a furnisher may include any of its existing policies and procedures that are relevant and appropriate. Section 1022.42(c) requires each furnisher to review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness.

I. Nature, Scope, and Objectives of Policies and Procedures

(a) *Nature and Scope.* Section 1022.42(a) of this part requires that a furnisher's policies and procedures be appropriate to the nature, size, complexity, and scope of the furnisher's activities. In developing its policies and procedures, a furnisher should consider, for example:

(1) The types of business activities in which the furnisher engages;

(2) The nature and frequency of the information the furnisher provides to consumer reporting agencies; and

(3) The technology used by the furnisher to furnish information to consumer reporting agencies.

(b) *Objectives.* A furnisher's policies and procedures should be reasonably designed to promote the following objectives:

(1) To furnish information about accounts or other relationships with a consumer that is accurate, such that the furnished information:

(i) Identifies the appropriate consumer;

(ii) Reflects the terms of and liability for those accounts or other relationships; and

(iii) Reflects the consumer's performance and other conduct with respect to the account or other relationship;

(2) To furnish information about accounts or other relationships with a consumer that has integrity, such that the furnished information:

(i) Is substantiated by the furnisher's records at the time it is furnished;

(ii) Is furnished in a form and manner that is designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; thus, the furnished information should:

(A) Include appropriate identifying information about the consumer to whom it pertains; and

(B) Be furnished in a standardized and clearly understandable form and manner and with a date specifying the time period to which the information pertains; and

(iii) Includes the credit limit, if applicable and in the furnisher's possession;

(3) To conduct reasonable investigations of consumer disputes and take appropriate actions based on the outcome of such investigations; and

(4) To update the information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including, for example:

(i) Any transfer of an account (*e.g.*, by sale or assignment for collection) to a third party; and

(ii) Any cure of the consumer's failure to abide by the terms of the account or other relationship.

II. Establishing and Implementing Policies and Procedures

In establishing and implementing its policies and procedures, a furnisher should:

(a) Identify practices or activities of the furnisher that can compromise the accuracy or integrity of information furnished to consumer reporting agencies, such as by:

(1) Reviewing its existing practices and activities, including the technological means and other methods it uses to furnish information to consumer reporting agencies and the frequency and timing of its furnishing of information;

(2) Reviewing its historical records relating to accuracy or integrity or to disputes; reviewing other information relating to the accuracy or integrity of information provided by the furnisher to consumer reporting agencies; and considering the types of errors, omissions, or other problems that may have affected the accuracy or integrity of information it has furnished about consumers to consumer reporting agencies;

(3) Considering any feedback received from consumer reporting agencies, consumers, or other appropriate parties;

(4) Obtaining feedback from the furnisher's staff; and

(5) Considering the potential impact of the furnisher's policies and procedures on consumers.

(b) Evaluate the effectiveness of existing policies and procedures of the furnisher regarding the accuracy and integrity of information furnished to consumer reporting agencies; consider whether new, additional, or different policies and procedures are necessary; and consider whether implementation of existing policies and procedures should be modified to enhance the accuracy and integrity of information about consumers furnished to consumer reporting agencies.

(c) Evaluate the effectiveness of specific methods (including technological means) the furnisher uses to provide information to consumer reporting agencies; how those methods may affect the accuracy and integrity of the information it provides to consumer reporting agencies; and whether new, additional, or different methods (including technological means) should be used to provide information to consumer reporting agencies to enhance the accuracy and integrity of that information.

III. Specific Components of Policies and Procedures

In developing its policies and procedures, a furnisher should address the following, as appropriate:

(a) Establishing and implementing a system for furnishing information about consumers to consumer reporting agencies that is appropriate to the nature, size, complexity, and scope of the furnisher's business operations.

(b) Using standard data reporting formats and standard procedures for compiling and furnishing data, where feasible, such as the electronic transmission of information about consumers to consumer reporting agencies.

(c) Maintaining records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a direct dispute.

(d) Establishing and implementing appropriate internal controls regarding the accuracy and integrity of information about consumers furnished to consumer reporting agencies, such as by implementing standard procedures and verifying random samples of information provided to consumer reporting agencies.

(e) Training staff that participates in activities related to the furnishing of information about consumers to consumer reporting agencies to implement the policies and procedures.

(f) Providing for appropriate and effective oversight of relevant service providers whose activities may affect the accuracy or integrity of information about consumers furnished to consumer reporting agencies to ensure compliance with the policies and procedures.

(g) Furnishing information about consumers to consumer reporting agencies following mergers, portfolio acquisitions or sales, or other acquisitions or transfers of accounts or other obligations in a manner that prevents re-aging of information, duplicative reporting, or other problems that may similarly affect the accuracy or integrity of the information furnished.

(h) Deleting, updating, and correcting information in the furnisher's records, as appropriate, to avoid furnishing inaccurate information.

(i) Conducting reasonable investigations of disputes.

(j) Designing technological and other means of communication with consumer reporting agencies to prevent duplicative reporting of accounts, erroneous association of information with the wrong consumer(s), and other occurrences that may compromise the accuracy or integrity of information provided to consumer reporting agencies.

(k) Providing consumer reporting agencies with sufficient identifying information in the furnisher's possession about each consumer about whom information is furnished to enable the consumer reporting agency properly to identify the consumer.

(l) Conducting a periodic evaluation of its own practices, consumer reporting agency practices of which the furnisher is aware, investigations of disputed information, corrections of inaccurate information, means of communication, and other factors that may affect the accuracy or integrity of information furnished to consumer reporting agencies.

(m) Complying with applicable requirements under the FCRA and its implementing regulations.

Appendixes F–G to Part 1022 [Reserved]

Appendix H to Part 1022—Model Forms for Risk-Based Pricing and Credit Score Disclosure Exception Notices

1. This appendix contains four model forms for risk-based pricing notices and three model forms for use in connection with the credit score disclosure exceptions. Each of the model forms is designated for use in a particular set of circumstances as indicated by the title of that model form.

2. Model form H–1 is for use in complying with the general risk-based pricing notice requirements in Sec. 1022.72 if a credit score is not used in setting the material terms of credit. Model form H–2 is for risk-based pricing notices given in connection with account review if a credit score is not used in increasing the annual percentage rate. Model form H–3 is for use in connection with the credit score disclosure exception for loans secured by residential real property. Model form H–4 is for use in connection with the credit score disclosure exception for loans that are not secured by residential real property. Model form H–5 is for use in connection with the credit score disclosure exception when no credit score is available for a consumer. Model form H–6 is for use in complying with the general risk-based pricing notice requirements in Sec. 1022.72 if a credit score is used in setting the material terms of credit. Model form H–7 is for risk-based pricing notices given in connection with account review if a credit score is used in increasing the annual percentage rate. All forms contained in this appendix are models; their use is optional.

3. A person may change the forms by rearranging the format or by making technical modifications to the language of the forms, in each case without modifying the substance of the disclosures. Any such rearrangement or modification of the language

of the model forms may not be so extensive as to materially affect the substance, clarity, comprehensibility, or meaningful sequence of the forms. Persons making revisions with that effect will lose the benefit of the safe harbor for appropriate use of appendix H model forms. A person is not required to conduct consumer testing when rearranging the format of the model forms.

a. Acceptable changes include, for example:

i. Corrections or updates to telephone numbers, mailing addresses, or Web site addresses that may change over time.

ii. The addition of graphics or icons, such as the person's corporate logo.

iii. Alteration of the shading or color contained in the model forms.

iv. Use of a different form of graphical presentation to depict the distribution of credit scores.

v. Substitution of the words ''credit'' and ''creditor'' or ''finance'' and ''finance company'' for the terms ''loan'' and ''lender.''

vi. Including pre-printed lists of the sources of consumer reports or consumer reporting agencies in a ''check-the-box'' format.

vii. Including the name of the consumer, transaction identification numbers, a date, and other information that will assist in identifying the transaction to which the form pertains.

viii. Including the name of an agent, such as an auto dealer or other party, when providing the ''Name of the Entity Providing the Notice.''

ix. Until January 1, 2013, substituting ''For more information about credit reports and your rights under Federal law, visit the Federal Reserve Board's Web site at *www.federalreserve.gov*, or the Federal Trade Commission's Web site at *www.ftc.gov*.'' for ''For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau's Web site at *www.consumerfinance.gov/learnmore*.''

b. Unacceptable changes include, for example:

i. Providing model forms on register receipts or interspersed with other disclosures.

ii. Eliminating empty lines and extra spaces between sentences within the same section.

4. If a person uses an appropriate appendix H model form, or modifies a form in accordance with the above instructions, that person shall be deemed to be acting in compliance with the provisions of §1022.73 or §1022.74, as applicable, of this part. It is intended that appropriate use of Model Form H–3 also will comply with the disclosure that may be required under section 609(g) of the FCRA. Optional language in model forms H–6 and H–7 may be used to direct the consumer to the entity (which may be a consumer reporting agency or the creditor itself, for a proprietary score that meets the definition of a credit score) that provided the credit score for any questions about the credit score, along with the entity's contact information. Creditors may use or not use the additional language without losing the safe harbor, since the language is optional.

H–1 Model form for risk-based pricing notice.

H–2 Model form for account review risk-based pricing notice.

H–3 Model form for credit score disclosure exception for credit secured by one to four units of residential real property.

H–4 Model form for credit score disclosure exception for loans not secured by residential real property.

H–5 Model form for credit score disclosure exception for loans where credit score is not available.

H–6 Model form for risk-based pricing notice with credit score information.

H–7 Model form for account review risk-based pricing notice with credit score information.

H-1. Model form for risk-based pricing notice

[Name of Entity Providing the Notice]
Your Credit Report[s] and the Price You Pay for Credit

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We used information from your credit report[s] to set the terms of the credit we are offering you, such as the [Annual Percentage Rate/down payment]. The terms offered to you may be less favorable than the terms offered to consumers who have better credit histories.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] the [consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under Federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert website address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/learnmore.

H-2. Model form for account review risk-based pricing notice

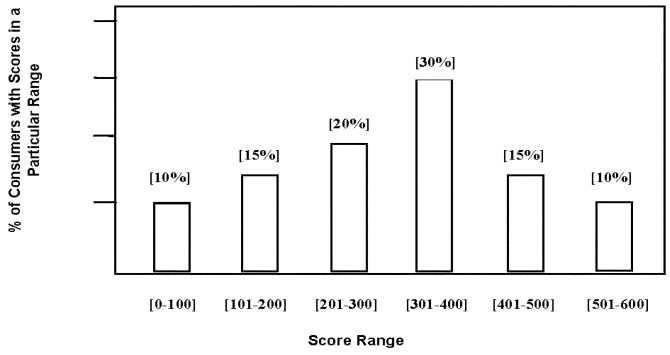
[Name of Entity Providing the Notice]
Your Credit Report[s] and the Pricing of Your Account

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We have used information from your credit report[s] to review the terms of your account with us. Based on our review of your credit report[s], we have increased the annual percentage rate on your account.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] [a consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under Federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert website address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/learnmore.

H-3. Model form for credit score disclosure exception for loans secured by one to four units of residential real property

[Name of Entity Providing the Notice]
Your Credit Score and the Price You Pay for Credit

Your Credit Score	
Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**

Understanding Your Credit Score	
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. Your credit score can change, depending on how your credit history changes.
How we use your credit score	Your credit score can affect whether you can get a loan and how much you will have to pay for that loan.
The range of scores	Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number in the range]**. Generally, the higher your score, the more likely you are to be offered better credit terms.
How your score compares to the scores of other consumers	 **[or]** [Your credit score ranks higher than [X] percent of U.S. consumers.]

Understanding Your Credit Score (continued)	
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert fifth factor, if applicable]**

Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under Federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's website at http://www.ftc.gov/bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281
How can you get more information?	For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/learnmore.

Notice to the Home Loan Applicant

In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

The credit score is a computer generated summary calculated at the time of the request and based on information that a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

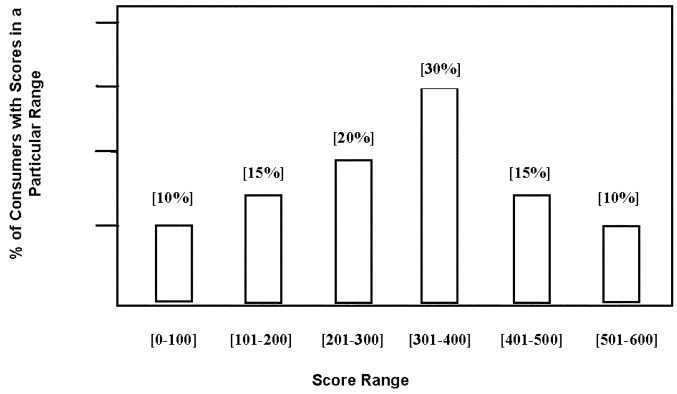
If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

If you have questions concerning the terms of the loan, contact the lender.

H-4. Model form for credit score disclosure exception for loans not secured by residential real property

[Name of Entity Providing the Notice]
Your Credit Score and the Price You Pay for Credit

Your Credit Score	
Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**

Understanding Your Credit Score	
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. Your credit score can change, depending on how your credit history changes.
How we use your credit score	Your credit score can affect whether you can get a loan and how much you will have to pay for that loan.
The range of scores	Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number in the range]**. Generally, the higher your score, the more likely you are to be offered better credit terms.
How your score compares to the scores of other consumers	 **[or]** [Your credit score ranks higher than [X] percent of U.S. consumers.]

Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under Federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's website at http://www.ftc.gov/bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281
How can you get more information?	For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/learnmore.

H-5. Model form for loans where credit score is not available

[Name of Entity Providing the Notice]
Credit Scores and the Price You Pay for Credit

Your Credit Score	
Your credit score	Your credit score is not available from **[insert name of CRA]**, which is a consumer reporting agency, because they may not have enough information about your credit history to calculate a score.
What you should know about credit scores	A credit score is a number that reflects the information in a credit report. A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. A credit score can change, depending on how a consumer's credit history changes.
Why credit scores are important	Credit scores are important because consumers who have higher credit scores generally will get more favorable credit terms. Not having a credit score can affect whether you can get a loan and how much you will have to pay for that loan.
Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under Federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request

	Form (which you can obtain from the Federal Trade Commission's website at http://www.ftc.gov/bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281
How can you get more information?	For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/learnmore.

H-6. Model form for risk-based pricing notice with credit score information

[Name of Entity Providing the Notice]
Your Credit Report[s] and the Price You Pay for Credit

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We used information from your credit report[s] to set the terms of the credit we are offering you, such as the [Annual Percentage Rate/down payment]. The terms offered to you may be less favorable than the terms offered to consumers who have better credit histories.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] the [consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under Federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[insert address]** *On the web:* Visit **[insert website address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/learnmore.

Your Credit Score and Understanding Your Credit Score

Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. We used your credit score to set the terms of credit we are offering you. Your credit score can change, depending on how your credit history changes.
The range of scores	Scores range from a low of **[insert bottom number in the range]** to a high of **[insert top number in the range]**.
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert number of enquiries as a key factor, if applicable]**
[How can you get more information about your credit score?]	[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at: Address: _____ _____ _____ _____ [Toll-free] Telephone number:_____]

H-7. Model form for account review risk-based pricing notice with credit score information

[Name of Entity Providing the Notice]
Your Credit Report[s] and the Pricing of Your Account

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We have used information from your credit report[s] to review the terms of your account with us. Based on our review of your credit report[s], we have increased the annual percentage rate on your account.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] [a consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under Federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[insert address]** *On the web:* Visit **[insert website address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under Federal law, visit the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/learnmore.

Your Credit Score and Understanding Your Credit Score

Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. We used your credit score to set the terms of credit we are offering you. Your credit score can change, depending on how your credit history changes.
The range of scores	Scores range from a low of **[insert bottom number in the range]** to a high of **[insert top number in the range]**.
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert number of enquiries as a key factor, if applicable]**
[How can you get more information about your credit score?]	[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at: Address: _____ _____ _____ _____ [Toll-free] Telephone number:_____]

APPENDIX I TO PART 1022—SUMMARY OF CONSUMER IDENTITY THEFT RIGHTS

The prescribed form for this summary is a disclosure that is substantially similar to the Bureau's model summary with all information clearly and prominently displayed. A summary should accurately reflect changes to those items that may change over time (such as telephone numbers) to remain in compliance. Translations of this summary will be in compliance with the Bureau's prescribed model, provided that the translation is accurate and that it is provided in a language used by the recipient consumer.

Para información en español, visite www.consumerfinance.gov/learnmore o escribe a la Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.

Remedying the Effects of Identity Theft

You are receiving this information because you have notified a consumer reporting agency that you believe that you are a victim of identity theft. Identity theft occurs when someone uses your name, Social Security number, date of birth, or other identifying information, without authority, to commit fraud. For example, someone may have committed identity theft by using your personal information to open a credit card account or get a loan in your name. For more information, visit www.consumerfinance.gov/learnmore or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.

The Fair Credit Reporting Act (FCRA) gives you specific rights when you are, or believe that you are, the victim of identity theft. Here is a brief summary of the rights designed to help you recover from identity theft.

1. **You have the right to ask that nationwide consumer reporting agencies place "fraud alerts" in your file to let potential creditors and others know that you may be a victim of identity theft.** A fraud alert can make it more difficult for someone to get credit in your name because it tells creditors to follow certain procedures to protect you. It also may delay your ability to obtain credit. You may place a fraud alert in your file by calling just one of the three nationwide consumer reporting agencies. As soon as that agency processes your fraud alert, it will notify the other two, which then also must place fraud alerts in your file.

   - Equifax: 1-800-XXX-XXXX; www.equifax.com
   - Experian: 1-800-XXX-XXXX; www.experian.com
   - TransUnion: 1-800-XXX-XXXX; www.transunion.com

   An initial fraud alert stays in your file for at least 90 days. An extended alert stays in your file for seven years. To place either of these alerts, a consumer reporting agency will require you to provide appropriate proof of your identity, which may include your Social Security number. If you ask for an extended alert, you will have to provide an identity theft report. An identity theft report includes a copy of a report you have filed with a federal, state, or local law enforcement agency, and additional information a consumer reporting agency may require you to submit. For more detailed information about the identity theft report, visit www.consumerfinance.gov/learnmore.

2. **You have the right to free copies of the information in your file (your "file disclosure").** An initial fraud alert entitles you to a copy of all the information in your file at each of the three nationwide agencies, and an extended alert entitles you to two free file disclosures in a 12-month period following the placing of the alert. These additional disclosures may help you detect signs of fraud, for example, whether fraudulent accounts have been opened in your name or whether someone has reported a change in your address. Once a year, you also have the right to a free copy of the information in your file at any consumer reporting agency, if you believe it has inaccurate information due to fraud, such as identity theft. You also

have the ability to obtain additional free file disclosures under other provisions of the FCRA. See www.consumerfinance.gov/learnmore.

3. **You have the right to obtain documents relating to fraudulent transactions made or accounts opened using your personal information.** A creditor or other business must give you copies of applications and other business records relating to transactions and accounts that resulted from the theft of your identity, if you ask for them in writing. A business may ask you for proof of your identity, a police report, and an affidavit before giving you the documents. It may also specify an address for you to send your request. Under certain circumstances, a business can refuse to provide you with these documents. See www.consumerfinance.gov/learnmore.

4. **You have the right to obtain information from a debt collector.** If you ask, a debt collector must provide you with certain information about the debt you believe was incurred in your name by an identity thief – like the name of the creditor and the amount of the debt.

5. **If you believe information in your file results from identity theft, you have the right to ask that a consumer reporting agency block that information from your file.** An identity thief may run up bills in your name and not pay them. Information about the unpaid bills may appear on your consumer report. Should you decide to ask a consumer reporting agency to block the reporting of this information, you must identify the information to block, and provide the consumer reporting agency with proof of your identity and a copy of your identity theft report. The consumer reporting agency can refuse or cancel your request for a block if, for example, you don't provide the necessary documentation, or where the block results from an error or a material misrepresentation of fact made by you. If the agency declines or rescinds the block, it must notify you. Once a debt resulting from identity theft has been blocked, a person or business with notice of the block may not sell, transfer, or place the debt for collection.

6. **You also may prevent businesses from reporting information about you to consumer reporting agencies if you believe the information is a result of identity theft.** To do so, you must send your request to the address specified by the business that reports the information to the consumer reporting agency. The business will expect you to identify what information you do not want reported and to provide an identity theft report.

To learn more about identity theft and how to deal with its consequences, visit www.consumerfinance.gov/learnmore, or write to the Consumer Financial Protection Bureau. You may have additional rights under state law. For more information, contact your local consumer protection agency or your state Attorney General.

In addition to the new rights and procedures to help consumers deal with the effects of identity theft, the FCRA has many other important consumer protections. They are described in more detail at www.consumerfinance.gov/learnmore.

[77 FR 67745, Nov. 14, 2012]

APPENDIX J TO PART 1022 [RESERVED]

APPENDIX K TO PART 1022—SUMMARY OF CONSUMER RIGHTS

The prescribed form for this summary is a disclosure that is substantially similar to the Bureau's model summary with all information clearly and prominently displayed. The list of Federal regulators that is included in the Bureau's prescribed summary may be provided separately so long as this is done in a clear and conspicuous way. A summary should accurately reflect changes to those items that may change over time (e.g., dollar amounts, or telephone numbers and

addresses of Federal agencies) to remain in compliance. Translations of this summary will be in compliance with the Bureau's prescribed model, provided that the translation is accurate and that it is provided in a language used by the recipient consumer.

Para información en español, visite www.consumerfinance.gov/learnmore o escribe a la Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to www.consumerfinance.gov/learnmore or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.

- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your "file disclosure"). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
  - a person has taken adverse action against you because of information in your credit report;
  - you are the victim of identity theft and place a fraud alert in your file;
  - your file contains inaccurate information as a result of fraud;
  - you are on public assistance;
  - you are unemployed but expect to apply for employment within 60 days.

  In addition, all consumers are entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.consumerfinance.gov/learnmore for additional information.

- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.

- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.consumerfinance.gov/learnmore for an explanation of dispute procedures.

- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete, or unverifiable information must be removed or corrected, usually within 30 days. However , a consumer reporting agency may continue to report information it has verified as accurate.

- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.

- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need – usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.

- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.consumerfinance.gov/learnmore.

- **You many limit "prescreened" offers of credit and insurance you get based on information in your credit report.** Unsolicited "prescreened" offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt out with the nationwide credit bureaus at 1-800-XXX-XXXX.

- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.

- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit www.consumerfinance.gov/learnmore.

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. For information about your federal rights, contact:

TYPE OF BUSINESS:	CONTACT:
1.a. Banks, savings associations, and credit unions with total assets of over $10 billion and their affiliates	a. Consumer Financial Protection Bureau 1700 G Street, N.W. Washington, DC 20552
b. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the CFPB:	b. Federal Trade Commission: Consumer Response Center – FCRA Washington, DC 20580 (877) 382-4357
2. To the extent not included in item 1 above:	
a. National banks, federal savings associations, and federal branches and federal agencies of foreign banks	a. Office of the Comptroller of the Currency Customer Assistance Group 1301 McKinney Street, Suite 3450 Houston, TX 77010-9050
b. State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and Insured State Branches of Foreign Banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act	b. Federal Reserve Consumer Help Center P.O. Box. 1200 Minneapolis, MN 55480
c. Nonmember Insured Banks, Insured State Branches of Foreign Banks, and insured state savings associations	c. FDIC Consumer Response Center 1100 Walnut Street, Box #11 Kansas City, MO 64106
d. Federal Credit Unions	d. National Credit Union Administration Office of Consumer Protection (OCP) Division of Consumer Compliance and Outreach (DCCO) 1775 Duke Street Alexandria, VA 22314
3. Air carriers	Asst. General Counsel for Aviation Enforcement & Proceedings Aviation Consumer Protection Division Department of Transportation 1200 New Jersey Avenue, S.E. Washington, DC 20590
4. Creditors Subject to the Surface Transportation Board	Office of Proceedings, Surface Transportation Board Department of Transportation 395 E Street, S.W. Washington, DC 20423
5. Creditors Subject to the Packers and Stockyards Act, 1921	Nearest Packers and Stockyards Administration area supervisor
6. Small Business Investment Companies	Associate Deputy Administrator for Capital Access United States Small Business Administration 409 Third Street, SW, 8th Floor Washington, DC 20416
7. Brokers and Dealers	Securities and Exchange Commission 100 F Street, N.E. Washington, DC 20549
8. Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations	Farm Credit Administration 1501 Farm Credit Drive McLean, VA 22102-5090
9. Retailers, Finance Companies, and All Other Creditors Not Listed Above	FTC Regional Office for region in which the creditor operates or Federal Trade Commission: Consumer Response Center – FCRA Washington, DC 20580 (877) 382-4357

[77 FR 67747, Nov. 14, 2012]

APPENDIX L TO PART 1022—STANDARDIZED FORM FOR REQUESTING ANNUAL FILE DISCLOSURES

REQUEST FOR FREE CREDIT REPORT

Note to Consumers: **You have the right to obtain a free copy of your credit report once every 12 months (also known as an "annual file disclosure"), from each of the nationwide consumer reporting agencies. Your report may contain information on where you work and live, the credit accounts that have been opened in your name, if you've paid your bills on time, and whether you have been sued, arrested, or have filed for bankruptcy. Businesses use this information in making decisions about whether to offer you credit, insurance, or employment, and on what terms.**

Use this form to request your credit report from any, or all, of the nationwide consumer reporting agencies.

The following information is required to process your request:

Your Full Name: _____

Your Street Address: _____

Your City, State & Zip Code: _____

Your Telephone Numbers (with area code): Day: _____
Evening: _____

Your Social Security number: _____ Your Date of Birth_____

Place a check next to each credit report you want.

_____ I want a credit report from each of the nationwide consumer reporting agencies

OR

_____ I want a credit report from:

_____ [name of nationwide consumer reporting agency]
_____ [name of nationwide consumer reporting agency]
_____ [name of nationwide consumer reporting agency]

Please check how you would like to receive your report. (Note: because of the need to accurately identify you before we send you your credit report, we may not be able to offer every delivery method to every consumer. We will try to honor your preference.)

_____ [available delivery method]
_____ [available delivery method]
_____ [available delivery method]

_____ Check here if, for security purposes, you want your copy of your credit report to include only the last four digits of your Social Security number (SSN), rather than your entire SSN.

For more information on obtaining your free credit report, visit [insert appropriate website address], call [insert appropriate telephone number], or write to [insert appropriate address].

Mail this form to:
[insert appropriate address]

Your report(s) will be sent within 15 days after we receive your request.

APPENDIX M TO PART 1022—NOTICE OF FURNISHER RESPONSIBILITIES

The prescribed form for this disclosure is a separate document that is substantially similar to the Bureau's model notice with all information clearly and prominently displayed. Consumer reporting agencies may limit the disclosure to only those items that they know are relevant to the furnisher that will receive the notice.

All furnishers of information to consumer reporting agencies must comply with all applicable regulations. Information about applicable regulations currently in effect can be found at the Consumer Financial Protection Bureau's website, www.consumerfinance.gov/learnmore.

NOTICE TO FURNISHERS OF INFORMATION: OBLIGATIONS OF FURNISHERS UNDER THE FCRA

The federal Fair Credit Reporting Act (FCRA), 15 U.S.C 1681-1681y, imposes responsibilities on all persons who furnish information to consumer reporting agencies (CRAs). These responsibilities are found in Section 623 of the FCRA, 15 U.S.C 1681s-2. State law may impose additional requirements on furnishers. All furnishers of information to CRAs should become familiar with the applicable laws and may want to consult with their counsel to ensure that they are in compliance. The text of the FCRA is available at the website of the Consumer Financial Protection Bureau (CFPB): www.consumerfinance.gov/learnmore. A list of the sections of the FCRA cross-referenced to the U.S Code is at the end of this document.

Section 623 imposes the following duties upon furnishers:

Accuracy Guidelines

The FCRA requires furnishers to comply with federal guidelines and regulations dealing with the accuracy of information provided to CRAs by furnishers. Federal regulations and guidelines are available at www.consumerfinance.gov/learnmore. Section 623(e).

General Prohibition on Reporting Inaccurate Information

The FCRA prohibits information furnishers from providing information to a CRA that they know or have reasonable cause to believe is inaccurate. However, the furnisher is not subject to this general prohibition if it clearly and conspicuously specifies an address to which consumers may write to notify the furnisher that certain information is inaccurate. Sections 623(a)(1)(A) and (a)(1)(C).

Duty to Correct and Update Information

If at any time a person who regularly and in the ordinary course of business furnishes information to one or more CRAs determines that the information provided is not complete or accurate, the furnisher must promptly provide complete and accurate information to the CRA. In addition, the furnisher must notify all CRAs that received the information of any corrections, and must thereafter report only the complete and accurate information. Section 623(a)(2).

Duties After Notice of Dispute from Consumer

If a consumer notifies a furnisher, at an address specified for the furnisher for such notices, that specific information is inaccurate, and the information is, in fact, inaccurate, the furnisher must thereafter report the correct information to CRAs. Section 623(a)(1)(B).

If a consumer notifies a furnisher that the consumer disputes the completeness or accuracy of any information reported by the furnisher, the furnisher may not subsequently report that information to a CRA without providing notice of the dispute. Section 623(a)(3).

Furnishers must comply with federal regulations that identify when an information furnisher must investigate a dispute made directly to the furnisher by a consumer. Under these regulations, furnishers must complete an investigation within 30 days (or 45 days, if the consumer later provides relevant additional information) unless the dispute is frivolous or irrelevant or comes from a "credit repair organization." Section 623(a)(8). Federal regulations are available at www.consumerfinance.gov/learnmore. Section 623(a)(8)

Duties After Notice of Dispute from Consumer Reporting Agency

If a CRA notifies a furnisher that a consumer disputes the completeness or accuracy of information provided by the furnisher, the furnisher has a duty to follow certain procedures. The furnisher must:

- Conduct an investigation and review all relevant information provided by the CRA, including information given to the CRA by the consumer. Sections 623(b)(1)(A) and (b)(1)(B).
- Report the results to the CRA that referred the dispute, and, if the investigation establishes that the information was, in fact, incomplete or inaccurate, report the results to all CRAs to which the furnisher provided the information that compile and maintain files on a nationwide basis. Section 623(b)(1)(C) and (b)(1)(D).
- Complete the above steps within 30 days from the date the CRA receives the dispute (or 45 days, if the consumer later provides relevant additional information to the CRA). Section 623(b)(2).
- Promptly modify or delete the information, or block its reporting. Section 623(b)(1)(E).

Duty to Report Voluntary Closing of Credit Accounts

If a consumer voluntarily closes a credit account, any person who regularly and in the ordinary course of business furnished information to one or more CRAs must report this fact when it provides information to CRAs for the time period in which the account was closed. Section 623(a)(4).

Duty to Report Dates of Delinquencies

If a furnisher reports information concerning a delinquent account placed for collection, charged to profit or loss, or subject to any similar action, the furnisher must, within 90 days after reporting the information, provide the CRA with the month and the year of the commencement of the delinquency that immediately preceded the action, so that the agency will know how long to keep the information in the consumer's file. Section 623(a)(5).

Any person, such as a debt collector, that has acquired or is responsible for collecting delinquent accounts and that reports information to CRAs may comply with the requirements of Section 623(a)(5) (until there is a consumer dispute) by reporting the same delinquency date previously reported by the creditor. If the creditor did not report this date, they may comply with the FCRA by establishing reasonable procedures to obtain and report delinquency dates, or, if a delinquency date cannot be reasonably obtained, by following reasonable procedures to ensure that the date reported precedes the date when the account was placed for collection, charged to profit or loss, or subjected to any similar action. Section 623(a)(5).

Duties of Financial Institutions When Reporting Negative Information

Financial institutions that furnish information to "nationwide" consumer reporting agencies, as defined in Section 603(p), must notify consumers in writing if they may furnish or have furnished negative information to a CRA. Section 623(a)(7). The CFPB has prescribed model disclosures, 12 CFR Part 1022, App. B.

Duties When Furnishing Medical Information

A furnisher whose primary business is providing medical services, products, or devices (and such furnisher's agents or assignees) is a medical information furnisher for the purposes of the FCRA and must notify all CRAs to which it reports of this fact. Section 623(a)(9). This notice will enable CRAs to comply with their duties under Section 604(g) when reporting medical information.

Duties When ID Theft Occurs

All furnishers must have in place reasonable procedures to respond to notifications from CRAs that information furnished is the result of identity theft, and to prevent refurnishing the information in the future. A furnisher may not furnish information that a consumer has identified as resulting from identity theft unless the furnisher subsequently knows or is informed by the consumer that the information is correct. Section 623 (a)(6). If a furnisher learns that it has furnished inaccurate information due to identity theft, it must notify each CRA of the correct information and must thereafter report only complete and accurate information. Section 623(a)(2). When any furnisher of information is notified pursuant to the procedures set forth in Section 605B that a debt has resulted from identity theft, the furnisher many not sell, transfer, or place for collection the debt except in certain limited circumstances. Section 615(f).

The CFPB's website, www.consumerfinance.gov/learnmore, has more information about the FCRA, including publications for businesses and the full text of the FCRA.

Citations for FCRA sections in the U.S. Code, 15 U.S.C. § 1681 et seq.:

Section 602	15 U.S.C. 1681	Section 615	15 U.S.C. 1681m
Section 603	15 U.S.C. 1681a	Section 616	15 U.S.C. 1681n
Section 604	15 U.S.C. 1681b	Section 617	15 U.S.C. 1681o
Section 605	15 U.S.C. 1681c	Section 618	15 U.S.C. 1681p
Section 605A	15 U.S.C. 1681cA	Section 619	15 U.S.C. 1681q
Section 605B	15 U.S.C. 1681cB	Section 620	15 U.S.C. 1681r
Section 606	15 U.S.C. 1681d	Section 621	15 U.S.C. 1681s
Section 607	15 U.S.C. 1681e	Section 622	15 U.S.C. 1681s-1
Section 608	15 U.S.C. 1681f	Section 623	15 U.S.C. 1681s-2
Section 609	15 U.S.C. 1681g	Section 624	15 U.S.C. 1681t
Section 610	15 U.S.C. 1681h	Section 625	15 U.S.C. 1681u
Section 611	15 U.S.C. 1681i	Section 626	15 U.S.C. 1681v
Section 612	15 U.S.C. 1681j	Section 627	15 U.S.C. 1681w
Section 613	15 U.S.C. 1681k	Section 628	15 U.S.C. 1681x
Section 614	15 U.S.C. 1681l	Section 629	15 U.S.C. 1681y

[77 FR 67750, Nov. 14, 2012]

APPENDIX N TO PART 1022—NOTICE OF USER RESPONSIBILITIES

The prescribed form for this disclosure is a separate document that is substantially similar to the Bureau's notice with all information clearly and prominently displayed. Consumer reporting agencies may limit the disclosure to only those items that they know are relevant to the user that will receive the notice.

All users of consumer reports must comply with all applicable regulations. Information about applicable regulations currently in effect can be found at the Consumer Financial Protection Bureau's website, www.consumerfinance.gov/learnmore.

NOTICE TO USERS OF CONSUMER REPORTS: OBLIGATIONS OF USERS UNDER THE FCRA

The Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681-1681y, requires that this notice be provided to inform users of consumer reports of their legal obligations. State law may impose additional requirements. The text of the FCRA is set forth in full at the Consumer Financial Protection Bureau's (CFPB) website at www.consumerfinance.gov/learnmore. At the end of this document is a list of United States Code citations for the FCRA. Other information about user duties is also available at the CFPB's website. **Users must consult the relevant provisions of the FCRA for details about their obligations under the FCRA.**

The first section of this summary sets forth the responsibilities imposed by the FCRA on all users of consumer reports. The subsequent sections discuss the duties of users of reports that contain specific types of information, or that are used for certain purposes, and the legal consequences of violations. If you are a furnisher of information to a consumer reporting agency (CRA), you have additional obligations and will receive a separate notice from the CRA describing your duties as a furnisher.

I. OBLIGATIONS OF ALL USERS OF CONSUMER REPORTS

A. Users Must Have a Permissible Purpose

Congress has limited the use of consumer reports to protect consumers' privacy. All users must have a permissible purpose under the FCRA to obtain a consumer report. Section 604 contains a list of the permissible purposes under the law. These are:

- As ordered by a court or a federal grand jury subpoena. Section 604(a)(1)
- As instructed by the consumer in writing. Section 604(a)((2)
- For the extension of credit as a result of an application from a consumer, or the review or collection of a consumer's account. Section 604(a)(3)(A)
- For employment purposes, including hiring and promotion decisions, where the consumer has given written permission. Sections 604(a)(3)(B) and 604(b)

- For the underwriting of insurance as a result of an application from a consumer. Section 604(a)(3)(C)

- When there is a legitimate business need, in connection with a business transaction that is initiated by the consumer. Section 604(a)(3)(F)(i)

- To review a consumer's account to determine whether the consumer continues to meet the terms of the account. Section 604(a)(3)(F)(ii)

- To determine a consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status. Section 604(a)(3)(D)

- For use by a potential investor or servicer, or current insurer, in a valuation or assessment of the credit or prepayment risks associated with an existing credit obligation. Section 604(a)(3)(E)

- For use by state and local officials in connection with the determination of child support payments, or modifications and enforcement thereof. Sections 604(a)(4) and 604(a)(5)

In addition, creditors and insurers may obtain certain consumer report information for the purpose of making "prescreened" unsolicited offers of credit or insurance. Section 604(c). The particular obligations of users of "prescreened" information are described in Section VII below.

B. Users Must Provide Certifications

Section 604(f) prohibits any person from obtaining a consumer report from a consumer reporting agency (CRA) unless the person has certified to the CRA the permissible purpose(s) for which the report is being obtained and certifies that the report will not be used for any other purpose.

C. Users Must Notify Consumers When Adverse Actions Are Taken

The term "adverse action" is defined very broadly by Section 603. "Adverse actions" include all business, credit, and employment actions affecting consumers that can be considered to have a negative impact as defined by Section 603(k) of the FCRA – such as denying or canceling credit or insurance, or denying employment or promotion. No adverse action occurs in a credit transaction where the creditor makes a counteroffer that is accepted by the consumer.

1. Adverse Actions Based on Information Obtained From a CRA

If a user takes any type of adverse action as defined by the FCRA that is based at least in part on information contained in a consumer report, Section 615(a) requires the user to notify the consumer. The notification may be done in writing, orally, or by electronic means. It must include the following:

- The name, address, and telephone number of the CRA (including a toll-free telephone number, if it is a nationwide CRA) that provided the report.
- A statement that the CRA did not make the adverse decision and is not able to explain why the decision was made.
- A statement setting forth the consumer's right to obtain a free disclosure of the consumer's file from the CRA if the consumer makes a request within 60 days.
- A statement setting forth the consumer's right to dispute directly with the CRA the accuracy or completeness of any information provided by the CRA.

2. Adverse Actions Based on Information Obtained From Third Parties Who Are Not Consumer Reporting Agencies

If a person denies (or increases the charge for) credit for personal, family, or household purposes based either wholly or partly upon information from a person other than a CRA, and the information is the type of consumer information covered by the FCRA, Section 615(b)(1) requires that the user clearly and accurately disclose to the consumer his or her right to be told the nature of the information that was relied upon if the consumer makes a written request within 60 days of notification. The user must provide the disclosure within a reasonable period of time following the consumer's written request.

3. Adverse Actions Based on Information Obtained From Affiliates

If a person takes an adverse action involving insurance, employment, or a credit transaction initiated by the consumer, based on information of the type covered by the FCRA, and this information was obtained from an entity affiliated with the user of the information by common ownership or control, Section 615(b)(2) requires the user to notify the consumer of the adverse action. The notice must inform the consumer that he or she may obtain a disclosure of the nature of the information relied upon by making a written request within 60 days of receiving the adverse action notice. If the consumer makes such a request, the user must disclose the nature of the information not later than 30 days after receiving the request. If consumer report information is shared among affiliates and then used for an adverse action, the user must make an adverse action disclosure as set forth in I.C.1 above.

D. Users Have Obligations When Fraud and Active Duty Military Alerts are in Files

When a consumer has placed a fraud alert, including one relating to identity theft, or an active duty military alert with a nationwide consumer reporting agency as defined in Section 603(p) and resellers, Section 605A(h) imposes limitations on users of reports obtained from the consumer reporting agency in certain circumstances, including the establishment of a new credit plan and the issuance of additional credit cards. For initial fraud alerts and active duty alerts, the user must have reasonable policies and procedures in place to form a belief that the user knows the identity of the applicant or contact the consumer at a telephone number specified by the consumer; in the case of extended fraud alerts, the user must contact the consumer in accordance with the contact information provided in the consumer's alert.

E. Users Have Obligations When Notified of an Address Discrepancy

Section 605(h) requires nationwide CRAs, as defined in Section 603(p), to notify users that request reports when the address for a consumer provided by the user in requesting the report is substantially different from the addresses in the consumer's file. When this occurs, users must comply with regulations specifying the procedures to be followed. Federal regulations are available at www.consumerfinance.gov/learnmore.

F. Users Have Obligations When Disposing of Records

Section 628 requires that all users of consumer report information have in place procedures to properly dispose of records containing this information. Federal regulations have been issued that cover disposal.

II. CREDITORS MUST MAKE ADDITIONAL DISCLOSURES

If a person uses a consumer report in connection with an application for, or a grant, extension, or provision of, credit to a consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person, based in whole or in part on a consumer report, the person must provide a risk-based pricing notice to the consumer in accordance with regulations prescribed by the CFPB.

Section 609(g) requires a disclosure by all persons that make or arrange loans secured by residential real property (one to four units) and that use credit scores. These persons must

provide credit scores and other information about credit scores to applicants, including the disclosure set forth in Section 609(g)(1)(D) ("Notice to the Home Loan Applicant").

III. OBLIGATIONS OF USERS WHEN CONSUMER REPORTS ARE OBTAINED FOR EMPLOYMENT PURPOSES

A. Employment Other Than in the Trucking Industry

If information from a CRA is used for employment purposes, the user has specific duties, which are set forth in Section 604(b) of the FCRA. The user must:

- Make a clear and conspicuous written disclosure to the consumer before the report is obtained, in a document that consists solely of the disclosure, that a consumer report may be obtained.
- Obtain from the consumer prior written authorization. Authorization to access reports during the term of employment may be obtained at the time of employment.
- Certify to the CRA that the above steps have been followed, that the information being obtained will not be used in violation of any federal or state equal opportunity law or regulation, and that, if any adverse action is to be taken based on the consumer report, a copy of the report and a summary of the consumer's rights will be provided to the consumer.
- **Before** taking an adverse action, the user must provide a copy of the report to the consumer as well as the summary of consumer's rights. (The user should receive this summary from the CRA.) A Section 615(a) adverse action notice should be sent after the adverse action is taken.

An adverse action notice also is required in employment situations if credit information (other than transactions and experience data) obtained from an affiliate is used to deny employment. Section 615(b)(2)

The procedures for investigative consumer reports and employee misconduct investigations are set forth below.

B. Employment in the Trucking Industry

Special rules apply for truck drivers where the only interaction between the consumer and the potential employer is by mail, telephone, or computer. In this case, the consumer may provide consent orally or electronically, and an adverse action may be made orally, in writing, or electronically. The consumer may obtain a copy of any report relied upon by the trucking

company by contacting the company.

IV. OBLIGATIONS WHEN INVESTIGATIVE CONSUMER REPORTS ARE USED

Investigative consumer reports are a special type of consumer report in which information about a consumer's character, general reputation, personal characteristics, and mode of living is obtained through personal interviews by an entity or person that is a consumer reporting agency. Consumers who are the subjects of such reports are given special rights under the FCRA. If a user intends to obtain an investigative consumer report, Section 606 requires the following:

- The user must disclose to the consumer that an investigative consumer report may be obtained. This must be done in a written disclosure that is mailed, or otherwise delivered, to the consumer at some time before or not later than three days after the date on which the report was first requested. The disclosure must include a statement informing the consumer of his or her right to request additional disclosures of the nature and scope of the investigation as described below, and the summary of consumer rights required by Section 609 of the FCRA. (The summary of consumer rights will be provided by the CRA that conducts the investigation.)

- The user must certify to the CRA that the disclosures set forth above have been made and that the user will make the disclosure described below.

- Upon the written request of a consumer made within a reasonable period of time after the disclosures required above, the user must make a complete disclosure of the nature and scope of the investigation. This must be made in a written statement that is mailed, or otherwise delivered, to the consumer no later than five days after the date on which the request was received from the consumer or the report was first requested, whichever is later in time.

V. SPECIAL PROCEDURES FOR EMPLOYEE INVESTIGATIONS

Section 603(x) provides special procedures for investigations of suspected misconduct by an employee or for compliance with Federal, state or local laws and regulations or the rules of a self-regulatory organization, and compliance with written policies of the employer. These investigations are not treated as consumer reports so long as the employer or its agent complies with the procedures set forth in Section 603(x), and a summary describing the nature and scope of the inquiry is made to the employee if an adverse action is taken based on the investigation.

VI. OBLIGATIONS OF USERS OF MEDICAL INFORMATION

Section 604(g) limits the use of medical information obtained from consumer reporting agencies (other than payment information that appears in a coded form that does not identify the

medical provider). If the information is to be used for an insurance transaction, the consumer must give consent to the user of the report or the information must be coded. If the report is to be used for employment purposes – or in connection with a credit transaction (except as provided in federal regulations) – the consumer must provide specific written consent and the medical information must be relevant. Any user who receives medical information shall not disclose the information to any other person (except where necessary to carry out the purpose for which the information was disclosed, or as permitted by statute, regulation, or order).

VII. OBLIGATIONS OF USERS OF "PRESCREENED" LISTS

The FCRA permits creditors and insurers to obtain limited consumer report information for use in connection with unsolicited offers of credit or insurance under certain circumstances. Sections 603(1), 604(c), 604(e), and 615(d). This practice is known as "prescreening" and typically involves obtaining from a CRA a list of consumers who meet certain preestablished criteria. If any person intends to use prescreened lists, that person must (1) before the offer is made, establish the criteria that will be relied upon to make the offer and to grant credit or insurance, and (2) maintain such criteria on file for a three-year period beginning on the date on which the offer is made to each consumer. In addition, any user must provide with each written solicitation a clear and conspicuous statement that:

- Information contained in a consumer's CRA file was used in connection with the transaction.
- The consumer received the offer because he or she satisfied the criteria for credit worthiness or insurability used to screen for the offer.
- Credit or insurance may not be extended if, after the consumer responds, it is determined that the consumer does not meet the criteria used for screening or any applicable criteria bearing on credit worthiness or insurability, or the consumer does not furnish required collateral.
- The consumer may prohibit the use of information in his or her file in connection with future prescreened offers of credit or insurance by contacting the notification system established by the CRA that provided the report. The statement must include the address and toll-free telephone number of the appropriate notification system.

In addition, the CFPB has established the format, type size, and manner of the disclosure required by Section 615(d), with which users must comply. The relevant regulation is 12 CFR 1022.54.

VIII. OBLIGATIONS OF RESELLERS

A. Disclosure and Certification Requirements

Section 607(e) requires any person who obtains a consumer report for resale to take the following steps:

- Disclose the identity of the end-user to the source CRA.
- Identify to the source CRA each permissible purpose for which the report will be furnished to the end-user.
- Establish and follow reasonable procedures to ensure that reports are resold only for permissible purposes, including procedures to obtain:
  (1) the identity of all end-users;
  (2) certifications from all users of each purpose for which reports will be used; and
  (3) certifications that reports will not be used for any purpose other than the purpose(s) specified to the reseller. Resellers must make reasonable efforts to verify this information before selling the report.

B. Reinvestigations by Resellers

Under Section 611(f), if a consumer disputes the accuracy or completeness of information in a report prepared by a reseller, the reseller must determine whether this is a result of an action or omission on its part and, if so, correct or delete the information. If not, the reseller must send the dispute to the source CRA for reinvestigation. When any CRA notifies the reseller of the results of an investigation, the reseller must immediately convey the information to the consumer.

C. Fraud Alerts and Resellers

Section 605A(f) requires resellers who receive fraud alerts or active duty alerts from another consumer reporting agency to include these in their reports.

IX. LIABILITY FOR VIOLATIONS OF THE FCRA

Failure to comply with the FCRA can result in state government or federal government enforcement actions, as well as private lawsuits. Sections 616, 617, and 621. In addition, any person who knowingly and willfully obtains a consumer report under false pretenses may face criminal prosecution. Section 619.

The CFPB's website, www.consumerfinance.gov/learnmore, has more information about the FCRA, including publications for businesses and the full text of the FCRA.

Citations for FCRA sections in the U.S. Code, 15 U.S.C. § 1681 et seq.:

Section 602	15 U.S.C. 1681	Section 615	15 U.S.C. 1681m
Section 603	15 U.S.C. 1681a	Section 616	15 U.S.C. 1681n
Section 604	15 U.S.C. 1681b	Section 617	15 U.S.C. 1681o
Section 605	15 U.S.C. 1681c	Section 618	15 U.S.C. 1681p
Section 605A	15 U.S.C. 1681cA	Section 619	15 U.S.C. 1681q
Section 605B	15 U.S.C. 1681cB	Section 620	15 U.S.C. 1681r
Section 606	15 U.S.C. 1681d	Section 621	15 U.S.C. 1681s
Section 607	15 U.S.C. 1681e	Section 622	15 U.S.C. 1681s-1
Section 608	15 U.S.C. 1681f	Section 623	15 U.S.C. 1681s-2
Section 609	15 U.S.C. 1681g	Section 624	15 U.S.C. 1681t
Section 610	15 U.S.C. 1681h	Section 625	15 U.S.C. 1681u
Section 611	15 U.S.C. 1681i	Section 626	15 U.S.C. 1681v
Section 612	15 U.S.C. 1681j	Section 627	15 U.S.C. 1681w
Section 613	15 U.S.C. 1681k	Section 628	15 U.S.C. 1681x
Section 614	15 U.S.C. 1681l	Section 629	15 U.S.C. 1681y

[77 FR 67754, Nov. 14, 2012]

PART 1024—REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)

Subpart A—General Provisions

Sec.

1024.1 Designation.
1024.2 Definitions.
1024.3 E-Sign applicability.
1024.4 Reliance upon rule, regulation, or interpretation by the Bureau.
1024.5 Coverage of RESPA.

Subpart B—Mortgage Settlement and Escrow Accounts

1024.6 Special information booklet at time of loan application.
1024.7 Good faith estimate.
1024.8 Use of HUD–1 or HUD–1A settlement statements.
1024.9 Reproduction of settlement statements.
1024.10 One-day advance inspection of HUD–1 or HUD–1A settlement statement; delivery; recordkeeping.
1024.11 Mailing.
1024.12 No fee.
1024.13 [Reserved]
1024.14 Prohibition against kickbacks and unearned fees.
1024.15 Affiliated business arrangements.
1024.16 Title companies.
1024.17 Escrow accounts.
1024.18–1024.19 [Reserved]
1024.20 List of homeownership counseling organizations.

Subpart C—Mortgage Servicing

1024.30 Scope.
1024.31 Definitions.
1024.32 General disclosure requirements.
1024.33 Mortgage servicing transfers.
1024.34 Timely escrow payments and treatment of escrow account balances.
1024.35 Error resolution procedures.
1024.36 Requests for information.
1024.37 Force-placed insurance.
1024.38 General servicing policies, procedures, and requirements.
1024.39 Early intervention requirements for certain borrowers.
1024.40 Continuity of contact.
1024.41 Loss mitigation procedures.

APPENDIX A TO PART 1024—INSTRUCTIONS FOR COMPLETING HUD–1 AND HUD–1A SETTLEMENT STATEMENTS; SAMPLE HUD–1 AND HUD–1A STATEMENTS
APPENDIX B TO PART 1024—ILLUSTRATIONS OF REQUIREMENTS OF RESPA
APPENDIX C TO PART 1024—INSTRUCTIONS FOR COMPLETING GOOD FAITH ESTIMATE (GFE) FORM
APPENDIX D TO PART 1024—AFFILIATED BUSINESS ARRANGEMENT DISCLOSURE STATEMENT FORMAT
APPENDIX E TO PART 1024—ARITHMETIC STEPS
APPENDIX MS—MORTGAGE SERVICING
APPENDIX MS–1 TO PART 1024—SERVICING DISCLOSURE STATEMENT
APPENDIX MS–2 TO PART 1024—NOTICE OF SERVICING TRANSFER
APPENDIX MS–3 TO PART 1024—MODEL FORCE-PLACED INSURANCE NOTICE FORMS

APPENDIX MS–4 TO PART 1024—MODEL CLAUSES FOR THE WRITTEN EARLY INTERVENTION NOTICE
SUPPLEMENT I TO PART 1024—OFFICIAL BUREAU INTERPRETATIONS

AUTHORITY: 12 U.S.C. 2603–2605, 2607, 2609, 2617, 5512, 5532, 5581.

SOURCE: 76 FR 78981, Dec. 20, 2011, unless otherwise noted.

Subpart A—General Provisions

§ 1024.1 Designation.

This part, known as Regulation X, is issued by the Bureau of Consumer Financial Protection to implement the Real Estate Settlement Procedures Act of 1974, as amended, 12 U.S.C. 2601 *et. seq*.

§ 1024.2 Definitions.

(a) *Statutory terms.* All terms defined in RESPA (12 U.S.C. 2602) are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) of this section or elsewhere in this part.

(b) *Other terms.* As used in this part:

Application means the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan, which shall include the borrower's name, the borrower's monthly income, the borrower's social security number to obtain a credit report, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any other information deemed necessary by the loan originator. An application may either be in writing or electronically submitted, including a written record of an oral application.

Balloon payment has the same meaning as ''balloon payment'' under Regulation Z (12 CFR part 1026).

Bureau means the Bureau of Consumer Financial Protection.

Business day means a day on which the offices of the business entity are open to the public for carrying on substantially all of the entity's business functions.

Changed circumstances means:

(1)(i) Acts of God, war, disaster, or other emergency;

(ii) Information particular to the borrower or transaction that was relied on in providing the GFE and that changes or is found to be inaccurate after the GFE has been provided. This may include information about the credit quality of the borrower, the amount of the loan, the estimated value of the property, or any other information that was used in providing the GFE;

(iii) New information particular to the borrower or transaction that was not relied on in providing the GFE; or

(iv) Other circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems.

(2) Changed circumstances do not include:

(i) The borrower's name, the borrower's monthly income, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any information contained in any credit report obtained by the loan originator prior to providing the GFE, unless the information changes or is found to be inaccurate after the GFE has been provided; or

(ii) Market price fluctuations by themselves.

Dealer means, in the case of property improvement loans, a seller, contractor, or supplier of goods or services. In the case of manufactured home loans, ''dealer'' means one who engages in the business of manufactured home retail sales.

Dealer loan or dealer consumer credit contract means, generally, any arrangement in which a dealer assists the borrower in obtaining a federally related mortgage loan from the funding lender and then assigns the dealer's legal interests to the funding lender and receives the net proceeds of the loan. The funding lender is the lender for the purposes of the disclosure requirements of this part. If a dealer is a ''creditor'' as defined under the definition of ''federally related mortgage loan'' in this part, the dealer is the lender for purposes of this part.

Effective date of transfer is defined in section 6(i)(1) of RESPA (12 U.S.C. 2605(i)(1)). In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, the effective date of transfer is the transfer

date agreed upon by the transferee servicer and the transferor servicer.

Federally related mortgage loan means:

(1) Any loan (other than temporary financing, such as a construction loan):

(i) That is secured by a first or subordinate lien on residential real property, including a refinancing of any secured loan on residential real property, upon which there is either:

(A) Located or, following settlement, will be constructed using proceeds of the loan, a structure or structures designed principally for occupancy of from one to four families (including individual units of condominiums and cooperatives and including any related interests, such as a share in the cooperative or right to occupancy of the unit); or

(B) Located or, following settlement, will be placed using proceeds of the loan, a manufactured home; and

(ii) For which one of the following paragraphs applies. The loan:

(A) Is made in whole or in part by any lender that is either regulated by or whose deposits or accounts are insured by any agency of the Federal Government;

(B) Is made in whole or in part, or is insured, guaranteed, supplemented, or assisted in any way:

(*1*) By the Secretary of the Department of Housing and Urban Development (HUD) or any other officer or agency of the Federal Government; or

(*2*) Under or in connection with a housing or urban development program administered by the Secretary of HUD or a housing or related program administered by any other officer or agency of the Federal Government;

(C) Is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation (or its successors), or a financial institution from which the loan is to be purchased by the Federal Home Loan Mortgage Corporation (or its successors);

(D) Is made in whole or in part by a ''creditor,'' as defined in section 103(g) of the Consumer Credit Protection Act (15 U.S.C. 1602(g)), that makes or invests in residential real estate loans aggregating more than $1,000,000 per year. For purposes of this definition, the term ''creditor'' does not include any agency or instrumentality of any State, and the term ''residential real estate loan'' means any loan secured by residential real property, including single-family and multifamily residential property;

(E) Is originated either by a dealer or, if the obligation is to be assigned to any maker of mortgage loans specified in paragraphs (1)(ii)(A) through (D) of this definition, by a mortgage broker; or

(F) Is the subject of a home equity conversion mortgage, also frequently called a ''reverse mortgage,'' issued by any maker of mortgage loans specified in paragraphs (1)(ii)(A) through (D) of this definition.

(2) Any installment sales contract, land contract, or contract for deed on otherwise qualifying residential property is a federally related mortgage loan if the contract is funded in whole or in part by proceeds of a loan made by any maker of mortgage loans specified in paragraphs (1)(ii) (A) through (D) of this definition.

(3) If the residential real property securing a mortgage loan is not located in a State, the loan is not a federally related mortgage loan.

Good faith estimate or *GFE* means an estimate of settlement charges a borrower is likely to incur, as a dollar amount, and related loan information, based upon common practice and experience in the locality of the mortgaged property, as provided on the form prescribed in §1024.7 and prepared in accordance with the Instructions in appendix C to this part.

HUD means the Department of Housing and Urban Development.

HUD–1 or HUD–1A settlement statement (also *HUD–1 or HUD–1A*) means the statement that is prescribed in this part for setting forth settlement charges in connection with either the purchase or the refinancing (or other subordinate lien transaction) of 1- to 4-family residential property.

Lender means, generally, the secured creditor or creditors named in the debt obligation and document creating the lien. For loans originated by a mortgage broker that closes a federally related mortgage loan in its own name in

a table funding transaction, the lender is the person to whom the obligation is initially assigned at or after settlement. A lender, in connection with dealer loans, is the lender to whom the loan is assigned, unless the dealer meets the definition of creditor as defined under ''federally related mortgage loan'' in this section. See also §1024.5(b)(7), secondary market transactions.

Loan originator means a lender or mortgage broker.

Manufactured home is defined in HUD regulation 24 CFR 3280.2.

Mortgage broker means a person (other than an employee of a lender) that renders origination services and serves as an intermediary between a borrower and a lender in a transaction involving a federally related mortgage loan, including such a person that closes the loan in its own name in a table-funded transaction.

Mortgaged property means the real property that is security for the federally related mortgage loan.

Origination service means any service involved in the creation of a federally related mortgage loan, including but not limited to the taking of the loan application, loan processing, the underwriting and funding of the loan, and the processing and administrative services required to perform these functions.

Person is defined in section 3(5) of RESPA (12 U.S.C. 2602(5)).

Prepayment penalty has the same meaning as ''prepayment penalty'' under Regulation Z (12 CFR part 1026).

Public Guidance Documents means FEDERAL REGISTER documents adopted or published, that the Bureau may amend from time-to-time by publication in the FEDERAL REGISTER. These documents are also available from the Bureau. Requests for copies of Public Guidance Documents should be directed to the Associate Director, Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

Refinancing means a transaction in which an existing obligation that was subject to a secured lien on residential real property is satisfied and replaced by a new obligation undertaken by the same borrower and with the same or a new lender. The following shall not be treated as a refinancing, even when the existing obligation is satisfied and replaced by a new obligation with the same lender (this definition of ''refinancing'' as to transactions with the same lender is similar to Regulation Z, 12 CFR 1026.20(a)):

(1) A renewal of a single payment obligation with no change in the original terms;

(2) A reduction in the annual percentage rate as computed under the Truth in Lending Act with a corresponding change in the payment schedule;

(3) An agreement involving a court proceeding;

(4) A workout agreement, in which a change in the payment schedule or change in collateral requirements is agreed to as a result of the consumer's default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for continuation of allowable insurance; and

(5) The renewal of optional insurance purchased by the consumer that is added to an existing transaction, if disclosures relating to the initial purchase were provided.

Regulation Z means the regulations issued by the Bureau (12 CFR part 1026) to implement the Federal Truth in Lending Act (15 U.S.C. 1601 *et seq.*), and includes the Commentary on Regulation Z.

Required use means a situation in which a person must use a particular provider of a settlement service in order to have access to some distinct service or property, and the person will pay for the settlement service of the particular provider or will pay a charge attributable, in whole or in part, to the settlement service. However, the offering of a package (or combination of settlement services) or the offering of discounts or rebates to consumers for the purchase of multiple settlement services does not constitute a required use. Any package or discount must be optional to the purchaser. The discount must be a true discount below the prices that are otherwise generally available, and must not be made up by

higher costs elsewhere in the settlement process.

RESPA means the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 *et seq.*).

Servicer means a person responsible for the servicing of a federally related mortgage loan (including the person who makes or holds such loan if such person also services the loan). The term does not include:

(1) The Federal Deposit Insurance Corporation (FDIC), in connection with assets acquired, assigned, sold, or transferred pursuant to section 13(c) of the Federal Deposit Insurance Act or as receiver or conservator of an insured depository institution;

(2) The National Credit Union Administration (NCUA), in connection with assets acquired, assigned, sold, or transferred pursuant to section 208 of the Federal Credit Union Act or as conservator or liquidating agent of an insured credit union; and

(3) The Federal National Mortgage Corporation (FNMA); the Federal Home Loan Mortgage Corporation (Freddie Mac); the FDIC; HUD, including the Government National Mortgage Association (GNMA) and the Federal Housing Administration (FHA) (including cases in which a mortgage insured under the National Housing Act (12 U.S.C. 1701 *et seq.*) is assigned to HUD); the NCUA; the Farm Service Agency; and the Department of Veterans Affairs (VA), in any case in which the assignment, sale, or transfer of the servicing of the federally related mortgage loan is preceded by termination of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, commencement of proceedings by the FDIC for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled), or commencement of proceedings by the NCUA for appointment of a conservator or liquidating agent of the servicer (or an entity by which the servicer is owned or controlled).

Servicing means receiving any scheduled periodic payments from a borrower pursuant to the terms of any federally related mortgage loan, including amounts for escrow accounts under section 10 of RESPA (12 U.S.C. 2609), and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, servicing includes making payments to the borrower.

Settlement means the process of executing legally binding documents regarding a lien on property that is subject to a federally related mortgage loan. This process may also be called ''closing'' or ''escrow'' in different jurisdictions.

Settlement service means any service provided in connection with a prospective or actual settlement, including, but not limited to, any one or more of the following:

(1) Origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of such loans);

(2) Rendering of services by a mortgage broker (including counseling, taking of applications, obtaining verifications and appraisals, and other loan processing and origination services, and communicating with the borrower and lender);

(3) Provision of any services related to the origination, processing or funding of a federally related mortgage loan;

(4) Provision of title services, including title searches, title examinations, abstract preparation, insurability determinations, and the issuance of title commitments and title insurance policies;

(5) Rendering of services by an attorney;

(6) Preparation of documents, including notarization, delivery, and recordation;

(7) Rendering of credit reports and appraisals;

(8) Rendering of inspections, including inspections required by applicable law or any inspections required by the sales contract or mortgage documents prior to transfer of title;

(9) Conducting of settlement by a settlement agent and any related services;

(10) Provision of services involving mortgage insurance;

(11) Provision of services involving hazard, flood, or other casualty insurance or homeowner's warranties;

(12) Provision of services involving mortgage life, disability, or similar insurance designed to pay a mortgage loan upon disability or death of a borrower, but only if such insurance is required by the lender as a condition of the loan;

(13) Provision of services involving real property taxes or any other assessments or charges on the real property;

(14) Rendering of services by a real estate agent or real estate broker; and

(15) Provision of any other services for which a settlement service provider requires a borrower or seller to pay.

Special information booklet means the booklet adopted pursuant to section 5 of RESPA (12 U.S.C. 2604) to help persons understand the nature and costs of settlement services. The Bureau publishes the form of the special information booklet in the FEDERAL REGISTER or by other public notice. The Bureau may issue or approve additional booklets or alternative booklets by publication of a Notice in the FEDERAL REGISTER.

State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Table funding means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. A table-funded transaction is not a secondary market transaction (see §1024.5(b)(7)).

Third party means a settlement service provider other than a loan originator.

Title company means any institution, or its duly authorized agent, that is qualified to issue title insurance.

Title service means any service involved in the provision of title insurance (lender's or owner's policy), including but not limited to: Title examination and evaluation; preparation and issuance of title commitment; clearance of underwriting objections; preparation and issuance of a title insurance policy or policies; and the processing and administrative services required to perform these functions. The term also includes the service of conducting a settlement.

Tolerance means the maximum amount by which the charge for a category or categories of settlement costs may exceed the amount of the estimate for such category or categories on a GFE.

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 10873, Feb. 14, 2013]

§1024.3 E-Sign applicability.

The disclosures required by this part may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

[78 FR 10873, Feb. 14, 2013]

§1024.4 Reliance upon rule, regulation, or interpretation by the Bureau.

(a) *Rule, regulation or interpretation.* (1) For purposes of sections 19(a) and (b) of RESPA (12 U.S.C. 2617(a) and (b)), only the following constitute a rule, regulation or interpretation of the Bureau:

(i) All provisions, including appendices and supplements, of this part. Any other document referred to in this part is not incorporated in this part unless it is specifically set out in this part;

(ii) Any other document that is published in the FEDERAL REGISTER by the Bureau and states that it is an ''interpretation,'' ''interpretive rule,'' ''commentary,'' or a ''statement of policy'' for purposes of section 19(a) of RESPA. Except in unusual circumstances, interpretations will not be issued separately but will be incorporated in an official interpretation to this part, which will be amended periodically.

(2) A ''rule, regulation, or interpretation thereof by the Bureau'' for purposes of section 19(b) of RESPA (12 U.S.C. 2617(b)) shall not include the special information booklet prescribed by the Bureau or any other statement or issuance, whether oral or written, by

an officer or representative of the Bureau, letter or memorandum by the Director, General Counsel, or other officer or employee of the Bureau, preamble to a regulation or other issuance of the Bureau, Public Guidance Document, report to Congress, pleading, affidavit or other document in litigation, pamphlet, handbook, guide, telegraphic communication, explanation, instructions to forms, speech or other material of any nature which is not specifically included in paragraph (a)(1) of this section.

(b) All informal counsel's opinions and staff interpretations issued by HUD before November 2, 1992, were withdrawn as of that date. Courts and administrative agencies, however, may use previous opinions to determine the validity of conduct under the previous Regulation X.

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 10874, Feb. 14, 2013]

§ 1024.5 Coverage of RESPA.

(a) *Applicability.* RESPA and this part apply to federally related mortgage loans, except as provided in paragraphs (b) and (d) of this section.

(b) *Exemptions.* (1) [Reserved]

(2) *Business purpose loans.* An extension of credit primarily for a business, commercial, or agricultural purpose, as defined by 12 CFR 1026.3(a)(1) of Regulation Z. Persons may rely on Regulation Z in determining whether the exemption applies.

(3) *Temporary financing.* Temporary financing, such as a construction loan. The exemption for temporary financing does not apply to a loan made to finance construction of 1- to 4-family residential property if the loan is used as, or may be converted to, permanent financing by the same lender or is used to finance transfer of title to the first user. If a lender issues a commitment for permanent financing, with or without conditions, the loan is covered by this part. Any construction loan for new or rehabilitated 1- to 4-family residential property, other than a loan to a *bona fide* builder (a person who regularly constructs 1- to 4-family residential structures for sale or lease), is subject to this part if its term is for two years or more. A ''bridge loan'' or ''swing loan'' in which a lender takes a security interest in otherwise covered 1- to 4-family residential property is not covered by RESPA and this part.

(4) *Vacant land.* Any loan secured by vacant or unimproved property, unless within two years from the date of the settlement of the loan, a structure or a manufactured home will be constructed or placed on the real property using the loan proceeds. If a loan for a structure or manufactured home to be placed on vacant or unimproved property will be secured by a lien on that property, the transaction is covered by this part.

(5) *Assumption without lender approval.* Any assumption in which the lender does not have the right expressly to approve a subsequent person as the borrower on an existing federally related mortgage loan. Any assumption in which the lender's permission is both required and obtained is covered by RESPA and this part, whether or not the lender charges a fee for the assumption.

(6) *Loan conversions.* Any conversion of a federally related mortgage loan to different terms that are consistent with provisions of the original mortgage instrument, as long as a new note is not required, even if the lender charges an additional fee for the conversion.

(7) *Secondary market transactions.* A bona fide transfer of a loan obligation in the secondary market is not covered by RESPA and this part, except with respect to RESPA (12 U.S.C. 2605) and subpart C of this part (§§ 1024.30–1024.41). In determining what constitutes a *bona fide* transfer, the Bureau will consider the real source of funding and the real interest of the funding lender. Mortgage broker transactions that are table-funded are not secondary market transactions. Neither the creation of a dealer loan or dealer consumer credit contract, nor the first assignment of such loan or contract to a lender, is a secondary market transaction (see § 1024.2).

(c) *Relation to State laws.* (1) State laws that are inconsistent with RESPA or this part are preempted to the extent of the inconsistency. However, RESPA and these regulations do not annul, alter, affect, or exempt any person subject to their provisions from

complying with the laws of any State with respect to settlement practices, except to the extent of the inconsistency.

(2) Upon request by any person, the Bureau is authorized to determine if inconsistencies with State law exist; in doing so, the Bureau shall consult with appropriate Federal agencies.

(i) The Bureau may not determine that a State law or regulation is inconsistent with any provision of RESPA or this part, if the Bureau determines that such law or regulation gives greater protection to the consumer.

(ii) In determining whether provisions of State law or regulations concerning affiliated business arrangements are inconsistent with RESPA or this part, the Bureau may not construe those provisions that impose more stringent limitations on affiliated business arrangements as inconsistent with RESPA so long as they give more protection to consumers and/or competition.

(3) Any person may request the Bureau to determine whether an inconsistency exists by submitting to the address established by the Bureau to request an official interpretation, a copy of the State law in question, any other law or judicial or administrative opinion that implements, interprets or applies the relevant provision, and an explanation of the possible inconsistency. A determination by the Bureau that an inconsistency with State law exists will be made by publication of a notice in the FEDERAL REGISTER. ''Law'' as used in this section includes regulations and any enactment which has the force and effect of law and is issued by a State or any political subdivision of a State.

(4) A specific preemption of conflicting State laws regarding notices and disclosures of mortgage servicing transfers is set forth in §1024.33(d).

(d) *Partial exemptions for certain mortgage loans.* Sections 1024.6, 1024.7, 1024.8, 1024.10, and 1024.33(a) do not apply to a federally related mortgage loan:

(1) That is subject to the special disclosure requirements for certain consumer credit transactions secured by real property set forth in Regulation Z, 12 CFR 1026.19(e), (f), and (g); or

(2) That satisfies the criteria in Regulation Z, 12 CFR 1026.3(h).

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 10874, Feb. 14, 2013; 78 FR 44717, July 24, 2013; 78 FR 80104, Dec. 31, 2013; 80 FR 8775, Feb. 19, 2015]

Subpart B—Mortgage Settlement and Escrow Accounts

§1024.6 Special information booklet at time of loan application.

(a) *Lender to provide special information booklet.* Subject to the exceptions set forth in this paragraph, the lender shall provide a copy of the special information booklet to a person from whom the lender receives, or for whom the lender prepares, a written application for a federally related mortgage loan. When two or more persons apply together for a loan, the lender is in compliance if the lender provides a copy of the booklet to one of the persons applying.

(1) The lender shall provide the special information booklet by delivering it or placing it in the mail to the applicant not later than three business days (as that term is defined in §1024.2) after the application is received or prepared. However, if the lender denies the borrower's application for credit before the end of the three-business-day period, then the lender need not provide the booklet to the borrower. If a borrower uses a mortgage broker, the mortgage broker shall distribute the special information booklet and the lender need not do so. The intent of this provision is that the applicant receive the special information booklet at the earliest possible date.

(2) In the case of a federally related mortgage loan involving an open-ended credit plan, as defined in Regulation Z, 12 CFR 1026.2(a)(20), a lender or mortgage broker that provides the borrower with a copy of the brochure entitled ''When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit'', or any successor brochure issued by the Bureau, is deemed to be in compliance with this section.

(3) In the categories of transactions set forth at the end of this paragraph, the lender or mortgage broker does not

have to provide the booklet to the borrower. Under the authority of section 19(a) of RESPA (12 U.S.C. 2617(a)), the Bureau may issue a revised or separate special information booklet that deals with these transactions, or the Bureau may choose to endorse the forms or booklets of other Federal agencies. In such an event, the requirements for delivery by lenders and the availability of the booklet or alternate materials for these transactions will be set forth in a Notice in the FEDERAL REGISTER. This paragraph shall apply to the following transactions:

(i) Refinancing transactions;

(ii) Closed-end loans, as defined in 12 CFR 1026.2(a)(10) of Regulation Z, when the lender takes a subordinate lien;

(iii) Reverse mortgages; and

(iv) Any other federally related mortgage loan whose purpose is not the purchase of a 1- to 4-family residential property.

(b) *Revision.* The Bureau may from time to time revise the special information booklet, publishing a notice in the FEDERAL REGISTER.

(c) *Reproduction.* The special information booklet may be reproduced in any form, provided that no change is made other than as provided under paragraph (d) of this section. The special information booklet may not be made a part of a larger document for purposes of distribution under RESPA and this section. Any color, size and quality of paper, type of print, and method of reproduction may be used so long as the booklet is clearly legible.

(d) *Permissible changes.* (1)(i) No changes to, deletions from, or additions to the special information booklet currently prescribed by the Bureau shall be made other than the permissible changes specified in paragraphs (d)(1)(ii) through (d)(3) of this section or changes as otherwise approved in writing by the Bureau in accordance with the procedures described in this paragraph. A request to the Bureau for approval of any changes other than the permissible changes specified in paragraphs (d)(1)(ii) through (d)(3) of this section shall be submitted in writing to the address indicated in §1024.3, stating the reasons why the applicant believes such changes, deletions or additions are necessary.

(ii)(A) In the Complaints section of the booklet, it is a permissible change to substitute ''the Bureau of Consumer Financial Protection'' for ''HUD's Office of RESPA'' and ''the RESPA office.''

(B) In the Avoiding Foreclosure section of the booklet, it is a permissible change to inform homeowners that they may find information on and assistance in avoiding foreclosures at *http://www.consumerfinance.gov*. The deletion of the reference to the HUD Web page, *http://www.hud.gov/foreclosure/*, in the Avoiding Foreclosure section of the booklet is not a permissible change.

(C) In the appendix to the booklet, it is a permissible change to substitute ''the Bureau of Consumer Financial Protection'' for the reference to the ''Board of Governors of the Federal Reserve System'' in the No Discrimination section of the appendix to the booklet. In the Contact Information section of the appendix to the booklet, it is a permissible change to add the following contact information for the Bureau: ''Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006; *www.consumerfinance.gov/learnmore*''. It is also a permissible change to remove the contact information for HUD's Office of RESPA and Interstate Land Sales from the Contact Information section of the appendix to the booklet.

(2) The cover of the booklet may be in any form and may contain any drawings, pictures or artwork, provided that the words ''settlement costs'' are used in the title. Names, addresses and telephone numbers of the lender or others and similar information may appear on the cover, but no discussion of the matters covered in the booklet shall appear on the cover. References to HUD on the cover of the booklet may be changed to references to the Bureau.

(3) The special information booklet may be translated into languages other than English.

§1024.7 Good faith estimate.

(a) *Lender to provide.* (1) Except as otherwise provided in paragraphs (a), (b), or (h) of this section, not later than 3 business days after a lender receives

an application, or information sufficient to complete an application, the lender must provide the applicant with a GFE. In the case of dealer loans, the lender must either provide the GFE or ensure that the dealer provides the GFE.

(2) The lender must provide the GFE to the loan applicant by hand delivery, by placing it in the mail, or, if the applicant agrees, by fax, email, or other electronic means.

(3) The lender is not required to provide the applicant with a GFE if, before the end of the 3-business-day period:

(i) The lender denies the application; or

(ii) The applicant withdraws the application.

(4) The lender is not permitted to charge, as a condition for providing a GFE, any fee for an appraisal, inspection, or other similar settlement service. The lender may, at its option, charge a fee limited to the cost of a credit report. The lender may not charge additional fees until after the applicant has received the GFE and indicated an intention to proceed with the loan covered by that GFE. If the GFE is mailed to the applicant, the applicant is considered to have received the GFE 3 calendar days after it is mailed, not including Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(5) The lender may at any time collect from the loan applicant any information that it requires in addition to the required application information. However, the lender is not permitted to require, as a condition for providing a GFE, that an applicant submit supplemental documentation to verify the information provided on the application.

(b) *Mortgage broker to provide.* (1) Except as otherwise provided in paragraphs (a), (b), or (h) of this section, either the lender or the mortgage broker must provide a GFE not later than 3 business days after a mortgage broker receives either an application or information sufficient to complete an application. The lender is responsible for ascertaining whether the GFE has been provided. If the mortgage broker has provided a GFE, the lender is not required to provide an additional GFE.

(2) The mortgage broker must provide the GFE by hand delivery, by placing it in the mail, or, if the applicant agrees, by fax, email, or other electronic means.

(3) The mortgage broker is not required to provide the applicant with a GFE if, before the end of the 3-business-day period:

(i) The mortgage broker or lender denies the application; or

(ii) The applicant withdraws the application.

(4) The mortgage broker is not permitted to charge, as a condition for providing a GFE, any fee for an appraisal, inspection, or other similar settlement service. The mortgage broker may, at its option, charge a fee limited to the cost of a credit report. The mortgage broker may not charge additional fees until after the applicant has received the GFE and indicated an intention to proceed with the loan covered by that GFE. If the GFE is mailed to the applicant, the applicant is considered to have received the GFE 3 calendar days after it is mailed, not including Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(5) The mortgage broker may at any time collect from the loan applicant any information that it requires in addition to the required application information. However, the mortgage broker is not permitted to require, as a condition for providing a GFE, that an applicant submit supplemental documentation to verify the information provided on the application.

(c) *Availability of GFE terms.* Except as provided in this paragraph, the estimate of the charges and terms for all settlement services must be available for at least 10 business days from when the GFE is provided, but it may remain available longer, if the loan originator extends the period of availability. The estimate for the following charges are excepted from this requirement: the interest rate, charges and terms dependent upon the interest rate, which includes the charge or credit for the interest rate chosen, the adjusted origination charges, and per diem interest.

(d) *Content and form of GFE.* The GFE form is set out in appendix C to this part. The loan originator must prepare

the GFE in accordance with the requirements of this section and the Instructions in appendix C to this part. The instructions in appendix C to this part allow for flexibility in the preparation and distribution of the GFE in hard copy and electronic format.

(e) *Tolerances for amounts included on GFE.* (1) Except as provided in paragraph (f) of this section, the actual charges at settlement may not exceed the amounts included on the GFE for:

(i) The origination charge;

(ii) While the borrower's interest rate is locked, the credit or charge for the interest rate chosen;

(iii) While the borrower's interest rate is locked, the adjusted origination charge; and

(iv) Transfer taxes.

(2) Except as provided in paragraph (f) of this section, the sum of the charges at settlement for the following services may not be greater than 10 percent above the sum of the amounts included on the GFE:

(i) Lender-required settlement services, where the lender selects the third party settlement service provider;

(ii) Lender-required services, title services and required title insurance, and owner's title insurance, when the borrower uses a settlement service provider identified by the loan originator; and

(iii) Government recording charges.

(3) The amounts charged for all other settlement services included on the GFE may change at settlement.

(f) *Binding GFE.* The loan originator is bound, within the tolerances provided in paragraph (e) of this section, to the settlement charges and terms listed on the GFE provided to the borrower, unless a revised GFE is provided prior to settlement consistent with this paragraph (f) or the GFE expires in accordance with paragraph (f)(4) of this section. If a loan originator provides a revised GFE consistent with this paragraph, the loan originator must document the reason that a revised GFE was provided. Loan originators must retain documentation of any reason for providing a revised GFE for no less than 3 years after settlement.

(1) *Changed circumstances affecting settlement costs.* If changed circumstances result in increased costs for any settlement services such that the charges at settlement would exceed the tolerances for those charges, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of receiving information sufficient to establish changed circumstances. The revised GFE may increase charges for services listed on the GFE only to the extent that the changed circumstances actually resulted in higher charges.

(2) *Changed circumstances affecting loan.* If changed circumstances result in a change in the borrower's eligibility for the specific loan terms identified in the GFE, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of receiving information sufficient to establish changed circumstances. The revised GFE may increase charges for services listed on the GFE only to the extent that the changed circumstances affecting the loan actually resulted in higher charges.

(3) *Borrower-requested changes.* If a borrower requests changes to the federally related mortgage loan identified in the GFE that change the settlement charges or the terms of the loan, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within three business days of the borrower's request. The revised GFE may increase charges for services listed on the GFE only to the extent that the borrower-requested changes to the mortgage loan identified on the GFE actually resulted in higher charges.

(4) *Expiration of GFE.* If a borrower does not express an intent to continue with an application within 10 business days after the GFE is provided, or such longer time specified by the loan originator pursuant to paragraph (c) of this section, the loan originator is no longer bound by the GFE.

(5) *Interest rate-dependent charges and terms.* If the interest rate has not been locked, or a locked interest rate has expired, the charge or credit for the interest rate chosen, the adjusted origination charges, per diem interest, and

loan terms related to the interest rate may change. When the interest rate is later locked, a revised GFE must be provided showing the revised interest rate-dependent charges and terms. The loan originator must provide the revised GFE within 3 business days of the interest rate being locked or, for an expired interest rate, re-locked. All other charges and terms must remain the same as on the original GFE, except as otherwise provided in paragraph (f) of this section.

(6) *New construction home purchases.* In transactions involving new construction home purchases, where settlement is anticipated to occur more than 60 calendar days from the time a GFE is provided, the loan originator may provide the GFE to the borrower with a clear and conspicuous disclosure stating that at any time up until 60 calendar days prior to closing, the loan originator may issue a revised GFE. If no such separate disclosure is provided, the loan originator cannot issue a revised GFE, except as otherwise provided in paragraph (f) of this section.

(g) *GFE is not a loan commitment.* Nothing in this section shall be interpreted to require a loan originator to make a loan to a particular borrower. The loan originator is not required to provide a GFE if the loan originator does not have available a loan for which the borrower is eligible.

(h) *Open-end lines of credit (home-equity plans) under Truth in Lending Act.* In the case of a federally related mortgage loan involving an open-end line of credit (home-equity plan) covered under the Truth in Lending Act and Regulation Z, a lender or mortgage broker that provides the borrower with the disclosures required by 12 CFR 1026.40 of Regulation Z at the time the borrower applies for such loan shall be deemed to satisfy the requirements of this section.

(i) *Violations of section 5 of RESPA (12 U.S.C. 2604).* A loan originator that violates the requirements of this section shall be deemed to have violated section 5 of RESPA. If any charges at settlement exceed the charges listed on the GFE by more than the permitted tolerances, the loan originator may cure the tolerance violation by reimbursing to the borrower the amount by which the tolerance was exceeded, at settlement or within 30 calendar days after settlement. A borrower will be deemed to have received timely reimbursement if the loan originator delivers or places the payment in the mail within 30 calendar days after settlement.

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 10875, Feb. 14, 2013]

§ 1024.8 Use of HUD–1 or HUD–1A settlement statements.

(a) *Use by settlement agent.* The settlement agent shall use the HUD–1 settlement statement in every settlement involving a federally related mortgage loan in which there is a borrower and a seller. For transactions in which there is a borrower and no seller, such as refinancing loans or subordinate lien loans, the HUD–1 may be utilized by using the borrower's side of the HUD–1 statement. Alternatively, the form HUD–1A may be used for these transactions. The HUD–1 or HUD–1A may be modified as permitted under this part. Either the HUD–1 or the HUD–1A, as appropriate, shall be used for every RESPA-covered transaction, unless its use is specifically exempted. The use of the HUD–1 or HUD–1A is exempted for open-end lines of credit (home-equity plans) covered by the Truth in Lending Act and Regulation Z.

(b) *Charges to be stated.* The settlement agent shall complete the HUD–1 or HUD–1A, in accordance with the instructions set forth in appendix A to this part. The loan originator must transmit to the settlement agent all information necessary to complete the HUD–1 or HUD–1A.

(1) *In general.* The settlement agent shall state the actual charges paid by the borrower and seller on the HUD–1, or by the borrower on the HUD–1A. The settlement agent must separately itemize each third party charge paid by the borrower and seller. All origination services performed by or on behalf of the loan originator must be included in the loan originator's own charge. Administrative and processing services related to title services must be included in the title underwriter's or title agent's own charge. The amount stated on the HUD–1 or HUD–1A for any itemized service cannot exceed the

amount actually received by the settlement service provider for that itemized service, unless the charge is an average charge in accordance with paragraph (b)(2) of this section.

(2) *Use of average charge.* (i) The average charge for a settlement service shall be no more than the average amount paid for a settlement service by one settlement service provider to another settlement service provider on behalf of borrowers and sellers for a particular class of transactions involving federally related mortgage loans. The total amounts paid by borrowers and sellers for a settlement service based on the use of an average charge may not exceed the total amounts paid to the providers of that service for the particular class of transactions.

(ii) The settlement service provider shall define the particular class of transactions for purposes of calculating the average charge as all transactions involving federally related mortgage loans for:

(A) A period of time as determined by the settlement service provider, but not less than 30 calendar days and not more than 6 months;

(B) A geographic area as determined by the settlement service provider; and

(C) A type of loan as determined by the settlement service provider.

(iii) A settlement service provider may use an average charge in the same class of transactions for which the charge was calculated. If the settlement service provider uses the average charge for any transaction in the class, the settlement service provider must use the same average charge in every transaction within that class for which a GFE was provided.

(iv) The use of an average charge is not permitted for any settlement service if the charge for the service is based on the loan amount or property value. For example, an average charge may not be used for transfer taxes, interest charges, reserves or escrow, or any type of insurance, including mortgage insurance, title insurance, or hazard insurance.

(v) The settlement service provider must retain all documentation used to calculate the average charge for a particular class of transactions for at least 3 years after any settlement for which that average charge was used.

(c) *Violations of section 4 of RESPA (12 U.S.C. 2603).* A violation of any of the requirements of this section will be deemed to be a violation of section 4 of RESPA. An inadvertent or technical error in completing the HUD–1 or HUD–1A shall not be deemed a violation of section 4 of RESPA if a revised HUD–1 or HUD–1A is provided in accordance with the requirements of this section within 30 calendar days after settlement.

§ 1024.9 Reproduction of settlement statements.

(a) *Permissible changes—HUD–1.* The following changes and insertions are permitted when the HUD–1 settlement statement is reproduced:

(1) The person reproducing the HUD–1 may insert its business name and logo in section A and may rearrange, but not delete, the other information that appears in section A.

(2) The name, address, and other information regarding the lender and settlement agent may be printed in sections F and H, respectively.

(3) Reproduction of the HUD–1 must conform to the terminology, sequence, and numbering of line items as presented in lines 100–1400. However, blank lines or items listed in lines 100–1400 that are not used locally or in connection with mortgages by the lender may be deleted, except for the following: Lines 100, 120, 200, 220, 300, 301, 302, 303, 400, 420, 500, 520, 600, 601, 602, 603, 700, 800, 900, 1000, 1100, 1200, 1300, and 1400. The form may be shortened correspondingly. The number of a deleted item shall not be used for a substitute or new item, but the number of a blank space on the HUD–1 may be used for a substitute or new item.

(4) Charges not listed on the HUD–1, but that are customary locally or pursuant to the lender's practice, may be inserted in blank spaces. Where existing blank spaces on the HUD–1 are insufficient, additional lines and spaces may be added and numbered in sequence with spaces on the HUD–1.

(5) The following variations in layout and format are within the discretion of persons reproducing the HUD–1 and do not require prior HUD approval: size of

pages; tint or color of pages; size and style of type or print; vertical spacing between lines or provision for additional horizontal space on lines (for example, to provide sufficient space for recording time periods used in prorations); printing of the HUD–1 contents on separate pages, on the front and back of a single page, or on one continuous page; use of multicopy tear-out sets; printing on rolls for computer purposes; reorganization of sections B through I, when necessary to accommodate computer printing; and manner of placement of the HUD number, but not the OMB approval number, neither of which may be deleted. The expiration date associated with the OMB number listed on the form may be deleted. Any changes in the HUD number or OMB approval number may be announced by notice in the FEDERAL REGISTER, rather than by amendment of this part.

(6) The borrower's information and the seller's information may be provided on separate pages.

(7) Signature lines may be added.

(8) The HUD–1 may be translated into languages other than English.

(9) An additional page may be attached to the HUD–1 for the purpose of including customary recitals and information used locally in real estate settlements; for example, breakdown of payoff figures, a breakdown of the borrower's total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between buyer and seller, and the date funds are transferred. If space permits, such information may be added at the end of the HUD–1.

(10) As required by HUD/FHA in FHA-insured loans.

(11) As allowed by §1024.17, relating to an initial escrow account statement.

(b) *Permissible changes—HUD–1A.* The changes and insertions on the HUD–1 permitted under paragraph (a) of this section are also permitted when the HUD–1A settlement statement is reproduced, except the changes described in paragraphs (a)(3) and (6) of this section.

(c) *Written approval.* Any other deviation in the HUD–1 or HUD–1A forms is permissible only upon receipt of written approval of the Bureau; provided, however, that notwithstanding contrary instructions in this section or appendix A, reproducing the HUD–1 or HUD–1A forms with the Bureau's OMB approval number displayed in place of HUD's OMB approval number does not require the written approval of the Bureau. A request to the Bureau for approval shall be submitted in writing to the address indicated in §1024.3 and shall state the reasons why the applicant believes such deviation is needed. The prescribed form(s) must be used until approval is received.

§1024.10 One-day advance inspection of HUD–1 or HUD–1A settlement statement; delivery; recordkeeping.

(a) *Inspection one day prior to settlement upon request by the borrower.* The settlement agent shall permit the borrower to inspect the HUD–1 or HUD–1A settlement statement, completed to set forth those items that are known to the settlement agent at the time of inspection, during the business day immediately preceding settlement. Items related only to the seller's transaction may be omitted from the HUD–1.

(b) *Delivery.* The settlement agent shall provide a completed HUD–1 or HUD–1A to the borrower, the seller (if there is one), the lender (if the lender is not the settlement agent), and/or their agents. When the borrower's and seller's copies of the HUD–1 or HUD–1A differ as permitted by the instructions in appendix A to this part, both copies shall be provided to the lender (if the lender is not the settlement agent). The settlement agent shall deliver the completed HUD–1 or HUD–1A at or before the settlement, except as provided in paragraphs (c) and (d) of this section.

(c) *Waiver.* The borrower may waive the right to delivery of the completed HUD–1 or HUD–1A no later than at settlement by executing a written waiver at or before settlement. In such case, the completed HUD–1 or HUD–1A shall be mailed or delivered to the borrower, seller, and lender (if the lender is not the settlement agent) as soon as practicable after settlement.

(d) *Exempt transactions.* When the borrower or the borrower's agent does not attend the settlement, or when the settlement agent does not conduct a

meeting of the parties for that purpose, the transaction shall be exempt from the requirements of paragraphs (a) and (b) of this section, except that the HUD–1 or HUD–1A shall be mailed or delivered as soon as practicable after settlement.

(e) *Recordkeeping*. The lender shall retain each completed HUD–1 or HUD–1A and related documents for five years after settlement, unless the lender disposes of its interest in the mortgage and does not service the mortgage. In that case, the lender shall provide its copy of the HUD–1 or HUD–1A to the owner or servicer of the mortgage as a part of the transfer of the loan file. Such owner or servicer shall retain the HUD–1 or HUD–1A for the remainder of the five-year period. The Bureau shall have the right to inspect or require copies of records covered by this paragraph (e).

§ 1024.11 Mailing.

The provisions of this part requiring or permitting mailing of documents shall be deemed to be satisfied by placing the document in the mail (whether or not received by the addressee) addressed to the addresses stated in the loan application or in other information submitted to or obtained by the lender at the time of loan application or submitted or obtained by the lender or settlement agent, except that a revised address shall be used where the lender or settlement agent has been expressly informed in writing of a change in address.

§ 1024.12 No fee.

No fee shall be imposed or charge made upon any other person, as a part of settlement costs or otherwise, by a lender in connection with a federally related mortgage loan made by it (or a loan for the purchase of a manufactured home), or by a servicer (as that term is defined under 12 U.S.C. 2605(i)(2)) for or on account of the preparation and distribution of the HUD–1 or HUD–1A settlement statement, escrow account statements required pursuant to section 10 of RESPA (12 U.S.C. 2609), or statements required by the Truth in Lending Act (15 U.S.C. 1601 *et seq*.).

§ 1024.13 [Reserved]

§ 1024.14 Prohibition against kickbacks and unearned fees.

(a) *Section 8 violation*. Any violation of this section is a violation of section 8 of RESPA (12 U.S.C. 2607).

(b) *No referral fees*. No person shall give and no person shall accept any fee, kickback or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a settlement service involving a federally related mortgage loan shall be referred to any person. Any referral of a settlement service is not a compensable service, except as set forth in § 1024.14(g)(1). A company may not pay any other company or the employees of any other company for the referral of settlement service business.

(c) *No split of charges except for actual services performed*. No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed. A charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this section. The source of the payment does not determine whether or not a service is compensable. Nor may the prohibitions of this part be avoided by creating an arrangement wherein the purchaser of services splits the fee.

(d) *Thing of value*. This term is broadly defined in section 3(2) of RESPA (12 U.S.C. 2602(2)). It includes, without limitation, monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based

in whole or in part on the amount of business referred, trips and payment of another person's expenses, or reduction in credit against an existing obligation. The term ''payment'' is used throughout §§1024.14 and 1024.15 as synonymous with the giving or receiving of any ''thing of value'' and does not require transfer of money.

(e) *Agreement or understanding.* An agreement or understanding for the referral of business incident to or part of a settlement service need not be written or verbalized but may be established by a practice, pattern or course of conduct. When a thing of value is received repeatedly and is connected in any way with the volume or value of the business referred, the receipt of the thing of value is evidence that it is made pursuant to an agreement or understanding for the referral of business.

(f) *Referral.* (1) A referral includes any oral or written action directed to a person which has the effect of affirmatively influencing the selection by any person of a provider of a settlement service or business incident to or part of a settlement service when such person will pay for such settlement service or business incident thereto or pay a charge attributable in whole or in part to such settlement service or business.

(2) A referral also occurs whenever a person paying for a settlement service or business incident thereto is required to use (see §1024.2, ''required use'') a particular provider of a settlement service or business incident thereto.

(g) *Fees, salaries, compensation, or other payments.* (1) Section 8 of RESPA permits:

(i) A payment to an attorney at law for services actually rendered;

(ii) A payment by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance;

(iii) A payment by a lender to its duly appointed agent or contractor for services actually performed in the origination, processing, or funding of a loan;

(iv) A payment to any person of a *bona fide* salary or compensation or other payment for goods or facilities actually furnished or for services actually performed;

(v) A payment pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and real estate brokers. (The statutory exemption restated in this paragraph refers only to fee divisions within real estate brokerage arrangements when all parties are acting in a real estate brokerage capacity, and has no applicability to any fee arrangements between real estate brokers and mortgage brokers or between mortgage brokers.);

(vi) Normal promotional and educational activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto; or

(vii) An employer's payment to its own employees for any referral activities.

(2) The Bureau may investigate high prices to see if they are the result of a referral fee or a split of a fee. If the payment of a thing of value bears no reasonable relationship to the market value of the goods or services provided, then the excess is not for services or goods actually performed or provided. These facts may be used as evidence of a violation of section 8 and may serve as a basis for a RESPA investigation. High prices standing alone are not proof of a RESPA violation. The value of a referral (*i.e.*, the value of any additional business obtained thereby) is not to be taken into account in determining whether the payment exceeds the reasonable value of such goods, facilities or services. The fact that the transfer of the thing of value does not result in an increase in any charge made by the person giving the thing of value is irrelevant in determining whether the act is prohibited.

(3) *Multiple services.* When a person in a position to refer settlement service business, such as an attorney, mortgage lender, real estate broker or agent, or developer or builder, receives a payment for providing additional settlement services as part of a real estate transaction, such payment must be for services that are actual, necessary and distinct from the primary services provided by such person. For example, for

an attorney of the buyer or seller to receive compensation as a title agent, the attorney must perform core title agent services (for which liability arises) separate from attorney services, including the evaluation of the title search to determine the insurability of the title, the clearance of underwriting objections, the actual issuance of the policy or policies on behalf of the title insurance company, and, where customary, issuance of the title commitment, and the conducting of the title search and closing.

(h) *Recordkeeping.* Any documents provided pursuant to this section shall be retained for five (5) years from the date of execution.

(i) *Appendix B of this part.* Illustrations in appendix B of this part demonstrate some of the requirements of this section.

§ 1024.15 Affiliated business arrangements.

(a) *General.* An affiliated business arrangement is defined in section 3(7) of RESPA (12 U.S.C. 2602(7)).

(b) *Violation and exemption.* An affiliated business arrangement is not a violation of section 8 of RESPA (12 U.S.C. 2607) and of §1024.14 if the conditions set forth in this section are satisfied. Paragraph (b)(1) of this section shall not apply to the extent it is inconsistent with section 8(c)(4)(A) of RESPA (12 U.S.C. 2607(c)(4)(A)).

(1) The person making each referral has provided to each person whose business is referred a written disclosure, in the format of the Affiliated Business Arrangement Disclosure Statement set forth in appendix D of this part, of the nature of the relationship (explaining the ownership and financial interest) between the provider of settlement services (or business incident thereto) and the person making the referral and of an estimated charge or range of charges generally made by such provider (which describes the charge using the same terminology, as far as practical, as section L of the HUD–1 settlement statement). The disclosures must be provided on a separate piece of paper no later than the time of each referral or, if the lender requires use of a particular provider, the time of loan application, except that:

(i) Where a lender makes the referral to a borrower, the condition contained in paragraph (b)(1) of this section may be satisfied at the time that the good faith estimate or a statement under §1024.7(d) is provided; and

(ii) Whenever an attorney or law firm requires a client to use a particular title insurance agent, the attorney or law firm shall provide the disclosures no later than the time the attorney or law firm is engaged by the client.

(iii) Failure to comply with the disclosure requirements of this section may be overcome if the person making a referral can prove by a preponderance of the evidence that procedures reasonably adopted to result in compliance with these conditions have been maintained and that any failure to comply with these conditions was unintentional and the result of a *bona fide* error. An error of legal judgment with respect to a person's obligations under RESPA is not a *bona fide* error. Administrative and judicial interpretations of section 130(c) of the Truth in Lending Act shall not be binding interpretations of the preceding sentence or section 8(d)(3) of RESPA (12 U.S.C. 2607(d)(3)).

(2) No person making a referral has required (as defined in §1024.2, ''required use'') any person to use any particular provider of settlement services or business incident thereto, except if such person is a lender, for requiring a buyer, borrower or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction, or except if such person is an attorney or law firm for arranging for issuance of a title insurance policy for a client, directly as agent or through a separate corporate title insurance agency that may be operated as an adjunct to the law practice of the attorney or law firm, as part of representation of that client in a real estate transaction.

(3) The only thing of value that is received from the arrangement other than payments listed in §1024.14(g) is a return on an ownership interest or franchise relationship.

(i) In an affiliated business arrangement:

(A) *Bona fide* dividends, and capital or equity distributions, related to ownership interest or franchise relationship, between entities in an affiliate relationship, are permissible; and

(B) *Bona fide* business loans, advances, and capital or equity contributions between entities in an affiliate relationship (in any direction), are not prohibited—so long as they are for ordinary business purposes and are not fees for the referral of settlement service business or unearned fees.

(ii) A return on an ownership interest does not include:

(A) Any payment which has as a basis of calculation no apparent business motive other than distinguishing among recipients of payments on the basis of the amount of their actual, estimated or anticipated referrals;

(B) Any payment which varies according to the relative amount of referrals by the different recipients of similar payments; or

(C) A payment based on an ownership, partnership or joint venture share which has been adjusted on the basis of previous relative referrals by recipients of similar payments.

(iii) Neither the mere labeling of a thing of value, nor the fact that it may be calculated pursuant to a corporate or partnership organizational document or a franchise agreement, will determine whether it is a *bona fide* return on an ownership interest or franchise relationship. Whether a thing of value is such a return will be determined by analyzing facts and circumstances on a case by case basis.

(iv) A return on franchise relationship may be a payment to or from a franchisee but it does not include any payment which is not based on the franchise agreement, nor any payment which varies according to the number or amount of referrals by the franchisor or franchisee or which is based on a franchise agreement which has been adjusted on the basis of a previous number or amount of referrals by the franchiser or franchisees. A franchise agreement may not be constructed to insulate against kickbacks or referral fees.

(c) *Definitions.* As used in this section:

Associate is defined in section 3(8) of RESPA (12 U.S.C. 2602(8)).

Affiliate relationship means the relationship among business entities where one entity has effective control over the other by virtue of a partnership or other agreement or is under common control with the other by a third entity or where an entity is a corporation related to another corporation as parent to subsidiary by an identity of stock ownership.

Beneficial ownership means the effective ownership of an interest in a provider of settlement services or the right to use and control the ownership interest involved even though legal ownership or title may be held in another person's name.

Control, as used in the definitions of ''associate'' and ''affiliate relationship,'' means that a person:

(i) Is a general partner, officer, director, or employer of another person;

(ii) Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interests of another person;

(iii) Affirmatively influences in any manner the election of a majority of the directors of another person; or

(iv) Has contributed more than 20 percent of the capital of the other person.

Direct ownership means the holding of legal title to an interest in a provider of settlement service except where title is being held for the beneficial owner.

Franchise is defined in FTC regulation 16 CFR 436.1(h).

Franchisor is defined in FTC regulation 16 CFR 436.1(k).

Franchisee is defined in FTC regulation 16 CFR 436.1(i).

FTC means the Federal Trade Commission.

Person who is in a position to refer settlement service business means any real estate broker or agent, lender, mortgage broker, builder or developer, attorney, title company, title agent, or other person deriving a significant portion of his or her gross income from providing settlement services.

(d) *Recordkeeping.* Any documents provided pursuant to this section shall be retained for 5 years after the date of execution.

(e) *Appendix B of this part.* Illustrations in appendix B of this part demonstrate some of the requirements of this section.

§ 1024.16 Title companies.

No seller of property that will be purchased with the assistance of a federally related mortgage loan shall violate section 9 of RESPA (12 U.S.C. 2608). Section 1024.2 defines ''required use'' of a provider of a settlement service.

§ 1024.17 Escrow accounts.

(a) *General.* This section sets out the requirements for an escrow account that a lender establishes in connection with a federally related mortgage loan. It sets limits for escrow accounts using calculations based on monthly payments and disbursements within a calendar year. If an escrow account involves biweekly or any other payment period, the requirements in this section shall be modified accordingly. A Public Guidance Document entitled ''Biweekly Payments—Example'' provides examples of biweekly accounting and a Public Guidance Document entitled ''Annual Escrow Account Disclosure Statement—Example'' provides examples of a 3-year accounting cycle that may be used in accordance with paragraph (c)(9) of this section. A Public Guidance Document entitled ''Consumer Disclosure for Voluntary Escrow Account Payments'' provides a model disclosure format that originators and servicers are encouraged, but not required, to provide to consumers when the originator or servicer anticipates a substantial increase in disbursements from the escrow account after the first year of the loan. The disclosures in that model format may be combined with or included in the Initial Escrow Account Statement required in § 1024.17(g).

(b) *Definitions.* As used in this section:

Aggregate (or) composite analysis, hereafter called *aggregate analysis,* means an accounting method a servicer uses in conducting an escrow account analysis by computing the sufficiency of escrow account funds by analyzing the account as a whole. Appendix E to this part sets forth examples of aggregate escrow account analyses.

Annual escrow account statement means a statement containing all of the information set forth in § 1024.17(i). As noted in § 1024.17(i), a servicer shall submit an annual escrow account statement to the borrower within 30 calendar days of the end of the escrow account computation year, after conducting an escrow account analysis.

Cushion or reserve (hereafter cushion) means funds that a servicer may require a borrower to pay into an escrow account to cover unanticipated disbursements or disbursements made before the borrower's payments are available in the account, as limited by § 1024.17(c).

Deficiency is the amount of a negative balance in an escrow account. As noted in § 1024.17(f), if a servicer advances funds for a borrower, then the servicer must perform an escrow account analysis before seeking repayment of the deficiency.

Delivery means the placing of a document in the United States mail, first-class postage paid, addressed to the last known address of the recipient. Hand delivery also constitutes delivery.

Disbursement date means the date on which the servicer actually pays an escrow item from the escrow account.

Escrow account means any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay. The definition encompasses any account established for this purpose, including a ''trust account'', ''reserve account'', ''impound account'', or other term in different localities. An ''escrow account'' includes any arrangement where the servicer adds a portion of the borrower's payments to principal and subsequently deducts from principal the disbursements for escrow account items. For purposes of

this section, the term ''escrow account'' excludes any account that is under the borrower's total control.

Escrow account analysis means the accounting that a servicer conducts in the form of a trial running balance for an escrow account to:

(1) Determine the appropriate target balances;

(2) Compute the borrower's monthly payments for the next escrow account computation year and any deposits needed to establish or maintain the account; and

(3) Determine whether shortages, surpluses or deficiencies exist.

Escrow account computation year is a 12-month period that a servicer establishes for the escrow account beginning with the borrower's initial payment date. The term includes each 12-month period thereafter, unless a servicer chooses to issue a short year statement under the conditions stated in §1024.17(i)(4).

Escrow account item or *separate item* means any separate expenditure category, such as ''taxes'' or ''insurance'', for which funds are collected in the escrow account for disbursement. An escrow account item with installment payments, such as local property taxes, remains one escrow account item regardless of multiple disbursement dates to the tax authority.

Initial escrow account statement means the first disclosure statement that the servicer delivers to the borrower concerning the borrower's escrow account. The initial escrow account statement shall meet the requirements of §1024.17(g) and be in substantially the format set forth in §1024.17(h).

Installment payment means one of two or more payments payable on an escrow account item during an escrow account computation year. An example of an installment payment is where a jurisdiction bills quarterly for taxes.

Payment due date means the date each month when the borrower's monthly payment to an escrow account is due to the servicer. The initial payment date is the borrower's first payment due date to an escrow account.

Penalty means a late charge imposed by the payee for paying after the disbursement is due. It does not include any additional charge or fee imposed by the payee associated with choosing installment payments as opposed to annual payments or for choosing one installment plan over another.

Pre-accrual is a practice some servicers use to require borrowers to deposit funds, needed for disbursement and maintenance of a cushion, in the escrow account some period before the disbursement date. Pre-accrual is subject to the limitations of §1024.17(c).

Shortage means an amount by which a current escrow account balance falls short of the target balance at the time of escrow analysis.

Single-item analysis means an accounting method servicers use in conducting an escrow account analysis by computing the sufficiency of escrow account funds by considering each escrow item separately. Appendix E to this part sets forth examples of single-item analysis.

Submission (of an escrow account statement) means the delivery of the statement.

Surplus means an amount by which the current escrow account balance exceeds the target balance for the account.

System of recordkeeping means the servicer's method of keeping information that reflects the facts relating to that servicer's handling of the borrower's escrow account, including, but not limited to, the payment of amounts from the escrow account and the submission of initial and annual escrow account statements to borrowers.

Target balance means the estimated month end balance in an escrow account that is just sufficient to cover the remaining disbursements from the escrow account in the escrow account computation year, taking into account the remaining scheduled periodic payments, and a cushion, if any.

Trial running balance means the accounting process that derives the target balances over the course of an escrow account computation year. Section 1024.17(d) provides a description of the steps involved in performing a trial running balance.

(c) *Limits on payments to escrow accounts.* (1) A lender or servicer (hereafter servicer) shall not require a borrower to deposit into any escrow account, created in connection with a

federally related mortgage loan, more than the following amounts:

(i) *Charges at settlement or upon creation of an escrow account.* At the time a servicer creates an escrow account for a borrower, the servicer may charge the borrower an amount sufficient to pay the charges respecting the mortgaged property, such as taxes and insurance, which are attributable to the period from the date such payment(s) were last paid until the initial payment date. The ''amount sufficient to pay'' is computed so that the lowest month end target balance projected for the escrow account computation year is zero (–0–) (see Step 2 in appendix E to this part). In addition, the servicer may charge the borrower a cushion that shall be no greater than one-sixth (⅙) of the estimated total annual payments from the escrow account.

(ii) *Charges during the life of the escrow account.* Throughout the life of an escrow account, the servicer may charge the borrower a monthly sum equal to one-twelfth (1/12) of the total annual escrow payments which the servicer reasonably anticipates paying from the account. In addition, the servicer may add an amount to maintain a cushion no greater than one-sixth (⅙) of the estimated total annual payments from the account. However, if a servicer determines through an escrow account analysis that there is a shortage or deficiency, the servicer may require the borrower to pay additional deposits to make up the shortage or eliminate the deficiency, subject to the limitations set forth in § 1024.17(f).

(2) *Escrow analysis at creation of escrow account.* Before establishing an escrow account, the servicer must conduct an escrow account analysis to determine the amount the borrower must deposit into the escrow account (subject to the limitations of paragraph (c)(1)(i) of this section), and the amount of the borrower's periodic payments into the escrow account (subject to the limitations of paragraph (c)(1)(ii) of this section). In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer must use a date on or before the deadline to avoid a penalty as the disbursement date for the escrow item and comply with any other requirements of paragraph (k) of this section. Upon completing the initial escrow account analysis, the servicer must prepare and deliver an initial escrow account statement to the borrower, as set forth in paragraph (g) of this section. The servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists and must make any adjustments to the account pursuant to paragraph (f) of this section.

(3) *Subsequent escrow account analyses.* For each escrow account, the servicer must conduct an escrow account analysis at the completion of the escrow account computation year to determine the borrower's monthly escrow account payments for the next computation year, subject to the limitations of paragraph (c)(1)(ii) of this section. In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer must use a date on or before the deadline to avoid a penalty as the disbursement date for the escrow item and comply with any other requirements of paragraph (k) of this section. The servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists, and must make any adjustments to the account pursuant to paragraph (f) of this section. Upon completing an escrow account analysis, the servicer must prepare and submit an annual escrow account statement to the borrower, as set forth in paragraph (i) of this section.

(4) *Aggregate accounting required.* All servicers must use the aggregate accounting method in conducting escrow account analyses.

(5) *Cushion.* The cushion must be no greater than one-sixth (⅙) of the estimated total annual disbursements from the escrow account.

(6) *Restrictions on pre-accrual.* A servicer must not practice pre-accrual.

(7) *Servicer estimates of disbursement amounts.* To conduct an escrow account analysis, the servicer shall estimate

the amount of escrow account items to be disbursed. If the servicer knows the charge for an escrow item in the next computation year, then the servicer shall use that amount in estimating disbursement amounts. If the charge is unknown to the servicer, the servicer may base the estimate on the preceding year's charge, or the preceding year's charge as modified by an amount not exceeding the most recent year's change in the national Consumer Price Index for all urban consumers (CPI, all items). In cases of unassessed new construction, the servicer may base an estimate on the assessment of comparable residential property in the market area.

(8) *Provisions in federally related mortgage documents.* The servicer must examine the federally related mortgage loan documents to determine the applicable cushion for each escrow account. If any such documents provide for lower cushion limits, then the terms of the loan documents apply. Where the terms of any such documents allow greater payments to an escrow account than allowed by this section, then this section controls the applicable limits. Where such documents do not specifically establish an escrow account, whether a servicer may establish an escrow account for the loan is a matter for determination by other Federal or State law. If such documents are silent on the escrow account limits and a servicer establishes an escrow account under other Federal or State law, then the limitations of this section apply unless applicable Federal or State law provides for a lower amount. If such documents provide for escrow accounts up to the RESPA limits, then the servicer may require the maximum amounts consistent with this section, unless an applicable Federal or State law sets a lesser amount.

(9) *Assessments for periods longer than one year.* Some escrow account items may be billed for periods longer than one year. For example, servicers may need to collect flood insurance or water purification escrow funds for payment every three years. In such cases, the servicer shall estimate the borrower's payments for a full cycle of disbursements. For a flood insurance premium payable every 3 years, the servicer shall collect the payments reflecting 36 equal monthly amounts. For two out of the three years, however, the account balance may not reach its low monthly balance because the low point will be on a three-year cycle, as compared to an annual one. The annual escrow account statement shall explain this situation (see example in the Public Guidance Document entitled ''Annual Escrow Account Disclosure Statement—Example'', available in accordance with §1024.3).

(d) *Methods of escrow account analysis.* (1) The following sets forth the steps servicers must use to determine whether their use of aggregate analysis conforms with the limitations in §1024.17(c)(1). The steps set forth in this section result in maximum limits. Servicers may use accounting procedures that result in lower target balances. In particular, servicers may use a cushion less than the permissible cushion or no cushion at all. This section does not require the use of a cushion.

(2) *Aggregate analysis.* (i) In conducting the escrow account analysis using aggregate analysis, the target balances may not exceed the balances computed according to the following arithmetic operations:

(A) The servicer first projects a trial balance for the account as a whole over the next computation year (a trial running balance). In doing so the servicer assumes that it will make estimated disbursements on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. The servicer does not use pre-accrual on these disbursement dates. The servicer also assumes that the borrower will make monthly payments equal to one-twelfth of the estimated total annual escrow account disbursements.

(B) The servicer then examines the monthly trial balances and adds to the first monthly balance an amount just sufficient to bring the lowest monthly trial balance to zero, and adjusts all other monthly balances accordingly.

(C) The servicer then adds to the monthly balances the permissible cushion. The cushion is two months of the borrower's escrow payments to the servicer or a lesser amount specified by

state law or the mortgage document (net of any increases or decreases because of prior year shortages or surpluses, respectively).

(ii) *Lowest monthly balance.* Under aggregate analysis, the lowest monthly target balance for the account shall be less than or equal to one-sixth of the estimated total annual escrow account disbursements or a lesser amount specified by state law or the mortgage document. The target balances that the servicer derives using these steps yield the maximum limit for the escrow account. Appendix E to this part illustrates these steps.

(e) *Transfer of servicing.* (1) If the new servicer changes either the monthly payment amount or the accounting method used by the transferor (old) servicer, then the new servicer shall provide the borrower with an initial escrow account statement within 60 days of the date of servicing transfer.

(i) Where a new servicer provides an initial escrow account statement upon the transfer of servicing, the new servicer shall use the effective date of the transfer of servicing to establish the new escrow account computation year.

(ii) Where the new servicer retains the monthly payments and accounting method used by the transferor servicer, then the new servicer may continue to use the escrow account computation year established by the transferor servicer or may choose to establish a different computation year using a short-year statement. At the completion of the escrow account computation year or any short year, the new servicer shall perform an escrow analysis and provide the borrower with an annual escrow account statement.

(2) The new servicer shall treat shortages, surpluses and deficiencies in the transferred escrow account according to the procedures set forth in § 1024.17(f).

(f) *Shortages, surpluses, and deficiencies requirements*—(1) *Escrow account analysis.* For each escrow account, the servicer shall conduct an escrow account analysis to determine whether a surplus, shortage or deficiency exists.

(i) As noted in § 1024.17(c)(2) and (3), the servicer shall conduct an escrow account analysis upon establishing an escrow account and at completion of the escrow account computation year.

(ii) The servicer may conduct an escrow account analysis at other times during the escrow computation year. If a servicer advances funds in paying a disbursement, which is not the result of a borrower's payment default under the underlying mortgage document, then the servicer shall conduct an escrow account analysis to determine the extent of the deficiency before seeking repayment of the funds from the borrower under this paragraph (f).

(2) *Surpluses.* (i) If an escrow account analysis discloses a surplus, the servicer shall, within 30 days from the date of the analysis, refund the surplus to the borrower if the surplus is greater than or equal to 50 dollars ($50). If the surplus is less than 50 dollars ($50), the servicer may refund such amount to the borrower, or credit such amount against the next year's escrow payments.

(ii) These provisions regarding surpluses apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may retain the surplus in the escrow account pursuant to the terms of the federally related mortgage loan documents.

(iii) After an initial or annual escrow analysis has been performed, the servicer and the borrower may enter into a voluntary agreement for the forthcoming escrow accounting year for the borrower to deposit funds into the escrow account for that year greater than the limits established under paragraph (c) of this section. Such an agreement shall cover only one escrow accounting year, but a new voluntary agreement may be entered into after the next escrow analysis is performed. The voluntary agreement may not alter how surpluses are to be treated when the next escrow analysis is performed at the end of the escrow accounting year covered by the voluntary agreement.

(3) *Shortages.* (i) If an escrow account analysis discloses a shortage of less

than one month's escrow account payment, then the servicer has three possible courses of action:

(A) The servicer may allow a shortage to exist and do nothing to change it;

(B) The servicer may require the borrower to repay the shortage amount within 30 days; or

(C) The servicer may require the borrower to repay the shortage amount in equal monthly payments over at least a 12-month period.

(ii) If an escrow account analysis discloses a shortage that is greater than or equal to one month's escrow account payment, then the servicer has two possible courses of action:

(A) The servicer may allow a shortage to exist and do nothing to change it; or

(B) The servicer may require the borrower to repay the shortage in equal monthly payments over at least a 12-month period.

(4) *Deficiency*. If the escrow account analysis confirms a deficiency, then the servicer may require the borrower to pay additional monthly deposits to the account to eliminate the deficiency.

(i) If the deficiency is less than one month's escrow account payment, then the servicer:

(A) May allow the deficiency to exist and do nothing to change it;

(B) May require the borrower to repay the deficiency within 30 days; or

(C) May require the borrower to repay the deficiency in 2 or more equal monthly payments.

(ii) If the deficiency is greater than or equal to 1 month's escrow payment, the servicer may allow the deficiency to exist and do nothing to change it or may require the borrower to repay the deficiency in two or more equal monthly payments.

(iii) These provisions regarding deficiencies apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may recover the deficiency pursuant to the terms of the federally related mortgage loan documents.

(5) *Notice of shortage or deficiency in escrow account*. The servicer shall notify the borrower at least once during the escrow account computation year if there is a shortage or deficiency in the escrow account. The notice may be part of the annual escrow account statement or it may be a separate document.

(g) *Initial escrow account statement*—(1) *Submission at settlement, or within 45 calendar days of settlement*. As noted in §1024.17(c)(2), the servicer shall conduct an escrow account analysis before establishing an escrow account to determine the amount the borrower shall deposit into the escrow account, subject to the limitations of §1024.17(c)(1)(i). After conducting the escrow account analysis for each escrow account, the servicer shall submit an initial escrow account statement to the borrower at settlement or within 45 calendar days of settlement for escrow accounts that are established as a condition of the loan.

(i) The initial escrow account statement shall include the amount of the borrower's monthly mortgage payment and the portion of the monthly payment going into the escrow account and shall itemize the estimated taxes, insurance premiums, and other charges that the servicer reasonably anticipates to be paid from the escrow account during the escrow account computation year and the anticipated disbursement dates of those charges. The initial escrow account statement shall indicate the amount that the servicer selects as a cushion. The statement shall include a trial running balance for the account.

(ii) Pursuant to §1024.17(h)(2), the servicer may incorporate the initial escrow account statement into the HUD–1 or HUD–1A settlement statement. If the servicer does not incorporate the initial escrow account statement into the HUD–1 or HUD–1A settlement statement, then the servicer shall submit the initial escrow account statement to the borrower as a separate document.

(2) *Time of submission of initial escrow account statement for an escrow account established after settlement*. For escrow

accounts established after settlement (and which are not a condition of the loan), a servicer shall submit an initial escrow account statement to a borrower within 45 calendar days of the date of establishment of the escrow account.

(h) *Format for initial escrow account statement.* (1) The format and a completed example for an initial escrow account statement are set out in Public Guidance Documents entitled ''Initial Escrow Account Disclosure Statement—Format'' and ''Initial Escrow Account Disclosure Statement—Example'', available in accordance with § 1024.3.

(2) *Incorporation of initial escrow account statement into HUD–1 or HUD–1A settlement statement.* Pursuant to § 1024.9(a)(11), a servicer may add the initial escrow account statement to the HUD–1 or HUD–1A settlement statement. The servicer may include the initial escrow account statement in the basic text or may attach the initial escrow account statement as an additional page to the HUD–1 or HUD–1A settlement statement.

(3) *Identification of payees.* The initial escrow account statement need not identify a specific payee by name if it provides sufficient information to identify the use of the funds. For example, appropriate entries include: county taxes, hazard insurance, condominium dues, *etc.* If a particular payee, such as a taxing body, receives more than one payment during the escrow account computation year, the statement shall indicate each payment and disbursement date. If there are several taxing authorities or insurers, the statement shall identify each taxing body or insurer (*e.g.*, ''City Taxes'', ''School Taxes'', ''Hazard Insurance'', or ''Flood Insurance,'' *etc.*).

(i) *Annual escrow account statements.* For each escrow account, a servicer shall submit an annual escrow account statement to the borrower within 30 days of the completion of the escrow account computation year. The servicer shall also submit to the borrower the previous year's projection or initial escrow account statement. The servicer shall conduct an escrow account analysis before submitting an annual escrow account statement to the borrower.

(1) *Contents of annual escrow account statement.* The annual escrow account statement shall provide an account history, reflecting the activity in the escrow account during the escrow account computation year, and a projection of the activity in the account for the next year. In preparing the statement, the servicer may assume scheduled payments and disbursements will be made for the final 2 months of the escrow account computation year. The annual escrow account statement must include, at a minimum, the following (the items in paragraphs (i)(1)(i) through (i)(1)(iv) must be clearly itemized):

(i) The amount of the borrower's current monthly mortgage payment and the portion of the monthly payment going into the escrow account;

(ii) The amount of the past year's monthly mortgage payment and the portion of the monthly payment that went into the escrow account;

(iii) The total amount paid into the escrow account during the past computation year;

(iv) The total amount paid out of the escrow account during the same period for taxes, insurance premiums, and other charges (as separately identified);

(v) The balance in the escrow account at the end of the period;

(vi) An explanation of how any surplus is being handled by the servicer;

(vii) An explanation of how any shortage or deficiency is to be paid by the borrower; and

(viii) If applicable, the reason(s) why the estimated low monthly balance was not reached, as indicated by noting differences between the most recent account history and last year's projection. Public Guidance Documents entitled ''Annual Escrow Account Disclosure Statement—Format'' and ''Annual Escrow Account Disclosure Statement—Example'' set forth an acceptable format and methodology for conveying this information.

(2) *No annual statements in the case of default, foreclosure, or bankruptcy.* This paragraph (i)(2) contains an exemption from the provisions of § 1024.17(i)(1). If at the time the servicer conducts the

escrow account analysis the borrower is more than 30 days overdue, then the servicer is exempt from the requirements of submitting an annual escrow account statement to the borrower under §1024.17(i). This exemption also applies in situations where the servicer has brought an action for foreclosure under the underlying federally related mortgage loan, or where the borrower is in bankruptcy proceedings. If the servicer does not issue an annual statement pursuant to this exemption and the loan subsequently is reinstated or otherwise becomes current, the servicer shall provide a history of the account since the last annual statement (which may be longer than 1 year) within 90 days of the date the account became current.

(3) *Delivery with other material.* The servicer may deliver the annual escrow account statement to the borrower with other statements or materials, including the Substitute 1098, which is provided for Federal income tax purposes.

(4) *Short year statements.* A servicer may issue a short year annual escrow account statement (''short year statement'') to change one escrow account computation year to another. By using a short year statement a servicer may adjust its production schedule or alter the escrow account computation year for the escrow account.

(i) *Effect of short year statement.* The short year statement shall end the ''escrow account computation year'' for the escrow account and establish the beginning date of the new escrow account computation year. The servicer shall deliver the short year statement to the borrower within 60 days from the end of the short year.

(ii) *Short year statement upon servicing transfer.* Upon the transfer of servicing, the transferor (old) servicer shall submit a short year statement to the borrower within 60 days of the effective date of transfer.

(iii) *Short year statement upon loan payoff.* If a borrower pays off a federally related mortgage loan during the escrow account computation year, the servicer shall submit a short year statement to the borrower within 60 days after receiving the payoff funds.

(j) *Formats for annual escrow account statement.* The formats and completed examples for annual escrow account statements using single-item analysis (pre-rule accounts) and aggregate analysis are set out in Public Guidance Documents entitled ''Annual Escrow Account Disclosure Statement—Format'' and ''Annual Escrow Account Disclosure Statement—Example''.

(k) *Timely payments.* (1) If the terms of any federally related mortgage loan require the borrower to make payments to an escrow account, the servicer must pay the disbursements in a timely manner, that is, on or before the deadline to avoid a penalty, as long as the borrower's payment is not more than 30 days overdue.

(2) The servicer must advance funds to make disbursements in a timely manner as long as the borrower's payment is not more than 30 days overdue. Upon advancing funds to pay a disbursement, the servicer may seek repayment from the borrower for the deficiency pursuant to paragraph (f) of this section.

(3) For the payment of property taxes from the escrow account, if a taxing jurisdiction offers a servicer a choice between annual and installment disbursements, the servicer must also comply with this paragraph (k)(3). If the taxing jurisdiction neither offers a discount for disbursements on a lump sum annual basis nor imposes any additional charge or fee for installment disbursements, the servicer must make disbursements on an installment basis. If, however, the taxing jurisdiction offers a discount for disbursements on a lump sum annual basis or imposes any additional charge or fee for installment disbursements, the servicer may, at the servicer's discretion (but is not required by RESPA to), make lump sum annual disbursements in order to take advantage of the discount for the borrower or avoid the additional charge or fee for installments, as long as such method of disbursement complies with paragraphs (k)(1) and (k)(2) of this section. The Bureau encourages, but does not require, the servicer to follow the preference of the borrower, if such preference is known to the servicer.

(4) Notwithstanding paragraph (k)(3) of this section, a servicer and borrower

may mutually agree, on an individual case basis, to a different disbursement basis (installment or annual) or disbursement date for property taxes from that required under paragraph (k)(3) of this section, so long as the agreement meets the requirements of paragraphs (k)(1) and (k)(2) of this section. The borrower must voluntarily agree; neither loan approval nor any term of the loan may be conditioned on the borrower's agreeing to a different disbursement basis or disbursement date.

(5) *Timely payment of hazard insurance*—(i) *In general.* Except as provided in paragraph (k)(5)(iii) of this section, with respect to a borrower whose mortgage payment is more than 30 days overdue, but who has established an escrow account for the payment for hazard insurance, as defined in §1024.31, a servicer may not purchase force-placed insurance, as that term is defined in §1024.37(a), unless a servicer is unable to disburse funds from the borrower's escrow account to ensure that the borrower's hazard insurance premium charges are paid in a timely manner.

(ii) *Inability to disburse funds*—(A) *When inability exists.* A servicer is considered unable to disburse funds from a borrower's escrow account to ensure that the borrower's hazard insurance premiums are paid in a timely manner only if the servicer has a reasonable basis to believe either that the borrower's hazard insurance has been canceled (or was not renewed) for reasons other than nonpayment of premium charges or that the borrower's property is vacant.

(B) *When inability does not exist.* A servicer shall not be considered unable to disburse funds from the borrower's escrow account because the escrow account contains insufficient funds for paying hazard insurance premium charges.

(C) *Recoupment of advances.* If a servicer advances funds to an escrow account to ensure that the borrower's hazard insurance premium charges are paid in a timely manner, a servicer may seek repayment from the borrower for the funds the servicer advanced, unless otherwise prohibited by applicable law.

(iii) *Small servicers.* Notwithstanding paragraphs (k)(5)(i) and (k)(5)(ii)(B) of this section and subject to the requirements in §1024.37, a servicer that qualifies as a small servicer pursuant to 12 CFR 1026.41(e)(4) may purchase force-placed insurance and charge the cost of that insurance to the borrower if the cost to the borrower of the force-placed insurance is less than the amount the small servicer would need to disburse from the borrower's escrow account to ensure that the borrower's hazard insurance premium charges were paid in a timely manner.

(l) *Discretionary payments.* Any borrower's discretionary payment (such as credit life or disability insurance) made as part of a monthly mortgage payment is to be noted on the initial and annual statements. If a discretionary payment is established or terminated during the escrow account computation year, this change should be noted on the next annual statement. A discretionary payment is not part of the escrow account unless the payment is required by the lender, in accordance with the definition of ''settlement service'' in §1024.2, or the servicer chooses to place the discretionary payment in the escrow account. If a servicer has not established an escrow account for a federally related mortgage loan and only receives payments for discretionary items, this section is not applicable.

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 10875, Feb. 14, 2013]

§§ 1024.18—1024.19 [Reserved]

§ 1024.20 List of homeownership counseling organizations.

(a) *Provision of list.* (1) Except as otherwise provided in this section, not later than three business days after a lender, mortgage broker, or dealer receives an application, or information sufficient to complete an application, the lender must provide the loan applicant with a clear and conspicuous written list of homeownership counseling organizations that provide relevant counseling services in the loan applicant's location. The list of homeownership counseling organizations distributed to each loan applicant under this section shall be obtained no earlier than 30 days prior to the time when the

list is provided to the loan applicant from either:

(i) The Web site maintained by the Bureau for lenders to use in complying with the requirements of this section; or

(ii) Data made available by the Bureau or HUD for lenders to use in complying with the requirements of this section, provided that the data is used in accordance with instructions provided with the data.

(2) The list of homeownership counseling organizations provided under this section may be combined and provided with other mortgage loan disclosures required pursuant to Regulation Z, 12 CFR part 1026, or this part unless prohibited by Regulation Z or this part.

(3) A mortgage broker or dealer may provide the list of homeownership counseling organizations required under this section to any loan applicant from whom it receives or for whom it prepares an application. If the mortgage broker or dealer has provided the required list of homeownership counseling organizations, the lender is not required to provide an additional list. The lender is responsible for ensuring that the list of homeownership counseling organizations is provided to a loan applicant in accordance with this section.

(4) If the lender, mortgage broker, or dealer does not provide the list of homeownership counseling organizations required under this section to the loan applicant in person, the lender must mail or deliver the list to the loan applicant by other means. The list may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. 7001 *et seq*.

(5) The lender is not required to provide the list of homeownership counseling organizations required under this section if, before the end of the three-business-day period provided in paragraph (a)(1) of this section, the lender denies the application or the loan applicant withdraws the application.

(6) If a mortgage loan transaction involves more than one lender, only one list of homeownership counseling organizations required under this section shall be given to the loan applicant and the lenders shall agree among themselves which lender will comply with the requirements that this section imposes on any or all of them. If there is more than one loan applicant, the required list of homeownership counseling organizations may be provided to any loan applicant with primary liability on the mortgage loan obligation.

(b) *Open-end lines of credit (home-equity plans) under Regulation Z.* For a federally related mortgage loan that is a home-equity line of credit subject to Regulation Z, 12 CFR 1026.40, a lender or mortgage broker that provides the loan applicant with the list of homeownership organizations required under this section may comply with the timing and delivery requirements set out in either paragraph (a) of this section or 12 CFR 1026.40(b).

(c) *Exemptions*—(1) *Reverse mortgage transactions.* A lender is not required to provide an applicant for a reverse mortgage transaction subject to 12 CFR 1026.33(a) the list of homeownership counseling organizations required under this section.

(2) *Timeshare plans.* A lender is not required to provide an applicant for a mortgage loan secured by a timeshare, as described under 11 U.S.C. 101(53D), the list of homeownership counseling organizations required under this section.

[78 FR 6961, Jan. 31, 2013]

Subpart C—Mortgage Servicing

SOURCE: 78 FR 10876, Feb. 14, 2013, unless otherwise noted.

§ 1024.30 Scope.

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section, this subpart applies to any mortgage loan, as that term is defined in § 1024.31.

(b) *Exemptions.* Except as otherwise provided in § 1024.41(j), §§ 1024.38 through 1024.41 of this subpart shall not apply to the following:

(1) A servicer that qualifies as a small servicer pursuant to 12 CFR 1026.41(e)(4);

(2) A servicer with respect to any reverse mortgage transaction as that term is defined in § 1024.31; and

(3) A servicer with respect to any mortgage loan for which the servicer is a qualified lender as that term is defined in 12 CFR 617.7000.

(c) *Scope of certain sections.* (1) Section 1024.33(a) only applies to reverse mortgage transactions.

(2) The procedures set forth in §§ 1024.39 through 1024.41 of this subpart only apply to a mortgage loan that is secured by a property that is a borrower's principal residence.

[78 FR 10876, Feb. 14, 2013, as amended at 78 FR 60437, Oct. 1, 2013; 78 FR 80104, Dec. 31, 2013]

§ 1024.31 Definitions.

For purposes of this subpart:

Consumer reporting agency has the meaning set forth in section 603 of the Fair Credit Reporting Act, 15 U.S.C. 1681a.

Day means calendar day.

Hazard insurance means insurance on the property securing a mortgage loan that protects the property against loss caused by fire, wind, flood, earthquake, theft, falling objects, freezing, and other similar hazards for which the owner or assignee of such loan requires insurance.

Loss mitigation application means an oral or written request for a loss mitigation option that is accompanied by any information required by a servicer for evaluation for a loss mitigation option.

Loss mitigation option means an alternative to foreclosure offered by the owner or assignee of a mortgage loan that is made available through the servicer to the borrower.

Master servicer means the owner of the right to perform servicing. A master servicer may perform the servicing itself or do so through a subservicer.

Mortgage loan means any federally related mortgage loan, as that term is defined in § 1024.2 subject to the exemptions in § 1024.5(b), but does not include open-end lines of credit (home equity plans).

Qualified written request means a written correspondence from the borrower to the servicer that includes, or otherwise enables the servicer to identify, the name and account of the borrower, and either:

(1) States the reasons the borrower believes the account is in error; or

(2) Provides sufficient detail to the servicer regarding information relating to the servicing of the mortgage loan sought by the borrower.

Reverse mortgage transaction has the meaning set forth in 12 CFR 1026.33(a).

Service provider means any party retained by a servicer that interacts with a borrower or provides a service to the servicer for which a borrower may incur a fee.

Subservicer means a servicer that does not own the right to perform servicing, but that performs servicing on behalf of the master servicer.

Transferee servicer means a servicer that obtains or will obtain the right to perform servicing pursuant to an agreement or understanding.

Transferor servicer means a servicer, including a table-funding mortgage broker or dealer on a first- lien dealer loan, that transfers or will transfer the right to perform servicing pursuant to an agreement or understanding.

§ 1024.32 General disclosure requirements.

(a) *Disclosure requirements.* (1) *Form of disclosures.* Except as otherwise provided in this subpart, disclosures required under this subpart must be clear and conspicuous, in writing, and in a form that a recipient may keep. The disclosures required by this subpart may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act, as set forth in § 1024.3. A servicer may use commonly accepted or readily understandable abbreviations in complying with the disclosure requirements of this subpart.

(2) *Foreign language disclosures.* Disclosures required under this subpart may be made in a language other than English, provided that the disclosures are made available in English upon a recipient's request.

(b) *Additional information; disclosures required by other laws.* Unless expressly prohibited in this subpart, by other applicable law, such as the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) or

the Truth in Savings Act (12 U.S.C. 4301 *et seq.*), or by the terms of an agreement with a Federal or State regulatory agency, a servicer may include additional information in a disclosure required under this subpart or combine any disclosure required under this subpart with any disclosure required by such other law.

§ 1024.33 Mortgage servicing transfers.

(a) *Servicing disclosure statement.* Within three days (excluding legal public holidays, Saturdays, and Sundays) after a person applies for a reverse mortgage transaction, the lender, mortgage broker who anticipates using table funding, or dealer in a first-lien dealer loan shall provide to the person a servicing disclosure statement that states whether the servicing of the mortgage loan may be assigned, sold, or transferred to any other person at any time. Appendix MS–1 of this part contains a model form for the disclosures required under this paragraph (a). If a person who applies for a reverse mortgage transaction is denied credit within the three-day period, a servicing disclosure statement is not required to be delivered.

(b) *Notices of transfer of loan servicing*—(1) *Requirement for notice.* Except as provided in paragraph (b)(2) of this section, each transferor servicer and transferee servicer of any mortgage loan shall provide to the borrower a notice of transfer for any assignment, sale, or transfer of the servicing of the mortgage loan. The notice must contain the information described in paragraph (b)(4) of this section. Appendix MS–2 of this part contains a model form for the disclosures required under this paragraph (b).

(2) *Certain transfers excluded.* (i) The following transfers are not assignments, sales, or transfers of mortgage loan servicing for purposes of this section if there is no change in the payee, address to which payment must be delivered, account number, or amount of payment due:

(A) A transfer between affiliates;

(B) A transfer that results from mergers or acquisitions of servicers or subservicers;

(C) A transfer that occurs between master servicers without changing the subservicer;

(ii) The Federal Housing Administration (FHA) is not required to provide to the borrower a notice of transfer where a mortgage insured under the National Housing Act is assigned to the FHA.

(3) *Time of notice*—(i) *In general.* Except as provided in paragraphs (b)(3)(ii) and (iii) of this section, the transferor servicer shall provide the notice of transfer to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage loan. The transferee servicer shall provide the notice of transfer to the borrower not more than 15 days after the effective date of the transfer. The transferor and transferee servicers may provide a single notice, in which case the notice shall be provided not less than 15 days before the effective date of the transfer of the servicing of the mortgage loan.

(ii) *Extended time.* The notice of transfer shall be provided to the borrower by the transferor servicer or the transferee servicer not more than 30 days after the effective date of the transfer of the servicing of the mortgage loan in any case in which the transfer of servicing is preceded by:

(A) Termination of the contract for servicing the loan for cause;

(B) Commencement of proceedings for bankruptcy of the servicer;

(C) Commencement of proceedings by the FDIC for conservatorship or receivership of the servicer or an entity that owns or controls the servicer; or

(D) Commencement of proceedings by the NCUA for appointment of a conservator or liquidating agent of the servicer or an entity that owns or controls the servicer.

(iii) *Notice provided at settlement.* Notices of transfer provided at settlement by the transferor servicer and transferee servicer, whether as separate notices or as a combined notice, satisfy the timing requirements of paragraph (b)(3) of this section.

(4) *Contents of notice.* The notices of transfer shall include the following information:

(i) The effective date of the transfer of servicing;

(ii) The name, address, and a collect call or toll-free telephone number for an employee or department of the transferee servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries;

(iii) The name, address, and a collect call or toll-free telephone number for an employee or department of the transferor servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries;

(iv) The date on which the transferor servicer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments. These dates shall either be the same or consecutive days;

(v) Whether the transfer will affect the terms or the continued availability of mortgage life or disability insurance, or any other type of optional insurance, and any action the borrower must take to maintain such coverage; and

(vi) A statement that the transfer of servicing does not affect any term or condition of the mortgage loan other than terms directly related to the servicing of the loan.

(c) *Borrower payments during transfer of servicing*—(1) *Payments not considered late.* During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage loan, if the transferor servicer (rather than the transferee servicer that should properly receive payment on the loan) receives payment on or before the applicable due date (including any grace period allowed under the mortgage loan instruments), a payment may not be treated as late for any purpose.

(2) *Treatment of payments.* Beginning on the effective date of transfer of the servicing of any mortgage loan, with respect to payments received incorrectly by the transferor servicer (rather than the transferee servicer that should properly receive the payment on the loan), the transferor servicer shall promptly either:

(i) Transfer the payment to the transferee servicer for application to a borrower's mortgage loan account, or

(ii) Return the payment to the person that made the payment and notify such person of the proper recipient of the payment.

(d) *Preemption of State laws.* A lender who makes a mortgage loan or a servicer shall be considered to have complied with the provisions of any State law or regulation requiring notice to a borrower at the time of application for a loan or transfer of servicing of a loan if the lender or servicer complies with the requirements of this section. Any State law requiring notice to the borrower at the time of application or at the time of transfer of servicing of the loan is preempted, and there shall be no additional borrower disclosure requirements. Provisions of State law, such as those requiring additional notices to insurance companies or taxing authorities, are not preempted by section 6 of RESPA or this section, and this additional information may be added to a notice provided under this section, if permitted under State law.

[78 FR 10876, Feb. 14, 2013, as amended at 78 FR 80104, Dec. 31, 2013]

§ 1024.34 Timely escrow payments and treatment of escrow account balances.

(a) *Timely escrow disbursements required.* If the terms of a mortgage loan require the borrower to make payments to the servicer of the mortgage loan for deposit into an escrow account to pay taxes, insurance premiums, and other charges for the mortgaged property, the servicer shall make payments from the escrow account in a timely manner, that is, on or before the deadline to avoid a penalty, as governed by the requirements in § 1024.17(k).

(b) *Refund of escrow balance*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, within 20 days (excluding legal public holidays, Saturdays, and Sundays) of a borrower's payment of a mortgage loan in full, a servicer shall return to the borrower any amounts remaining in an escrow account that is within the servicer's control.

(2) *Servicer may credit funds to a new escrow account.* Notwithstanding paragraph (b)(1) of this section, if the borrower agrees, a servicer may credit any

amounts remaining in an escrow account that is within the servicer's control to an escrow account for a new mortgage loan as of the date of the settlement of the new mortgage loan if the new mortgage loan is provided to the borrower by a lender that:

(i) Was also the lender to whom the prior mortgage loan was initially payable;

(ii) Is the owner or assignee of the prior mortgage loan; or

(iii) Uses the same servicer that serviced the prior mortgage loan to service the new mortgage loan.

§ 1024.35 Error resolution procedures.

(a) *Notice of error.* A servicer shall comply with the requirements of this section for any written notice from the borrower that asserts an error and that includes the name of the borrower, information that enables the servicer to identify the borrower's mortgage loan account, and the error the borrower believes has occurred. A notice on a payment coupon or other payment form supplied by the servicer need not be treated by the servicer as a notice of error. A qualified written request that asserts an error relating to the servicing of a mortgage loan is a notice of error for purposes of this section, and a servicer must comply with all requirements applicable to a notice of error with respect to such qualified written request.

(b) *Scope of error resolution.* For purposes of this section, the term ''error'' refers to the following categories of covered errors:

(1) Failure to accept a payment that conforms to the servicer's written requirements for the borrower to follow in making payments.

(2) Failure to apply an accepted payment to principal, interest, escrow, or other charges under the terms of the mortgage loan and applicable law.

(3) Failure to credit a payment to a borrower's mortgage loan account as of the date of receipt in violation of 12 CFR 1026.36(c)(1).

(4) Failure to pay taxes, insurance premiums, or other charges, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay, in a timely manner as required by §1024.34(a), or to refund an escrow account balance as required by §1024.34(b).

(5) Imposition of a fee or charge that the servicer lacks a reasonable basis to impose upon the borrower.

(6) Failure to provide an accurate payoff balance amount upon a borrower's request in violation of section 12 CFR 1026.36(c)(3).

(7) Failure to provide accurate information to a borrower regarding loss mitigation options and foreclosure, as required by §1024.39.

(8) Failure to transfer accurately and timely information relating to the servicing of a borrower's mortgage loan account to a transferee servicer.

(9) Making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process in violation of §1024.41(f) or (j).

(10) Moving for foreclosure judgment or order of sale, or conducting a foreclosure sale in violation of §1024.41(g) or (j).

(11) Any other error relating to the servicing of a borrower's mortgage loan.

(c) *Contact information for borrowers to assert errors.* A servicer may, by written notice provided to a borrower, establish an address that a borrower must use to submit a notice of error in accordance with the procedures in this section. The notice shall include a statement that the borrower must use the established address to assert an error. If a servicer designates a specific address for receiving notices of error, the servicer shall designate the same address for receiving information requests pursuant to §1024.36(b). A servicer shall provide a written notice to a borrower before any change in the address used for receiving a notice of error. A servicer that designates an address for receipt of notices of error must post the designated address on any Web site maintained by the servicer if the Web site lists any contact address for the servicer.

(d) *Acknowledgment of receipt.* Within five days (excluding legal public holidays, Saturdays, and Sundays) of a servicer receiving a notice of error from a borrower, the servicer shall provide to the borrower a written response

acknowledging receipt of the notice of error.

(e) *Response to notice of error*—(1) *Investigation and response requirements*—(i) *In general.* Except as provided in paragraphs (f) and (g) of this section, a servicer must respond to a notice of error by either:

(A) Correcting the error or errors identified by the borrower and providing the borrower with a written notification of the correction, the effective date of the correction, and contact information, including a telephone number, for further assistance; or

(B) Conducting a reasonable investigation and providing the borrower with a written notification that includes a statement that the servicer has determined that no error occurred, a statement of the reason or reasons for this determination, a statement of the borrower's right to request documents relied upon by the servicer in reaching its determination, information regarding how the borrower can request such documents, and contact information, including a telephone number, for further assistance.

(ii) *Different or additional error.* If during a reasonable investigation of a notice of error, a servicer concludes that errors occurred other than, or in addition to, the error or errors alleged by the borrower, the servicer shall correct all such additional errors and provide the borrower with a written notification that describes the errors the servicer identified, the action taken to correct the errors, the effective date of the correction, and contact information, including a telephone number, for further assistance.

(2) *Requesting information from borrower.* A servicer may request supporting documentation from a borrower in connection with the investigation of an asserted error, but may not:

(i) Require a borrower to provide such information as a condition of investigating an asserted error; or

(ii) Determine that no error occurred because the borrower failed to provide any requested information without conducting a reasonable investigation pursuant to paragraph (e)(1)(i)(B) of this section.

(3) *Time limits*—(i) *In general.* A servicer must comply with the requirements of paragraph (e)(1) of this section:

(A) Not later than seven days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the notice of error for errors asserted under paragraph (b)(6) of this section.

(B) Prior to the date of a foreclosure sale or within 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the notice of error, whichever is earlier, for errors asserted under paragraphs (b)(9) and (10) of this section.

(C) For all other asserted errors, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the applicable notice of error.

(ii) *Extension of time limit.* For asserted errors governed by the time limit set forth in paragraph (e)(3)(i)(C) of this section, a servicer may extend the time period for responding by an additional 15 days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the 30-day period, the servicer notifies the borrower of the extension and the reasons for the extension in writing. A servicer may not extend the time period for responding to errors asserted under paragraph (b)(6), (9), or (10) of this section.

(4) *Copies of documentation.* A servicer shall provide to the borrower, at no charge, copies of documents and information relied upon by the servicer in making its determination that no error occurred within 15 days (excluding legal public holidays, Saturdays, and Sundays) of receiving the borrower's request for such documents. A servicer is not required to provide documents relied upon that constitute confidential, proprietary or privileged information. If a servicer withholds documents relied upon because it has determined that such documents constitute confidential, proprietary or privileged information, the servicer must notify the borrower of its determination in writing within 15 days (excluding legal public holidays, Saturdays, and Sundays) of receipt of the borrower's request for such documents.

(f) *Alternative compliance*—(1) *Early correction.* A servicer is not required to comply with paragraphs (d) and (e) of

this section if the servicer corrects the error or errors asserted by the borrower and notifies the borrower of that correction in writing within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving the notice of error.

(2) *Error asserted before foreclosure sale.* A servicer is not required to comply with the requirements of paragraphs (d) and (e) of this section for errors asserted under paragraph (b)(9) or (10) of this section if the servicer receives the applicable notice of an error seven or fewer days before a foreclosure sale. For any such notice of error, a servicer shall make a good faith attempt to respond to the borrower, orally or in writing, and either correct the error or state the reason the servicer has determined that no error has occurred.

(g) *Requirements not applicable*—(1) *In general.* A servicer is not required to comply with the requirements of paragraphs (d), (e), and (i) of this section if the servicer reasonably determines that any of the following apply:

(i) *Duplicative notice of error.* The asserted error is substantially the same as an error previously asserted by the borrower for which the servicer has previously complied with its obligation to respond pursuant to paragraphs (d) and (e) of this section, unless the borrower provides new and material information to support the asserted error. New and material information means information that was not reviewed by the servicer in connection with investigating a prior notice of the same error and is reasonably likely to change the servicer's prior determination about the error.

(ii) *Overbroad notice of error.* The notice of error is overbroad. A notice of error is overbroad if the servicer cannot reasonably determine from the notice of error the specific error that the borrower asserts has occurred on a borrower's account. To the extent a servicer can reasonably identify a valid assertion of an error in a notice of error that is otherwise overbroad, the servicer shall comply with the requirements of paragraphs (d), (e) and (i) of this section with respect to that asserted error.

(iii) *Untimely notice of error.* A notice of error is delivered to the servicer more than one year after:

(A) Servicing for the mortgage loan that is the subject of the asserted error was transferred from the servicer receiving the notice of error to a transferee servicer; or

(B) The mortgage loan is discharged.

(2) *Notice to borrower.* If a servicer determines that, pursuant to this paragraph (g), the servicer is not required to comply with the requirements of paragraphs (d), (e), and (i) of this section, the servicer shall notify the borrower of its determination in writing not later than five days (excluding legal public holidays, Saturdays, and Sundays) after making such determination. The notice to the borrower shall set forth the basis under paragraph (g)(1) of this section upon which the servicer has made such determination.

(h) *Payment requirements prohibited.* A servicer shall not charge a fee, or require a borrower to make any payment that may be owed on a borrower's account, as a condition of responding to a notice of error.

(i) *Effect on servicer remedies*—(1) *Adverse information.* After receipt of a notice of error, a servicer may not, for 60 days, furnish adverse information to any consumer reporting agency regarding any payment that is the subject of the notice of error.

(2) *Remedies permitted.* Except as set forth in this section with respect to an assertion of error under paragraph (b)(9) or (10) of this section, nothing in this section shall limit or restrict a lender or servicer from pursuing any remedy it has under applicable law, including initiating foreclosure or proceeding with a foreclosure sale.

[78 FR 10876, Feb. 14, 2013, as amended at 78 FR 60437, Oct. 1, 2013]

§ 1024.36 Requests for information.

(a) *Information request.* A servicer shall comply with the requirements of this section for any written request for information from a borrower that includes the name of the borrower, information that enables the servicer to identify the borrower's mortgage loan account, and states the information the borrower is requesting with respect

to the borrower's mortgage loan. A request on a payment coupon or other payment form supplied by the servicer need not be treated by the servicer as a request for information. A request for a payoff balance need not be treated by the servicer as a request for information. A qualified written request that requests information relating to the servicing of the mortgage loan is a request for information for purposes of this section, and a servicer must comply with all requirements applicable to a request for information with respect to such qualified written request.

(b) *Contact information for borrowers to request information.* A servicer may, by written notice provided to a borrower, establish an address that a borrower must use to request information in accordance with the procedures in this section. The notice shall include a statement that the borrower must use the established address to request information. If a servicer designates a specific address for receiving information requests, a servicer shall designate the same address for receiving notices of error pursuant to §1024.35(c). A servicer shall provide a written notice to a borrower before any change in the address used for receiving an information request. A servicer that designates an address for receipt of information requests must post the designated address on any Web site maintained by the servicer if the Web site lists any contact address for the servicer.

(c) *Acknowledgment of receipt.* Within five days (excluding legal public holidays, Saturdays, and Sundays) of a servicer receiving an information request from a borrower, the servicer shall provide to the borrower a written response acknowledging receipt of the information request.

(d) *Response to information request*—(1) *Investigation and response requirements.* Except as provided in paragraphs (e) and (f) of this section, a servicer must respond to an information request by either:

(i) Providing the borrower with the requested information and contact information, including a telephone number, for further assistance in writing; or

(ii) Conducting a reasonable search for the requested information and providing the borrower with a written notification that states that the servicer has determined that the requested information is not available to the servicer, provides the basis for the servicer's determination, and provides contact information, including a telephone number, for further assistance.

(2) *Time limits*—(i) *In general.* A servicer must comply with the requirements of paragraph (d)(1) of this section:

(A) Not later than 10 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives an information request for the identity of, and address or other relevant contact information for, the owner or assignee of a mortgage loan; and

(B) For all other requests for information, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the information request.

(ii) *Extension of time limit.* For requests for information governed by the time limit set forth in paragraph (d)(2)(i)(B) of this section, a servicer may extend the time period for responding by an additional 15 days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the 30-day period, the servicer notifies the borrower of the extension and the reasons for the extension in writing. A servicer may not extend the time period for requests for information governed by paragraph (d)(2)(i)(A) of this section.

(e) *Alternative compliance.* A servicer is not required to comply with paragraphs (c) and (d) of this section if the servicer provides the borrower with the information requested and contact information, including a telephone number, for further assistance in writing within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving an information request.

(f) *Requirements not applicable*—(1) *In general.* A servicer is not required to comply with the requirements of paragraphs (c) and (d) of this section if the servicer reasonably determines that any of the following apply:

(i) *Duplicative information.* The information requested is substantially the same as information previously requested by the borrower for which the

servicer has previously complied with its obligation to respond pursuant to paragraphs (c) and (d) of this section.

(ii) *Confidential, proprietary or privileged information.* The information requested is confidential, proprietary or privileged.

(iii) *Irrelevant information.* The information requested is not directly related to the borrower's mortgage loan account.

(iv) *Overbroad or unduly burdensome information request.* The information request is overbroad or unduly burdensome. An information request is overbroad if a borrower requests that the servicer provide an unreasonable volume of documents or information to a borrower. An information request is unduly burdensome if a diligent servicer could not respond to the information request without either exceeding the maximum time limit permitted by paragraph (d)(2) of this section or incurring costs (or dedicating resources) that would be unreasonable in light of the circumstances. To the extent a servicer can reasonably identify a valid information request in a submission that is otherwise overbroad or unduly burdensome, the servicer shall comply with the requirements of paragraphs (c) and (d) of this section with respect to that requested information.

(v) *Untimely information request.* The information request is delivered to a servicer more than one year after:

(A) Servicing for the mortgage loan that is the subject of the information request was transferred from the servicer receiving the request for information to a transferee servicer; or

(B) The mortgage loan is discharged.

(2) *Notice to borrower.* If a servicer determines that, pursuant to this paragraph (f), the servicer is not required to comply with the requirements of paragraphs (c) and (d) of this section, the servicer shall notify the borrower of its determination in writing not later than five days (excluding legal public holidays, Saturdays, and Sundays) after making such determination. The notice to the borrower shall set forth the basis under paragraph (f)(1) of this section upon which the servicer has made such determination.

(g) *Payment requirement limitations*—(1) *Fees prohibited.* Except as set forth in paragraph (g)(2) of this section, a servicer shall not charge a fee, or require a borrower to make any payment that may be owed on a borrower's account, as a condition of responding to an information request.

(2) *Fee permitted.* Nothing in this section shall prohibit a servicer from charging a fee for providing a beneficiary notice under applicable State law, if such a fee is not otherwise prohibited by applicable law.

(h) *Servicer remedies.* Nothing in this section shall prohibit a servicer from furnishing adverse information to any consumer reporting agency or pursuing any of its remedies, including initiating foreclosure or proceeding with a foreclosure sale, allowed by the underlying mortgage loan instruments, during the time period that response to an information request notice is outstanding.

[78 FR 10876, Feb. 14, 2013, as amended at 78 FR 60437, Oct. 1, 2013]

§ 1024.37 Force-placed insurance.

(a) *Definition of force-placed insurance*—(1) *In general.* For the purposes of this section, the term ''force-placed insurance'' means hazard insurance obtained by a servicer on behalf of the owner or assignee of a mortgage loan that insures the property securing such loan.

(2) *Types of insurance not considered force-placed insurance.* The following insurance does not constitute ''force-placed insurance'' under this section:

(i) Hazard insurance required by the Flood Disaster Protection Act of 1973.

(ii) Hazard insurance obtained by a borrower but renewed by the borrower's servicer as described in §1024.17(k)(1), (2), or (5).

(iii) Hazard insurance obtained by a borrower but renewed by the borrower's servicer at its discretion, if the borrower agrees.

(b) *Basis for charging borrower for force-placed insurance.* A servicer may not assess on a borrower a premium charge or fee related to force-placed insurance unless the servicer has a reasonable basis to believe that the borrower has failed to comply with the mortgage loan contract's requirement to maintain hazard insurance.

(c) *Requirements before charging borrower for force-placed insurance*—(1) *In general.* Before a servicer assesses on a borrower any premium charge or fee related to force-placed insurance, the servicer must:

(i) Deliver to a borrower or place in the mail a written notice containing the information required by paragraph (c)(2) of this section at least 45 days before a servicer assesses on a borrower such charge or fee;

(ii) Deliver to the borrower or place in the mail a written notice in accordance with paragraph (d)(1) of this section; and

(iii) By the end of the 15-day period beginning on the date the written notice described in paragraph (c)(1)(ii) of this section was delivered to the borrower or placed in the mail, not have received, from the borrower or otherwise, evidence demonstrating that the borrower has had in place, continuously, hazard insurance coverage that complies with the loan contract's requirements to maintain hazard insurance.

(2) *Content of notice.* The notice required by paragraph (c)(1)(i) of this section shall set forth the following information:

(i) The date of the notice;

(ii) The servicer's name and mailing address;

(iii) The borrower's name and mailing address;

(iv) A statement that requests the borrower to provide hazard insurance information for the borrower's property and identifies the property by its physical address;

(v) A statement that the borrower's hazard insurance is expiring or has expired, as applicable, and that the servicer does not have evidence that the borrower has hazard insurance coverage past the expiration date, and that, if applicable, identifies the type of hazard insurance for which the servicer lacks evidence of coverage;

(vi) A statement that hazard insurance is required on the borrower's property, and that the servicer has purchased or will purchase, as applicable, such insurance at the borrower's expense;

(vii) A statement requesting the borrower to promptly provide the servicer with insurance information;

(viii) A description of the requested insurance information and how the borrower may provide such information, and if applicable, a statement that the requested information must be in writing;

(ix) A statement that insurance the servicer has purchased or purchases:

(A) May cost significantly more than hazard insurance purchased by the borrower;

(B) Not provide as much coverage as hazard insurance purchased by the borrower;

(x) The servicer's telephone number for borrower inquiries; and

(xi) If applicable, a statement advising the borrower to review additional information provided in the same transmittal.

(3) *Format.* A servicer must set the information required by paragraphs (c)(2)(iv), (vi), and (ix)(A) and (B) in bold text, except that the information about the physical address of the borrower's property required by paragraph (c)(2)(iv) of this section may be set in regular text. A servicer may use form MS–3A in appendix MS–3 of this part to comply with the requirements of paragraphs (c)(1)(i) and (2) of this section.

(4) *Additional information.* A servicer may not include any information other than information required by paragraphs (c)(2) of this section in the written notice required by paragraph (c)(1)(i) of this section. However, a servicer may provide such additional information to a borrower on separate pieces of paper in the same transmittal.

(d) *Reminder notice*—(1) *In general.* The notice required by paragraph (c)(1)(ii) of this section shall be delivered to the borrower or placed in the mail at least 15 days before a servicer assesses on a borrower a premium charge or fee related to force-placed insurance. A servicer may not deliver to a borrower or place in the mail the notice required by paragraph (c)(1)(ii) of this section until at least 30 days after delivering to the borrower or placing in the mail the written notice required by paragraph (c)(1)(i) of this section.

(2) *Content of the reminder notice*—(i) *Servicer receiving no insurance information.* A servicer that receives no hazard insurance information after delivering to the borrower or placing in the mail the notice required by paragraph (c)(1)(i) of this section must set forth in the notice required by paragraph (c)(1)(ii) of this section:

(A) The date of the notice;

(B) A statement that the notice is the second and final notice;

(C) The information required by paragraphs (c)(2)(ii) through (xi) of this section; and

(D) The cost of the force-placed insurance, stated as an annual premium, except if a servicer does not know the cost of force-placed insurance, a reasonable estimate shall be disclosed and identified as such.

(ii) *Servicer not receiving demonstration of continuous coverage.* A servicer that has received hazard insurance information after delivering to a borrower or placing in the mail the notice required by paragraph (c)(1)(i) of this section, but has not received, from the borrower or otherwise, evidence demonstrating that the borrower has had hazard insurance coverage in place continuously, must set forth in the notice required by paragraph (c)(1)(ii) of this section the following information:

(A) The date of the notice;

(B) The information required by paragraphs (c)(2)(ii) through (iv), (x), (xi), and (d)(2)(i)(B) and (D) of this section;

(C) A statement that the servicer has received the hazard insurance information that the borrower provided;

(D) A statement that requests the borrower to provide the information that is missing;

(E) A statement that the borrower will be charged for insurance the servicer has purchased or purchases for the period of time during which the servicer is unable to verify coverage;

(3) *Format.* A servicer must set the information required by paragraphs (d)(2)(i)(B) and (D) of this section in bold text. A servicer may use form MS–3B in appendix MS–3 of this part to comply with the requirements of paragraphs (d)(1) and (d)(2)(i) of this section. A servicer may use form MS–3C in appendix MS–3 of this part to comply with the requirements of paragraphs (d)(1) and (d)(2)(ii) of this section.

(4) *Additional information.* As applicable, a servicer may not include any information other than information required by paragraph (d)(2)(i) or (ii) of this section in the written notice required by paragraph (c)(1)(ii) of this section. However, a servicer may provide such additional information to a borrower on separate pieces of paper in the same transmittal.

(5) *Updating notice with borrower information.* If a servicer receives new information about a borrower's hazard insurance after a written notice required by paragraph (c)(1)(ii) of this section has been put into production, the servicer is not required to update such notice based on the new information so long as the notice was put into production a reasonable time prior to the servicer delivering the notice to the borrower or placing the notice in the mail.

(e) *Renewing or replacing force-placed insurance*—(1) *In general.* Before a servicer assesses on a borrower a premium charge or fee related to renewing or replacing existing force-placed insurance, a servicer must:

(i) Deliver to the borrower or place in the mail a written notice containing the information set forth in paragraph (e)(2) of this section at least 45 days before assessing on a borrower such charge or fee; and

(ii) By the end of the 45-day period beginning on the date the written notice required by paragraph (e)(1)(i) of this section was delivered to the borrower or placed in the mail, not have received, from the borrower or otherwise, evidence demonstrating that the borrower has purchased hazard insurance coverage that complies with the loan contract's requirements to maintain hazard insurance.

(iii) *Charging a borrower before end of notice period.* Notwithstanding paragraphs (e)(1)(i) and (ii) of this section, if not prohibited by State or other applicable law, if a servicer has renewed or replaced existing force-placed insurance and receives evidence demonstrating that the borrower lacked insurance coverage for some period of time following the expiration of the existing force-placed insurance (including

during the notice period prescribed by paragraph (e)(1) of this section), the servicer may, promptly upon receiving such evidence, assess on the borrower a premium charge or fee related to renewing or replacing existing force-placed insurance for that period of time.

(2) *Content of renewal notice.* The notice required by paragraph (e)(1)(i) of this section shall set forth the following information:

(i) The date of the notice;

(ii) The servicer's name and mailing address;

(iii) The borrower's name and mailing address;

(iv) A statement that requests the borrower to update the hazard insurance information for the borrower's property and identifies the borrower's property by its physical address;

(v) A statement that the servicer previously purchased insurance on the borrower's property and assessed the cost of the insurance to the borrower because the servicer did not have evidence that the borrower had hazard insurance coverage for the property;

(vi) A statement that:

(A) The insurance the servicer purchased previously has expired or is expiring, as applicable; and

(B) Because hazard insurance is required on the borrower's property, the servicer intends to maintain insurance on the property by renewing or replacing the insurance it previously purchased;

(vii) A statement informing the borrower:

(A) That insurance the servicer purchases may cost significantly more than hazard insurance purchased by the borrower;

(B) That such insurance may not provide as much coverage as hazard insurance purchased by the borrower; and

(C) The cost of the force-placed insurance, stated as an annual premium, except if a servicer does not know the cost of force-placed insurance, a reasonable estimate shall be disclosed and identified as such.

(viii) A statement that if the borrower purchases hazard insurance, the borrower should promptly provide the servicer with insurance information.

(ix) A description of the requested insurance information and how the borrower may provide such information, and if applicable, a statement that the requested information must be in writing;

(x) The servicer's telephone number for borrower inquiries; and

(xi) If applicable, a statement advising a borrower to review additional information provided in the same transmittal.

(3) *Format.* A servicer must set the information required by paragraphs (e)(2)(iv), (vi)(B), and (vii)(A) through (C) of this section in bold text, except that the information about the physical address of the borrower's property required by paragraph (e)(2)(iv) may be set in regular text. A servicer may use form MS–3D in appendix MS–3 of this part to comply with the requirements of paragraphs (e)(1)(i) and (2) of this section.

(4) *Additional information.* As applicable, a servicer may not include any information other than information required by paragraph (e)(2) of this section in the written notice required by paragraph (e)(1) of this section. However, a servicer may provide such additional information to a borrower on separate pieces of paper in same transmittal.

(5) *Frequency of renewal notices.* Before each anniversary of a servicer purchasing force-placed insurance on a borrower's property, the servicer shall deliver to the borrower or place in the mail the written notice required by paragraph (e)(1) of this section. A servicer is not required to provide the written notice required by paragraph (e)(1) of this section more than once a year.

(f) *Mailing the notices.* If a servicer mails a written notice required by paragraphs (c)(1)(i), (c)(1)(ii), or (e)(1) of this section, the servicer must use a class of mail not less than first-class mail.

(g) *Cancellation of force-placed insurance.* Within 15 days of receiving, from the borrower or otherwise, evidence demonstrating that the borrower has had in place hazard insurance coverage that complies with the loan contract's requirements to maintain hazard insurance, a servicer must:

(1) Cancel the force-placed insurance the servicer purchased to insure the borrower's property; and

(2) Refund to such borrower all force-placed insurance premium charges and related fees paid by such borrower for any period of overlapping insurance coverage and remove from the borrower's account all force-placed insurance charges and related fees for such period that the servicer has assessed to the borrower.

(h) *Limitations on force-placed insurance charges*—(1) *In general.* Except for charges subject to State regulation as the business of insurance and charges authorized by the Flood Disaster Protection Act of 1973, all charges related to force-placed insurance assessed to a borrower by or through the servicer must be bona fide and reasonable.

(2) *Bona fide and reasonable charge.* A bona fide and reasonable charge is a charge for a service actually performed that bears a reasonable relationship to the servicer's cost of providing the service, and is not otherwise prohibited by applicable law.

(i) *Relationship to Flood Disaster Protection Act of 1973.* If permitted by regulation under section 102(e) of the Flood Disaster Protection Act of 1973, a servicer subject to the requirements of this section may deliver to the borrower or place in the mail any notice required by this section and the notice required by section 102(e) of the Flood Disaster Protection Act of 1973 on separate pieces of paper in the same transmittal.

§ 1024.38 General servicing policies, procedures, and requirements.

(a) *Reasonable policies and procedures.* A servicer shall maintain policies and procedures that are reasonably designed to achieve the objectives set forth in paragraph (b) of this section.

(b) *Objectives*—(1) *Accessing and providing timely and accurate information.* The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:

(i) Provide accurate and timely disclosures to a borrower as required by this subpart or other applicable law;

(ii) Investigate, respond to, and, as appropriate, make corrections in response to complaints asserted by a borrower;

(iii) Provide a borrower with accurate and timely information and documents in response to the borrower's requests for information with respect to the borrower's mortgage loan;

(iv) Provide owners or assignees of mortgage loans with accurate and current information and documents about all mortgage loans they own;

(v) Submit documents or filings required for a foreclosure process, including documents or filings required by a court of competent jurisdiction, that reflect accurate and current information and that comply with applicable law; and

(vi) Upon notification of the death of a borrower, promptly identify and facilitate communication with the successor in interest of the deceased borrower with respect to the property secured by the deceased borrower's mortgage loan.

(2) *Properly evaluating loss mitigation applications.* The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:

(i) Provide accurate information regarding loss mitigation options available to a borrower from the owner or assignee of the borrower's mortgage loan;

(ii) Identify with specificity all loss mitigation options for which borrowers may be eligible pursuant to any requirements established by an owner or assignee of the borrower's mortgage loan;

(iii) Provide prompt access to all documents and information submitted by a borrower in connection with a loss mitigation option to servicer personnel that are assigned to assist the borrower pursuant to §1024.40;

(iv) Identify documents and information that a borrower is required to submit to complete a loss mitigation application and facilitate compliance with the notice required pursuant to §1024.41(b)(2)(i)(B); and

(v) Properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options for which the borrower may be eligible pursuant to any requirements established by the owner or assignee of

the borrower's mortgage loan and, where applicable, in accordance with the requirements of § 1024.41.

(3) *Facilitating oversight of, and compliance by, service providers.* The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:

(i) Provide appropriate servicer personnel with access to accurate and current documents and information reflecting actions performed by service providers;

(ii) Facilitate periodic reviews of service providers, including by providing appropriate servicer personnel with documents and information necessary to audit compliance by service providers with the servicer's contractual obligations and applicable law; and

(iii) Facilitate the sharing of accurate and current information regarding the status of any evaluation of a borrower's loss mitigation application and the status of any foreclosure proceeding among appropriate servicer personnel, including any personnel assigned to a borrower's mortgage loan account as described in § 1024.40, and appropriate service provider personnel, including service provider personnel responsible for handling foreclosure proceedings.

(4) *Facilitating transfer of information during servicing transfers.* The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:

(i) As a transferor servicer, timely transfer all information and documents in the possession or control of the servicer relating to a transferred mortgage loan to a transferee servicer in a form and manner that ensures the accuracy of the information and documents transferred and that enables a transferee servicer to comply with the terms of the transferee servicer's obligations to the owner or assignee of the mortgage loan and applicable law; and

(ii) As a transferee servicer, identify necessary documents or information that may not have been transferred by a transferor servicer and obtain such documents from the transferor servicer.

(iii) For the purposes of this paragraph (b)(4), transferee servicer means a servicer, including a master servicer or a subservicer, that performs or will perform servicing of a mortgage loan and transferor servicer means a servicer, including a master servicer or a subservicer, that transfers or will transfer the servicing of a mortgage loan.

(5) *Informing borrowers of the written error resolution and information request procedures.* The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer informs borrowers of the procedures for submitting written notices of error set forth in § 1024.35 and written information requests set forth in § 1024.36.

(c) *Standard requirements*—(1) *Record retention.* A servicer shall retain records that document actions taken with respect to a borrower's mortgage loan account until one year after the date a mortgage loan is discharged or servicing of a mortgage loan is transferred by the servicer to a transferee servicer.

(2) *Servicing file.* A servicer shall maintain the following documents and data on each mortgage loan account serviced by the servicer in a manner that facilitates compiling such documents and data into a servicing file within five days:

(i) A schedule of all transactions credited or debited to the mortgage loan account, including any escrow account as defined in § 1024.17(b) and any suspense account;

(ii) A copy of the security instrument that establishes the lien securing the mortgage loan;

(iii) Any notes created by servicer personnel reflecting communications with the borrower about the mortgage loan account;

(iv) To the extent applicable, a report of the data fields relating to the borrower's mortgage loan account created by the servicer's electronic systems in connection with servicing practices; and

(v) Copies of any information or documents provided by the borrower to the servicer in accordance with the procedures set forth in § 1024.35 or § 1024.41.

§ 1024.39 Early intervention requirements for certain borrowers.

(a) *Live contact.* A servicer shall establish or make good faith efforts to establish live contact with a delinquent borrower not later than the 36th day of the borrower's delinquency and, promptly after establishing live contact, inform such borrower about the availability of loss mitigation options if appropriate.

(b) *Written notice*—(1) *Notice required.* Except as otherwise provided in this section, a servicer shall provide to a delinquent borrower a written notice with the information set forth in paragraph (b)(2) of this section not later than the 45th day of the borrower's delinquency. A servicer is not required to provide the written notice more than once during any 180-day period.

(2) *Content of the written notice.* The notice required by paragraph (b)(1) of this section shall include:

(i) A statement encouraging the borrower to contact the servicer;

(ii) The telephone number to access servicer personnel assigned pursuant to §1024.40(a) and the servicer's mailing address;

(iii) If applicable, a statement providing a brief description of examples of loss mitigation options that may be available from the servicer;

(iv) If applicable, either application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from the servicer; and

(v) The Web site to access either the Bureau list or the HUD list of homeownership counselors or counseling organizations, and the HUD toll-free telephone number to access homeownership counselors or counseling organizations.

(3) *Model clauses.* Model clauses MS–4(A), MS–4(B), and MS–4(C), in appendix MS–4 to this part may be used to comply with the requirements of this paragraph (b).

(c) *Conflicts with other law.* Nothing in this section shall require a servicer to communicate with a borrower in a manner otherwise prohibited by applicable law.

(d) *Exemptions*—(1) *Borrowers in bankruptcy.* A servicer is exempt from the requirements of this section for a mortgage loan while the borrower is a debtor in bankruptcy under Title 11 of the United States Code.

(2) *Fair Debt Collections Practices Act.* A servicer subject to the Fair Debt Collections Practices Act (FDCPA) (15 U.S.C. 1692 *et seq.*) with respect to a borrower is exempt from the requirements of this section with regard to a mortgage loan for which the borrower has sent a notification pursuant to FDCPA section 805(c) (15 U.S.C. 1692c(c)).

[78 FR 10876, Feb. 14, 2013, as amended at 78 FR 60437, Oct. 1, 2013; 78 FR 63004, Oct. 23, 2013]

§ 1024.40 Continuity of contact.

(a) *In general.* A servicer shall maintain policies and procedures that are reasonably designed to achieve the following objectives:

(1) Assign personnel to a delinquent borrower by the time the servicer provides the borrower with the written notice required by §1024.39(b), but in any event, not later than the 45th day of the borrower's delinquency.

(2) Make available to a delinquent borrower, via telephone, personnel assigned to the borrower as described in paragraph (a)(1) of this section to respond to the borrower's inquiries, and as applicable, assist the borrower with available loss mitigation options until the borrower has made, without incurring a late charge, two consecutive mortgage payments in accordance with the terms of a permanent loss mitigation agreement.

(3) If a borrower contacts the personnel assigned to the borrower as described in paragraph (a)(1) of this section and does not immediately receive a live response from such personnel, ensure that the servicer can provide a live response in a timely manner.

(b) *Functions of servicer personnel.* A servicer shall maintain policies and procedures reasonably designed to ensure that servicer personnel assigned to a delinquent borrower as described in paragraph (a) of this section perform the following functions:

(1) Provide the borrower with accurate information about:

(i) Loss mitigation options available to the borrower from the owner or assignee of the borrower's mortgage loan;

(ii) Actions the borrower must take to be evaluated for such loss mitigation options, including actions the borrower must take to submit a complete loss mitigation application, as defined in §1024.41, and, if applicable, actions the borrower must take to appeal the servicer's determination to deny a borrower's loss mitigation application for any trial or permanent loan modification program offered by the servicer;

(iii) The status of any loss mitigation application that the borrower has submitted to the servicer;

(iv) The circumstances under which the servicer may make a referral to foreclosure; and

(v) Applicable loss mitigation deadlines established by an owner or assignee of the borrower's mortgage loan or §1024.41.

(2) Retrieve, in a timely manner:

(i) A complete record of the borrower's payment history; and

(ii) All written information the borrower has provided to the servicer, and if applicable, to prior servicers, in connection with a loss mitigation application;

(3) Provide the documents and information identified in paragraph (b)(2) of this section to other persons required to evaluate a borrower for loss mitigation options made available by the servicer, if applicable; and

(4) Provide a delinquent borrower with information about the procedures for submitting a notice of error pursuant to §1024.35 or an information request pursuant to §1024.36.

§1024.41 Loss mitigation procedures.

(a) *Enforcement and limitations.* A borrower may enforce the provisions of this section pursuant to section 6(f) of RESPA (12 U.S.C. 2605(f)). Nothing in §1024.41 imposes a duty on a servicer to provide any borrower with any specific loss mitigation option. Nothing in §1024.41 should be construed to create a right for a borrower to enforce the terms of any agreement between a servicer and the owner or assignee of a mortgage loan, including with respect to the evaluation for, or offer of, any loss mitigation option or to eliminate any such right that may exist pursuant to applicable law.

(b) *Receipt of a loss mitigation application*—(1) *Complete loss mitigation application.* A complete loss mitigation application means an application in connection with which a servicer has received all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower. A servicer shall exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application.

(2) *Review of loss mitigation application submission*—(i) *Requirements.* If a servicer receives a loss mitigation application 45 days or more before a foreclosure sale, a servicer shall:

(A) Promptly upon receipt of a loss mitigation application, review the loss mitigation application to determine if the loss mitigation application is complete; and

(B) Notify the borrower in writing within 5 days (excluding legal public holidays, Saturdays, and Sundays) after receiving the loss mitigation application that the servicer acknowledges receipt of the loss mitigation application and that the servicer has determined that the loss mitigation application is either complete or incomplete. If a loss mitigation application is incomplete, the notice shall state the additional documents and information the borrower must submit to make the loss mitigation application complete and the applicable date pursuant to paragraph (b)(2)(ii) of this section. The notice to the borrower shall include a statement that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options.

(ii) *Time period disclosure.* The notice required pursuant to paragraph (b)(2)(i)(B) of this section must include a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete.

(3) *Determining protections.* To the extent a determination of whether protections under this section apply to a borrower is made on the basis of the

number of days between when a complete loss mitigation application is received and when a foreclosure sale occurs, such determination shall be made as of the date a complete loss mitigation application is received.

(c) *Evaluation of loss mitigation applications*—(1) *Complete loss mitigation application.* If a servicer receives a complete loss mitigation application more than 37 days before a foreclosure sale, then, within 30 days of receiving a borrower's complete loss mitigation application, a servicer shall:

(i) Evaluate the borrower for all loss mitigation options available to the borrower; and

(ii) Provide the borrower with a notice in writing stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage. The servicer shall include in this notice the amount of time the borrower has to accept or reject an offer of a loss mitigation program as provided for in paragraph (e) of this section, if applicable, and a notification, if applicable, that the borrower has the right to appeal the denial of any loan modification option as well as the amount of time the borrower has to file such an appeal and any requirements for making an appeal, as provided for in paragraph (h) of this section.

(2) *Incomplete loss mitigation application evaluation*—(i) *In general.* Except as set forth in paragraphs (c)(2)(ii) and (iii) of this section, a servicer shall not evade the requirement to evaluate a complete loss mitigation application for all loss mitigation options available to the borrower by offering a loss mitigation option based upon an evaluation of any information provided by a borrower in connection with an incomplete loss mitigation application.

(ii) *Reasonable time.* Notwithstanding paragraph (c)(2)(i) of this section, if a servicer has exercised reasonable diligence in obtaining documents and information to complete a loss mitigation application, but a loss mitigation application remains incomplete for a significant period of time under the circumstances without further progress by a borrower to make the loss mitigation application complete, a servicer may, in its discretion, evaluate an incomplete loss mitigation application and offer a borrower a loss mitigation option. Any such evaluation and offer is not subject to the requirements of this section and shall not constitute an evaluation of a single complete loss mitigation application for purposes of paragraph (i) of this section.

(iii) *Payment forbearance.* Notwithstanding paragraph (c)(2)(i) of this section, a servicer may offer a short-term payment forbearance program to a borrower based upon an evaluation of an incomplete loss mitigation application. A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, and shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of a payment forbearance program offered pursuant to this section.

(iv) *Facially complete application.* If a borrower submits all the missing documents and information as stated in the notice required pursuant to §1026.41(b)(2)(i)(B), or no additional information is requested in such notice, the application shall be considered facially complete. If the servicer later discovers additional information or corrections to a previously submitted document are required to complete the application, the servicer must promptly request the missing information or corrected documents and treat the application as complete for the purposes of paragraphs (f)(2) and (g) of this section until the borrower is given a reasonable opportunity to complete the application. If the borrower completes the application within this period, the application shall be considered complete as of the date it was facially complete, for the purposes of paragraphs (d), (e), (f)(2), (g), and (h) of this section, and as of the date the application was actually complete for the purposes of paragraph (c). A servicer that complies with this paragraph will be deemed to have fulfilled its obligation to provide an accurate notice under paragraph (b)(2)(i)(B).

(d) *Denial of loan modification options.* If a borrower's complete loss mitigation application is denied for any trial or permanent loan modification option

available to the borrower pursuant to paragraph (c) of this section, a servicer shall state in the notice sent to the borrower pursuant to paragraph (c)(1)(ii) of this section the specific reason or reasons for the servicer's determination for each such trial or permanent loan modification option and, if applicable, that the borrower was not evaluated on other criteria.

(e) *Borrower response*—(1) *In general.* Subject to paragraphs (e)(2)(ii) and (iii) of this section, if a complete loss mitigation application is received 90 days or more before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than 14 days after the servicer provides the offer of a loss mitigation option to the borrower. If a complete loss mitigation application is received less than 90 days before a foreclosure sale, but more than 37 days before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than 7 days after the servicer provides the offer of a loss mitigation option to the borrower.

(2) *Rejection*—(i) *In general.* Except as set forth in paragraphs (e)(2)(ii) and (iii) of this section, a servicer may deem a borrower that has not accepted an offer of a loss mitigation option within the deadline established pursuant to paragraph (e)(1) of this section to have rejected the offer of a loss mitigation option.

(ii) *Trial Loan Modification Plan.* A borrower who does not satisfy the servicer's requirements for accepting a trial loan modification plan, but submits the payments that would be owed pursuant to any such plan within the deadline established pursuant to paragraph (e)(1) of this section, shall be provided a reasonable period of time to fulfill any remaining requirements of the servicer for acceptance of the trial loan modification plan beyond the deadline established pursuant to paragraph (e)(1) of this section.

(iii) *Interaction with appeal process.* If a borrower makes an appeal pursuant to paragraph (h) of this section, the borrower's deadline for accepting a loss mitigation option offered pursuant to paragraph (c)(1)(ii) of this section shall be extended until 14 days after the servicer provides the notice required pursuant to paragraph (h)(4) of this section.

(f) *Prohibition on foreclosure referral*—(1) *Pre-foreclosure review period.* A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

(i) A borrower's mortgage loan obligation is more than 120 days delinquent;

(ii) The foreclosure is based on a borrower's violation of a due-on-sale clause; or

(iii) The servicer is joining the foreclosure action of a subordinate lienholder.

(2) *Application received before foreclosure referral.* If a borrower submits a complete loss mitigation application during the pre-foreclosure review period set forth in paragraph (f)(1) of this section or before a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, a servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

(i) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied;

(ii) The borrower rejects all loss mitigation options offered by the servicer; or

(iii) The borrower fails to perform under an agreement on a loss mitigation option.

(g) *Prohibition on foreclosure sale.* If a borrower submits a complete loss mitigation application after a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process but more than 37 days before a foreclosure sale, a servicer shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, unless:

(1) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied;

(2) The borrower rejects all loss mitigation options offered by the servicer; or

(3) The borrower fails to perform under an agreement on a loss mitigation option.

(h) *Appeal process*—(1) *Appeal process required for loan modification denials.* If a servicer receives a complete loss mitigation application 90 days or more before a foreclosure sale or during the period set forth in paragraph (f) of this section, a servicer shall permit a borrower to appeal the servicer's determination to deny a borrower's loss mitigation application for any trial or permanent loan modification program available to the borrower.

(2) *Deadlines.* A servicer shall permit a borrower to make an appeal within 14 days after the servicer provides the offer of a loss mitigation option to the borrower pursuant to paragraph (c)(1)(ii) of this section.

(3) *Independent evaluation.* An appeal shall be reviewed by different personnel than those responsible for evaluating the borrower's complete loss mitigation application.

(4) *Appeal determination.* Within 30 days of a borrower making an appeal, the servicer shall provide a notice to the borrower stating the servicer's determination of whether the servicer will offer the borrower a loss mitigation option based upon the appeal and, if applicable, how long the borrower has to accept or reject such an offer or a prior offer of a loss mitigation option. A servicer may require that a borrower accept or reject an offer of a loss mitigation option after an appeal no earlier than 14 days after the servicer provides the notice to a borrower. A servicer's determination under this paragraph is not subject to any further appeal.

(i) *Duplicative requests.* A servicer is only required to comply with the requirements of this section for a single complete loss mitigation application for a borrower's mortgage loan account.

(j) *Small servicer requirements.* A small servicer shall be subject to the prohibition on foreclosure referral in paragraph (f)(1) of this section. A small servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process and shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of an agreement on a loss mitigation option.

[78 FR 10876, Feb. 14, 2013, as amended at 78 FR 60437, Oct. 1, 2013]

APPENDIX A TO PART 1024—INSTRUCTIONS FOR COMPLETING HUD–1 AND HUD–1A SETTLEMENT STATEMENTS; SAMPLE HUD–1 AND HUD–1A STATEMENTS

The following are instructions for completing the HUD–1 settlement statement, required under section 4 of RESPA and 12 CFR part 1024 (Regulation X) of the Bureau of Consumer Financial Protection (Bureau) regulations. This form is to be used as a statement of actual charges and adjustments paid by the borrower and the seller, to be given to the parties in connection with the settlement. The instructions for completion of the HUD–1 are primarily for the benefit of the settlement agents who prepare the statements and need not be transmitted to the parties as an integral part of the HUD–1. There is no objection to the use of the HUD–1 in transactions in which its use is not legally required. Refer to the definitions section of the regulations (12 CFR 1024.2) for specific definitions of many of the terms that are used in these instructions.

GENERAL INSTRUCTIONS

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to the Bureau's regulations (Regulation X) regarding rules applicable to reproduction of the HUD–1 for the purpose of including customary recitals and information used locally in settlements; for example, a breakdown of payoff figures, a breakdown of the Borrower's total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between Borrower and Seller, and the date funds are transferred.

The settlement agent shall complete the HUD–1 to itemize all charges imposed upon the Borrower and the Seller by the loan originator and all sales commissions, whether to be paid at settlement or outside of settlement, and any other charges which either the Borrower or the Seller will pay at settlement. Charges for loan origination and title services should not be itemized except as provided in these instructions. For each separately identified settlement service in connection with the transaction, the name of the person ultimately receiving the payment must be shown together with the total amount paid to such person. Items paid to and retained by a loan originator are disclosed as required in the instructions for lines in the 800-series of the HUD–1 (and for per diem interest, in the 900-series of the HUD–1).

As a general rule, charges that are paid for by the seller must be shown in the seller's column on page 2 of the HUD–1 (unless paid outside closing), and charges that are paid for by the borrower must be shown in the borrower's column (unless paid outside closing). However, in order to promote comparability between the charges on the GFE and the charges on the HUD–1, if a seller pays for a charge that was included on the GFE, the charge should be listed in the borrower's column on page 2 of the HUD–1. That charge should also be offset by listing a credit in that amount to the borrower on lines 204–209 on page 1 of the HUD–1, and by a charge to the seller in lines 506–509 on page 1 of the HUD–1. If a loan originator (other than for no-cost loans), real estate agent, other settlement service provider, or other person pays for a charge that was included on the GFE, the charge should be listed in the borrower's column on page 2 of the HUD–1, with an offsetting credit reported on page 1 of the HUD–1, identifying the party paying the charge.

Charges paid outside of settlement by the borrower, seller, loan originator, real estate agent, or any other person, must be included on the HUD–1 but marked ''P.O.C.'' for ''Paid Outside of Closing'' (settlement) and must not be included in computing totals. However, indirect payments from a lender to a mortgage broker may not be disclosed as P.O.C., and must be included as a credit on Line 802. P.O.C. items must not be placed in the Borrower or Seller columns, but rather on the appropriate line outside the columns. The settlement agent must indicate whether P.O.C. items are paid for by the Borrower, Seller, or some other party by marking the items paid for by whoever made the payment as ''P.O.C.'' with the party making the payment identified in parentheses, such as ''P.O.C. (borrower)'' or ''P.O.C. (seller)''.

In the case of ''no cost'' loans where ''no cost'' encompasses third party fees as well as the upfront payment to the loan originator, the third party services covered by the ''no cost'' provisions must be itemized and listed in the borrower's column on the HUD–1/1A with the charge for the third party service. These itemized charges must be offset with a negative adjusted origination charge on Line 803 and recorded in the columns.

Blank lines are provided in section L for any additional settlement charges. Blank lines are also provided for additional insertions in sections J and K. The names of the recipients of the settlement charges in section L and the names of the recipients of adjustments described in section J or K should be included on the blank lines.

Lines and columns in section J which relate to the Borrower's transaction may be left blank on the copy of the HUD–1 which will be furnished to the Seller. Lines and columns in section K which relate to the Seller's transaction may be left blank on the copy of the HUD–1 which will be furnished to the Borrower.

LINE ITEM INSTRUCTIONS

Instructions for completing the individual items on the HUD–1 follow.

Section A. This section requires no entry of information.

Section B. Check appropriate loan type and complete the remaining items as applicable.

Section C. This section provides a notice regarding settlement costs and requires no additional entry of information.

Sections D and E. Fill in the names and current mailing addresses and zip codes of the Borrower and the Seller. Where there is more than one Borrower or Seller, the name and address of each one is required. Use a supplementary page if needed to list multiple Borrowers or Sellers.

Section F. Fill in the name, current mailing address and zip code of the Lender.

Section G. The street address of the property being sold should be listed. If there is no street address, a brief legal description or other location of the property should be inserted. In all cases give the zip code of the property.

Section H. Fill in name, address, zip code and telephone number of settlement agent, and address and zip code of ''place of settlement.''

Section I. Fill in date of settlement.

Section J. Summary of Borrower's Transaction. Line 101 is for the contract sales price of the property being sold, excluding the price of any items of tangible personal property if Borrower and Seller have agreed to a separate price for such items.

Line 102 is for the sales price of any items of tangible personal property excluded from Line 101. Personal property could include

such items as carpets, drapes, stoves, refrigerators, *etc.* What constitutes personal property varies from State to State. Manufactured homes are not considered personal property for this purpose.

Line 103 is used to record the total charges to Borrower detailed in section L and totaled on Line 1400.

Lines 104 and 105 are for additional amounts owed by the Borrower, such as charges that were not listed on the GFE or items paid by the Seller prior to settlement but reimbursed by the Borrower at settlement. For example, the balance in the Seller's reserve account held in connection with an existing loan, if assigned to the Borrower in a loan assumption case, will be entered here. These lines will also be used when a tenant in the property being sold has not yet paid the rent, which the Borrower will collect, for a period of time prior to the settlement. The lines will also be used to indicate the treatment for any tenant security deposit. The Seller will be credited on Lines 404–405.

Lines 106 through 112 are for items which the Seller had paid in advance, and for which the Borrower must therefore reimburse the Seller. Examples of items for which adjustments will be made may include taxes and assessments paid in advance for an entire year or other period, when settlement occurs prior to the expiration of the year or other period for which they were paid. Additional examples include flood and hazard insurance premiums, if the Borrower is being substituted as an insured under the same policy; mortgage insurance in loan assumption cases; planned unit development or condominium association assessments paid in advance; fuel or other supplies on hand, purchased by the Seller, which the Borrower will use when Borrower takes possession of the property; and ground rent paid in advance.

Line 120 is for the total of Lines 101 through 112.

Line 201 is for any amount paid against the sales price prior to settlement.

Line 202 is for the amount of the new loan made by the Lender when a loan to finance construction of a new structure constructed for sale is used as or converted to a loan to finance purchase. Line 202 should also be used for the amount of the first user loan, when a loan to purchase a manufactured home for resale is converted to a loan to finance purchase by the first user. For other loans covered by 12 CFR part 1024 (Regulation X) which finance construction of a new structure or purchase of a manufactured home, list the sales price of the land on Line 104, the construction cost or purchase price of manufactured home on Line 105 (Line 101 would be left blank in this instance) and amount of the loan on Line 202. The remainder of the form should be completed taking into account adjustments and charges related to the temporary financing and permanent financing and which are known at the date of settlement. For reverse mortgage transactions, the amount disclosed on Line 202 is the initial principal limit.

Line 203 is used for cases in which the Borrower is assuming or taking title subject to an existing loan or lien on the property.

Lines 204–209 are used for other items paid by or on behalf of the Borrower. Lines 204–209 should be used to indicate any financing arrangements or other new loan not listed in Line 202. For example, if the Borrower is using a second mortgage or note to finance part of the purchase price, whether from the same lender, another lender or the Seller, insert the principal amount of the loan with a brief explanation on Lines 204–209. Lines 204–209 should also be used where the Borrower receives a credit from the Seller for closing costs, including seller-paid GFE charges. They may also be used in cases in which a Seller (typically a builder) is making an ''allowance'' to the Borrower for items that the Borrower is to purchase separately. For reverse mortgages, the amount of any initial draw at settlement is disclosed on Line 204.

Lines 210 through 219 are for items which have not yet been paid, and which the Borrower is expected to pay, but which are attributable in part to a period of time prior to the settlement. In jurisdictions in which taxes are paid late in the tax year, most cases will show the proration of taxes in these lines. Other examples include utilities used but not paid for by the Seller, rent collected in advance by the Seller from a tenant for a period extending beyond the settlement date, and interest on loan assumptions.

Line 220 is for the total of Lines 201 through 219.

Lines 301 and 302 are summary lines for the Borrower. Enter total in Line 120 on Line 301. Enter total in Line 220 on Line 302.

Line 303 must indicate either the cash required from the Borrower at settlement (the usual case in a purchase transaction), or cash payable to the Borrower at settlement (if, for example, the Borrower's earnest money exceeds the Borrower's cash obligations in the transaction or there is a cash-out refinance). Subtract Line 302 from Line 301 and enter the amount of cash due to or from the Borrower at settlement on Line 303. The appropriate box should be checked. If the Borrower's earnest money is applied toward the charge for a settlement service, the amount so applied should not be included on Line 303 but instead should be shown on the appropriate line for the settlement service, marked ''P.O.C. (Borrower)'', and must not be included in computing totals.

Section K. Summary of Seller's Transaction. Instructions for the use of Lines 101 and 102 and 104–112 above, apply also to Lines 401–412.

Line 420 is for the total of Lines 401 through 412.

Line 501 is used if the Seller's real estate broker or other party who is not the settlement agent has received and holds a deposit against the sales price (earnest money) which exceeds the fee or commission owed to that party. If that party will render the excess deposit directly to the Seller, rather than through the settlement agent, the amount of excess deposit should be entered on Line 501 and the amount of the total deposit (including commissions) should be entered on Line 201.

Line 502 is used to record the total charges to the Seller detailed in section L and totaled on Line 1400.

Line 503 is used if the Borrower is assuming or taking title subject to existing liens which are to be deducted from sales price.

Lines 504 and 505 are used for the amounts (including any accrued interest) of any first and/or second loans which will be paid as part of the settlement.

Line 506 is used for deposits paid by the Borrower to the Seller or other party who is not the settlement agent. Enter the amount of the deposit in Line 201 on Line 506 unless Line 501 is used or the party who is not the settlement agent transfers all or part of the deposit to the settlement agent, in which case the settlement agent will note in parentheses on Line 507 the amount of the deposit that is being disbursed as proceeds and enter in the column for Line 506 the amount retained by the above-described party for settlement services. If the settlement agent holds the deposit, insert a note in Line 507 which indicates that the deposit is being disbursed as proceeds.

Lines 506 through 509 may be used to list additional liens which must be paid off through the settlement to clear title to the property. Other Seller obligations should be shown on Lines 506–509, including charges that were disclosed on the GFE but that are actually being paid for by the Seller. These Lines may also be used to indicate funds to be held by the settlement agent for the payment of either repairs, or water, fuel, or other utility bills that cannot be prorated between the parties at settlement because the amounts used by the Seller prior to settlement are not yet known. Subsequent disclosure of the actual amount of these post-settlement items to be paid from settlement funds is optional. Any amounts entered on Lines 204–209 including Seller financing arrangements should also be entered on Lines 506–509.

Instructions for the use of Lines 510 through 519 are the same as those for Lines 210 to 219 above.

Line 520 is for the total of Lines 501 through 519.

Lines 601 and 602 are summary lines for the Seller. Enter the total in Line 420 on Line 601. Enter the total in Line 520 on Line 602.

Line 603 must indicate either the cash required to be paid to the Seller at settlement (the usual case in a purchase transaction), or the cash payable by the Seller at settlement. Subtract Line 602 from Line 601 and enter the amount of cash due to or from the Seller at settlement on Line 603. The appropriate box should be checked.

Section L. Settlement Charges.

Line 700 is used to enter the sales commission charged by the sales agent or real estate broker.

Lines 701–702 are to be used to state the split of the commission where the settlement agent disburses portions of the commission to two or more sales agents or real estate brokers.

Line 703 is used to enter the amount of sales commission disbursed at settlement. If the sales agent or real estate broker is retaining a part of the deposit against the sales price (earnest money) to apply towards the sales agent's or real estate broker's commission, include in Line 703 only that part of the commission being disbursed at settlement and insert a note on Line 704 indicating the amount the sales agent or real estate broker is retaining as a ''P.O.C.'' item.

Line 704 may be used for additional charges made by the sales agent or real estate broker, or for a sales commission charged to the Borrower, which will be disbursed by the settlement agent.

Line 801 is used to record ''Our origination charge,'' which includes all charges received by the loan originator, except any charge for the specific interest rate chosen (points). This number must not be listed in either the buyer's or seller's column. The amount shown in Line 801 must include any amounts received for origination services, including administrative and processing services, performed by or on behalf of the loan originator.

Line 802 is used to record ''Your credit or charge (points) for the specific interest rate chosen,'' which states the charge or credit adjustment as applied to ''Our origination charge,'' if applicable. This number must not be listed in either column or shown on page one of the HUD–1.

For a mortgage broker originating a loan in its own name, the amount shown on Line 802 will be the difference between the initial loan amount and the total payment to the mortgage broker from the lender. The total payment to the mortgage broker will be the sum of the price paid for the loan by the lender and any other payments to the mortgage broker from the lender, including any payments based on the loan amount or loan terms, and any flat rate payments. For a

mortgage broker originating a loan in another entity's name, the amount shown on Line 802 will be the sum of all payments to the mortgage broker from the lender, including any payments based on the loan amount or loan terms, and any flat rate payments.

In either case, when the amount paid to the mortgage broker exceeds the initial loan amount, there is a credit to the borrower and it is entered as a negative amount. When the initial loan amount exceeds the amount paid to the mortgage broker, there is a charge to the borrower and it is entered as a positive amount. For a lender, the amount shown on Line 802 may include any credit or charge (points) to the Borrower.

Line 803 is used to record ''Your adjusted origination charges,'' which states the net amount of the loan origination charges, the sum of the amounts shown in Lines 801 and 802. This amount must be listed in the columns as either a positive number (for example, where the origination charge shown in Line 801 exceeds any credit for the interest rate shown in Line 802 or where there is an origination charge in Line 801 and a charge for the interest rate (points) is shown on Line 802) or as a negative number (for example, where the credit for the interest rate shown in Line 802 exceeds the origination charges shown in Line 801).

In the case of ''no cost'' loans, where ''no cost'' refers only to the loan originator's fees, the amounts shown in Lines 801 and 802 should offset, so that the charge shown on Line 803 is zero. Where ''no cost'' includes third party settlement services, the credit shown in Line 802 will more than offset the amount shown in Line 801. The amount shown in Line 803 will be a negative number to offset the settlement charges paid indirectly through the loan originator.

Lines 804–808 may be used to record each of the ''Required services that we select.'' Each settlement service provider must be identified by name and the amount paid recorded either inside the columns or as paid to the provider outside closing (''P.O.C.''), as described in the General Instructions.

Line 804 is used to record the appraisal fee.

Line 805 is used to record the fee for all credit reports.

Line 806 is used to record the fee for any tax service.

Line 807 is used to record any flood certification fee.

Lines 808 and additional sequentially numbered lines, as needed, are used to record other third party services required by the loan originator. These Lines may also be used to record other required disclosures from the loan originator. Any such disclosures must be listed outside the columns.

Lines 901–904. This series is used to record the items which the Lender requires to be paid at the time of settlement, but which are not necessarily paid to the lender (*e.g.,* FHA mortgage insurance premium), other than reserves collected by the Lender and recorded in the 1000-series.

Line 901 is used if interest is collected at settlement for a part of a month or other period between settlement and the date from which interest will be collected with the first regular monthly payment. Enter that amount here and include the per diem charges. If such interest is not collected until the first regular monthly payment, no entry should be made on Line 901.

Line 902 is used for mortgage insurance premiums due and payable at settlement, including any monthly amounts due at settlement and any upfront mortgage insurance premium, but not including any reserves collected by the Lender and recorded in the 1000-series. If a lump sum mortgage insurance premium paid at settlement is included on Line 902, a note should indicate that the premium is for the life of the loan.

Line 903 is used for homeowner's insurance premiums that the Lender requires to be paid at the time of settlement, except reserves collected by the Lender and recorded in the 1000-series.

Lines 904 and additional sequentially numbered lines are used to list additional items required by the Lender (except for reserves collected by the Lender and recorded in the 1000-series), including premiums for flood or other insurance. These lines are also used to list amounts paid at settlement for insurance not required by the Lender.

Lines 1000–1007. This series is used for amounts collected by the Lender from the Borrower and held in an account for the future payment of the obligations listed as they fall due. Include the time period (number of months) and the monthly assessment. In many jurisdictions this is referred to as an ''escrow'', ''impound'', or ''trust'' account. In addition to the property taxes and insurance listed, some Lenders may require reserves for flood insurance, condominium owners' association assessments, *etc.* The amount in line 1001 must be listed in the columns, and the itemizations in lines 1002 through 1007 must be listed outside the columns.

After itemizing individual deposits in the 1000 series, the servicer shall make an adjustment based on aggregate accounting. This adjustment equals the difference between the deposit required under aggregate accounting and the sum of the itemized deposits. The computation steps for aggregate accounting are set out in 12 CFR 1024.17(d). The adjustment will always be a negative number or zero (-0-), except for amounts due to rounding. The settlement agent shall enter the aggregate adjustment amount outside the columns on a final line of the 1000 series of the HUD–1 or HUD–1A statement. Appendix E to this part sets out an example of aggregate analysis.

Lines 1100–1108. This series covers title charges and charges by attorneys and closing or settlement agents. The title charges include a variety of services performed by title companies or others, and include fees directly related to the transfer of title (title examination, title search, document preparation), fees for title insurance, and fees for conducting the closing. The legal charges include fees for attorneys representing the lender, seller, or borrower, and any attorney preparing title work. The series also includes any settlement, notary, and delivery fees related to the services covered in this series. Disbursements to third parties must be broken out in the appropriate lines or in blank lines in the series, and amounts paid to these third parties must be shown outside of the columns if included in Line 1101. Charges not included in Line 1101 must be listed in the columns.

Line 1101 is used to record the total for the category of ''Title services and lender's title insurance.'' This amount must be listed in the columns.

Line 1102 is used to record the settlement or closing fee.

Line 1103 is used to record the charges for the owner's title insurance and related endorsements. This amount must be listed in the columns.

Line 1104 is used to record the lender's title insurance premium and related endorsements.

Line 1105 is used to record the amount of the lender's title policy limit. This amount is recorded outside of the columns.

Line 1106 is used to record the amount of the owner's title policy limit. This amount is recorded outside of the columns.

Line 1107 is used to record the amount of the total title insurance premium, including endorsements, that is retained by the title agent. This amount is recorded outside of the columns.

Line 1108 used to record the amount of the total title insurance premium, including endorsements, that is retained by the title underwriter. This amount is recorded outside of the columns.

Additional sequentially numbered lines in the 1100-series may be used to itemize title charges paid to other third parties, as identified by name and type of service provided.

Lines 1200–1206. This series covers government recording and transfer charges. Charges paid by the borrower must be listed in the columns as described for lines 1201 and 1203, with itemizations shown outside the columns. Any amounts that are charged to the seller and that were not included on the Good Faith Estimate must be listed in the columns.

Line 1201 is used to record the total ''Government recording charges,'' and the amount must be listed in the columns.

Line 1202 is used to record, outside of the columns, the itemized recording charges.

Line 1203 is used to record the transfer taxes, and the amount must be listed in the columns.

Line 1204 is used to record, outside of the columns, the amounts for local transfer taxes and stamps.

Line 1205 is used to record, outside of the columns, the amounts for state transfer taxes and stamps.

Line 1206 and additional sequentially numbered lines may be used to record specific itemized third party charges for government recording and transfer services, but the amounts must be listed outside the columns.

Line 1301 and additional sequentially numbered lines must be used to record required services that the borrower can shop for, such as fees for survey, pest inspection, or other similar inspections. These lines may also be used to record additional itemized settlement charges that are not included in a specific category, such as fees for structural and environmental inspections; pre-sale inspections of heating, plumbing or electrical equipment; or insurance or warranty coverage. The amounts must be listed in either the borrower's or seller's column.

Line 1400 must state the total settlement charges as calculated by adding the amounts within each column.

PAGE 3

Comparison of Good Faith Estimate (GFE) and HUD–1/1A Charges

The HUD–1/1–A is a statement of actual charges and adjustments. The comparison chart on page 3 of the HUD–1 must be prepared using the exact information and amounts for the services that were purchased or provided as part of the transaction, as that information and those amounts are shown on the GFE and in the HUD–1. If a service that was listed on the GFE was not obtained in connection with the transaction, pages 1 and 2 of the HUD–1 should not include any amount for that service, and the estimate on the GFE of the charge for the service should not be included in any amounts shown on the comparison chart on Page 3 of the HUD–1. The comparison chart is comprised of three sections: ''Charges That Cannot Increase,'' ''Charges That Cannot Increase More Than 10%,'' and ''Charges That Can Change''.

''Charges That Cannot Increase.'' The amounts shown in Blocks 1 and 2, in Line A, and in Block 8 on the borrower's GFE must be entered in the appropriate line in the Good Faith Estimate column. The amounts shown on Lines 801, 802, 803 and 1203 of the HUD–1/1A must be entered in the corresponding line in the HUD–1/1A column. The HUD–1/1A column must include any amounts shown on page 2 of the HUD–1 in the column

as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower. If there is a credit in Block 2 of the GFE or Line 802 of the HUD–1/1A, the credit should be entered as a negative number.

''Charges That Cannot Increase More Than 10%.'' A description of each charge included in Blocks 3 and 7 on the borrower's GFE must be entered on separate lines in this section, with the amount shown on the borrower's GFE for each charge entered in the corresponding line in the Good Faith Estimate column. For each charge included in Blocks 4, 5 and 6 on the borrower's GFE for which the loan originator selected the provider or for which the borrower selected a provider identified by the loan originator, a description must be entered on a separate line in this section, with the amount shown on the borrower's GFE for each charge entered in the corresponding line in the Good Faith Estimate column. The loan originator must identify any third party settlement services for which the borrower selected a provider other than one identified by the loan originator so that the settlement agent can include those charges in the appropriate category. Additional lines may be added if necessary. The amounts shown on the HUD–1/1A for each line must be entered in the HUD–1/1A column next to the corresponding charge from the GFE, along with the appropriate HUD–1/1A line number. The HUD–1/1A column must include any amounts shown on page 2 of the HUD–1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower.

The amounts shown in the Good Faith Estimate and HUD–1/1A columns for this section must be separately totaled and entered in the designated line. If the total for the HUD–1/1A column is greater than the total for the Good Faith Estimate column, then the amount of the increase must be entered both as a dollar amount and as a percentage increase in the appropriate line.

''Charges That Can Change.'' The amounts shown in Blocks 9, 10 and 11 on the borrower's GFE must be entered in the appropriate lines in the Good Faith Estimate column. Any third party settlement services for which the borrower selected a provider other than one identified by the loan originator must also be included in this section. The amounts shown on the HUD–1/1A for each charge in this section must be entered in the corresponding line in the HUD–1/1A column, along with the appropriate HUD–1/1A line number. The HUD–1/1A column must include any amounts shown on page 2 of the HUD–1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower. Additional lines may be added if necessary.

LOAN TERMS

This section must be completed in accordance with the information and instructions provided by the lender. The lender must provide this information in a format that permits the settlement agent to simply enter the necessary information in the appropriate spaces, without the settlement agent having to refer to the loan documents themselves. For reverse mortgages, the initial monthly amount owed for principal, interest, and any mortgage insurance must read ''N/A'' and the loan term is disclosed as ''N/A'' when the loan term is conditioned upon the occurrence of a specified event, such as the death of the borrower or the borrower no longer occupying the property for a certain period of time. Additionally, for reverse mortgages the question ''Even if you make payments on time, can your loan balance rise?'' must be answered as ''Yes'' and the maximum amount disclosed as ''Unknown.''

For reverse mortgages that establish an arrangement for the payment of property taxes, homeowner's insurance, or other recurring charges through draws from the principal limit, the second box in the ''Total monthly amount owed including escrow payments'' section must be checked. The blank following the first $ must be completed with ''0'' and an asterisk, and all items that will be paid using draws from the principal limit, such as for property taxes, must also be indicated. An asterisk must also be placed in this section with the following statement: ''Paid by or through draws from the principal limit.'' Reverse mortgage transactions are not considered to be balloon transactions for the purposes of the loan terms disclosed on page 3 of the HUD–1.

INSTRUCTIONS FOR COMPLETING HUD–1A

NOTE: The HUD–1A is an optional form that may be used for refinancing and subordinate-lien federally related mortgage loans, as well as for any other one-party transaction that does not involve the transfer of title to residential real property. The HUD–1 form may also be used for such transactions, by utilizing the borrower's side of the HUD–1 and following the relevant parts of the instructions as set forth above. The use of either the HUD–1 or HUD–1A is not mandatory for open-end lines of credit (home-equity plans), as long as the provisions of Regulation Z are followed.

BACKGROUND

The HUD–1A settlement statement is to be used as a statement of actual charges and adjustments to be given to the borrower at settlement, as defined in this part. The instructions for completion of the HUD–1A are for the benefit of the settlement agent who prepares the statement; the instructions are not a part of the statement and need not be

transmitted to the borrower. There is no objection to using the HUD–1A in transactions in which it is not required, and its use in open-end lines of credit transactions (home-equity plans) is encouraged. It may not be used as a substitute for a HUD–1 in any transaction that has a seller.

Refer to the ''definitions'' section (§1024.2) of 12 CFR part 1024 (Regulation X) for specific definitions of terms used in these instructions.

GENERAL INSTRUCTIONS

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to 12 CFR 1024.9 regarding rules for reproduction of the HUD–1A. Additional pages may be attached to the HUD–1A for the inclusion of customary recitals and information used locally for settlements or if there are insufficient lines on the HUD–1A. The settlement agent shall complete the HUD–1A in accordance with the instructions for the HUD–1 to the extent possible, including the instructions for disclosing items paid outside closing and for no cost loans.

Blank lines are provided in section L for any additional settlement charges. Blank lines are also provided in section M for recipients of all or portions of the loan proceeds. The names of the recipients of the settlement charges in section L and the names of the recipients of the loan proceeds in section M should be set forth on the blank lines.

LINE-ITEM INSTRUCTIONS

Page 1

The identification information at the top of the HUD–1A should be completed as follows: The borrower's name and address is entered in the space provided. If the property securing the loan is different from the borrower's address, the address or other location information on the property should be entered in the space provided. The loan number is the lender's identification number for the loan. The settlement date is the date of settlement in accordance with 12 CFR 1024.2, not the end of any applicable rescission period. The name and address of the lender should be entered in the space provided.

Section L. Settlement Charges. This section of the HUD–1A is similar to section L of the HUD–1, with minor changes or omissions, including deletion of lines 700 through 704, relating to real estate broker commissions. The instructions for section L in the HUD–1 should be followed insofar as possible. Inapplicable charges should be ignored, as should any instructions regarding seller items.

Line 1400 in the HUD–1A is for the total settlement charges charged to the borrower. Enter this total on line 1601. This total should include section L amounts from additional pages, if any are attached to this HUD–1A.

Section M. Disbursement to Others. This section is used to list payees, other than the borrower, of all or portions of the loan proceeds (including the lender, if the loan is paying off a prior loan made by the same lender), when the payee will be paid directly out of the settlement proceeds. It is not used to list payees of settlement charges, nor to list funds disbursed directly to the borrower, even if the lender knows the borrower's intended use of the funds.

For example, in a refinancing transaction, the loan proceeds are used to pay off an existing loan. The name of the lender for the loan being paid off and the pay-off balance would be entered in section M. In a home improvement transaction when the proceeds are to be paid to the home improvement contractor, the name of the contractor and the amount paid to the contractor would be entered in section M. In a consolidation loan, or when part of the loan proceeds is used to pay off other creditors, the name of each creditor and the amount paid to that creditor would be entered in section M. If the proceeds are to be given directly to the borrower and the borrower will use the proceeds to pay off existing obligations, this would not be reflected in section M.

Section N. Net Settlement. Line 1600 normally sets forth the principal amount of the loan as it appears on the related note for this loan. In the event this form is used for an open-ended home equity line whose approved amount is greater than the initial amount advanced at settlement, the amount shown on Line 1600 will be the loan amount advanced at settlement. Line 1601 is used for all settlement charges that both are included in the totals for lines 1400 and 1602, and are not financed as part of the principal amount of the loan. This is the amount normally received by the lender from the borrower at settlement, which would occur when some or all of the settlement charges were paid in cash by the borrower at settlement, instead of being financed as part of the principal amount of the loan. Failure to include any such amount in line 1601 will result in an error in the amount calculated on line 1604. Items paid outside of closing (P.O.C.) should not be included in Line 1601.

Line 1602 is the total amount from line 1400.

Line 1603 is the total amount from line 1520.

Line 1604 is the amount disbursed to the borrower. This is determined by adding together the amounts for lines 1600 and 1601, and then subtracting any amounts listed on lines 1602 and 1603.

Page 2

This section of the HUD–1A is similar to page 3 of the HUD–1. The instructions for

page 3 of the HUD–1 should be followed insofar as possible. The HUD–1/1A Column should include any amounts shown on page 1 of the HUD–1A in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by the borrower. Inapplicable charges should be ignored.

OMB Approval No. 2502-0265

A. Settlement Statement (HUD-1)

B. Type of Loan			
1. ☐ FHA 2. ☐ RHS 3. ☐ Conv. Unins. 4. ☐ VA 5. ☐ Conv. Ins.	6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name & Address of Borrower:	E. Name & Address of Seller:	F. Name & Address of Lender:
G. Property Location:	H. Settlement Agent: Place of Settlement:	I. Settlement Date:

J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
100. Gross Amount Due from Borrower		**400. Gross Amount Due to Seller**	
101. Contract sales price		401. Contract sales price	
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)		403.	
104.		404.	
105.		405.	
Adjustment for items paid by seller in advance		**Adjustments for items paid by seller in advance**	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross Amount Due from Borrower		**420. Gross Amount Due to Seller**	
200. Amounts Paid by or in Behalf of Borrower		**500. Reductions In Amount Due to Seller**	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		**Adjustments for items unpaid by seller**	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid by/for Borrower		**520. Total Reduction Amount Due Seller**	
300. Cash at Settlement from/to Borrower		**600. Cash at Settlement to/from Seller**	
301. Gross amount due from borrower (line 120)		601. Gross amount due to seller (line 420)	
302. Less amounts paid by/for borrower (line 220)	( )	602. Less reductions in amount due seller (line 520)	( )
303. Cash ☐ **From** ☐ **To Borrower**		**603. Cash** ☐ **To** ☐ **From Seller**	

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

Previous editions are obsolete Page 1 of 3 HUD-1

L. Settlement Charges

700. Total Real Estate Broker Fees	Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
Division of commission (line 700) as follows:		
701. $ to		
702. $ to		
703. Commission paid at settlement		
704.		

800. Items Payable in Connection with Loan			
801. Our origination charge $ (from GFE #1)			
802. Your credit or charge (points) for the specific interest rate chosen $ (from GFE #2)			
803. Your adjusted origination charges (from GFE A)			
804. Appraisal fee to (from GFE #3)			
805. Credit report to (from GFE #3)			
806. Tax service to (from GFE #3)			
807. Flood certification (from GFE #3)			
808.			

900. Items Required by Lender to Be Paid in Advance			
901. Daily interest charges from to @ $ /day (from GFE #10)			
902. Mortgage insurance premium for months to (from GFE #3)			
903. Homeowner's insurance for years to (from GFE #11)			
904.			

1000. Reserves Deposited with Lender			
1001. Initial deposit for your escrow account (from GFE #9)			
1002. Homeowner's insurance months @ $ per month $			
1003. Mortgage insurance months @ $ per month $			
1004. Property taxes months @ $ per month $			
1005. months @ $ per month $			
1006. months @ $ per month $			
1007. Aggregate Adjustment -$			

1100. Title Charges			
1101. Title services and lender's title insurance (from GFE #4)			
1102. Settlement or closing fee $			
1103. Owner's title insurance (from GFE #5)			
1104. Lender's title insurance $			
1105. Lender's title policy limit $			
1106. Owner's title policy limit $			
1107. Agent's portion of the total title insurance premium $			
1108. Underwriter's portion of the total title insurance premium $			

1200. Government Recording and Transfer Charges					
1201. Government recording charges (from GFE #7)					
1202. Deed $	Mortgage $		Releases $		
1203. Transfer taxes (from GFE #8)					
1204. City/County tax/stamps	Deed $		Mortgage $		
1205. State tax/stamps	Deed $		Mortgage $		
1206.					

1300. Additional Settlement Charges			
1301. Required services that you can shop for (from GFE #6)			
1302. $			
1303. $			
1304.			
1305.			

1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)		

Previous editions are obsolete Page 2 of 3 HUD-1

Comparison of Good Faith Estimate (GFE) and HUD-1 Charges		Good Faith Estimate	HUD-1
Charges That Cannot Increase	**HUD-1 Line Number**		
Our origination charge	# 801		
Your credit or charge (points) for the specific interest rate chosen	# 802		
Your adjusted origination charges	# 803		
Transfer taxes	#1203		

Charges That in Total Cannot Increase More Than 10%		Good Faith Estimate	HUD-1
Government recording charges	# 1201		
	#		
	#		
	#		
	#		
	#		
	#		
	#		
Total			
Increase between GFE and HUD-1 Charges		$ or	%

Charges That Can Change		Good Faith Estimate	HUD-1
Initial deposit for your escrow account	#1001		
Daily interest charges	# 901 $ /day		
Homeowner's insurance	# 903		
	#		
	#		
	#		

Loan Terms

Your initial loan amount is	$
Your loan term is	years
Your initial interest rate is	%
Your initial monthly amount owed for principal, interest, and and any mortgage insurance is	$ includes ☐ Principal ☐ Interest ☐ Mortgage Insurance
Can your interest rate rise?	☐ No. ☐ Yes, it can rise to a maximum of %. The first change will be on and can change again every after . Every change date, your interest rate can increase or decrease by %. Over the life of the loan, your interest rate is guaranteed to never be lower than % or higher than %.
Even if you make payments on time, can your loan balance rise?	☐ No. ☐ Yes, it can rise to a maximum of $.
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	☐ No. ☐ Yes, the first increase can be on and the monthly amount owed can rise to $. The maximum it can ever rise to is $.
Does your loan have a prepayment penalty?	☐ No. ☐ Yes, your maximum prepayment penalty is $.
Does your loan have a balloon payment?	☐ No. ☐ Yes, you have a balloon payment of $ due in years on .
Total monthly amount owed including escrow account payments	☐ You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself. ☐ You have an additional monthly escrow payment of $ that results in a total initial monthly amount owed of $. This includes principal, interest, any mortgage insurance and any items checked below: ☐ Property taxes ☐ Homeowner's insurance ☐ Flood Insurance ☐ ☐ ☐

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.

OMB Approval No. 2502-0265

Settlement Statement (HUD-1A)

Optional Form for Transactions without Sellers

Name and Address of Borrower:	Name and Address of Lender:
Property Location: (if different from above)	Settlement Agent:
	Place of Settlement:
Loan Number:	Settlement Date:

L. Settlement Charges		M. Disbursements to Others	
800. Items Payable in Connection with Loan		1501.	
801. Our origination charge	(from GFE #1) $	1502.	
802. Your credit or charge (points) for the specific interest rate chosen	(from GFE #2) $		
803. Your adjusted origination charges	(from GFE A)	1503.	
804. Appraisal fee to	(from GFE #3)		
805. Credit report to	(from GFE #3)	1504.	
806. Tax service to	(from GFE #3)		
807. Flood certification	(from GFE #3)	1505.	
808.			
900. Items Required by Lender to Be Paid in Advance		1506.	
901. Daily interest charges from to @$ /day	(from GFE #10)		
902. Mortgage insurance premium for months to	(from GFE #3)	1507.	
903. Homeowner's insurance for years to	(from GFE #11)		
904.		1508.	
1000. Reserves Deposited with Lender			
1001. Initial deposit for your escrow account	(from GFE #9)	1509	
1002. Homeowner's insurance months @ $ per month	$		
1003. Mortgage insurance months @ $ per month	$	1510.	
1004. Property taxes months @ $ per month	$		
1005. months @ $ per month	$	1511.	
1006. months @ $ per month	$		
1007. Aggregate Adjustment	-$	1512.	
1100. Title Charges			
1101. Title services and lender's title insurance	(from GFE #4)	1513.	
1102. Settlement or closing fee	$		
1103. Owner's title insurance	(from GFE #5)	1514.	
1104. Lender's title insurance	$		
1105. Lender's title policy limit $		1515.	
1106. Owner's title policy limit $			
1107. Agent's portion of the total title insurance premium	$	**1520. Total Disbursed** (enter on line 1603)	
1108. Underwriter's portion of the total title insurance premium	$		
1200. Government Recording and Transfer Charges			
1201. Government recording charges	(from GFE #7)		
1202. Deed $ Mortgage $ Releases $		**N. Net Settlement**	
1203. Transfer taxes	(from GFE #8)	1600. Loan Amount	$
1204. City/County tax/stamps Deed $ Mortgage $		1601. **Plus** Cash/Check from Borrower	$
1205. State tax/stamps Deed $ Mortgage $		1602. **Minus** Total Settlement Charges (line 1400)	$
1206.		1603. **Minus** Total Disbursements to Others (line 1520)	$
1300. Additional Settlement Charges		1604. **Equals** Total Disbursements to Borrower (after expiration of any applicable rescission period required by law)	$
1301. Required services that you can shop for	(from GFE #6)		
1302.	$		
1303.	$		
1304.			
1305.			
1400. Total Settlement Charges (enter on line 1602, Section N)			

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

Comparison of Good Faith Estimate (GFE) and HUD-1 Charges		Good Faith Estimate	HUD-1
Charges That Cannot Increase	**HUD-1 Line Number**		
Our origination charge	# 801		
Your credit or charge (points) for the specific interest rate chosen	# 802		
Your adjusted origination charges	# 803		
Transfer taxes	#1203		

Charges That In Total Cannot Increase More Than 10%		Good Faith Estimate	HUD-1
Government recording charges	# 1201		
	#		
	#		
	#		
	#		
	#		
	#		
	#		
Total			
Increase between GFE and HUD-1 Charges		$ or	%

Charges That Can Change		Good Faith Estimate	HUD-1
Initial deposit for your escrow account	#1001		
Daily interest charges	# 901 $ /day		
Homeowner's insurance	# 903		
	#		
	#		
	#		

Loan Terms

Your initial loan amount is	$
Your loan term is	years
Your initial interest rate is	%
Your initial monthly amount owed for principal, interest, and and any mortgage insurance is	$ includes ☐ Principal ☐ Interest ☐ Mortgage Insurance
Can your interest rate rise?	☐ No. ☐ Yes, it can rise to a maximum of %. The first change will be on and can change again every after . Every change date, your interest rate can increase or decrease by %. Over the life of the loan, your interest rate is guaranteed to never be lower than % or higher than %.
Even if you make payments on time, can your loan balance rise?	☐ No. ☐ Yes, it can rise to a maximum of $.
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	☐ No. ☐ Yes, the first increase can be on and the monthly amount owed can rise to $. The maximum it can ever rise to is $.
Does your loan have a prepayment penalty?	☐ No. ☐ Yes, your maximum prepayment penalty is $.
Does your loan have a balloon payment?	☐ No. ☐ Yes, you have a balloon payment of $ due in years on .
Total monthly amount owed including escrow account payments	☐ You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself. ☐ You have an additional monthly escrow payment of $ that results in a total initial monthly amount owed of $. This includes principal, interest, any mortgage insurance and any items checked below: ☐ Property taxes ☐ Homeowner's insurance ☐ Flood insurance ☐ ☐ ☐

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.

Previous editions are obsolete Page 2 of 2 HUD-1A

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 80104, Dec. 31, 2013]

EDITORIAL NOTE: At 78 FR 80105, Dec. 31, 2013, appendix A to part 1024 was amended; however, amendatory instructions E and F could not be incorporated due to inaccurate amendatory instructions.

APPENDIX B TO PART 1024—ILLUSTRATIONS OF REQUIREMENTS OF RESPA

The following illustrations provide additional guidance on the meaning and coverage of the provisions of RESPA. Other provisions of Federal or state law may also be applicable to the practices and payments discussed in the following illustrations.

1. *Facts:* A, a provider of settlement services, provides settlement services at abnormally low rates or at no charge at all to B, a builder, in connection with a subdivision being developed by B. B agrees to refer purchasers of the completed homes in the subdivision to A for the purchase of settlement services in connection with the sale of individual lots by B.

Comments: The rendering of services by A to B at little or no charge constitutes a thing of value given by A to B in return for the referral of settlement services business, and both A and B are in violation of section 8 of RESPA.

2. *Facts:* B, a lender, encourages persons who receive federally related mortgage loans from it to employ A, an attorney, to perform title searches and related settlement services in connection with their transaction. B and A have an understanding that in return for the referral of this business A provides legal services to B or B's officers or employees at abnormally low rates or for no charge.

Comments: Both A and B are in violation of section 8 of RESPA. Similarly, if an attorney gives a portion of his or her fees to another attorney, a lender, a real estate broker or any other provider of settlement services, who had referred prospective clients to the attorney, section 8 would be violated by both persons.

3. *Facts:* A, a real estate broker, obtains all necessary licenses under state law to act as a title insurance agent. A refers individuals who are purchasing homes in transactions in which A participates as a broker to B, an unaffiliated title company, for the purchase of title insurance services. A performs minimal, if any, title services in connection with the issuance of the title insurance policy (such as placing an application with the title company). B pays A a commission (or A retains a portion of the title insurance premium) for the transactions or alternatively B receives a portion of the premium paid directly from the purchaser.

Comments: The payment of a commission or portion of the title insurance premium by B to A, or receipt of a portion of the payment for title insurance under circumstances where no substantial services are being performed by A, is a violation of section 8 of RESPA. It makes no difference whether the payment comes from B or the purchaser. The amount of the payment must bear a reasonable relationship to the services rendered. Here A really is being compensated for a referral of business to B.

4. *Facts:* A is an attorney who, as a part of his legal representation of clients in residential real estate transactions, orders and reviews title insurance policies for his clients. A enters into a contract with B, a title company, to be an agent of B under a program set up by B. Under the agreement, A agrees to prepare and forward title insurance applications to B, to re-examine the preliminary title commitment for accuracy and if he chooses to attempt to clear exceptions to the title policy before closing. A agrees to assume liability for waiving certain exceptions to title, but never exercises this authority. B performs the necessary title search and examination work, determines insurability of title, prepares documents containing substantive information in title commitments, handles closings for A's clients and issues title policies. A receives a fee from his client for legal services and an additional fee for his title agent ''services'' from the client's title insurance premium to B.

Comments: A and B are violating section 8 of RESPA. Here, A's clients are being double billed because the work A performs as a ''title agent'' is that which he already performs for his client in his capacity as an attorney. For A to receive a separate payment as a title agent, A must perform necessary core title work and may not contract out the work. To receive additional compensation as a title agent for this transaction, A must provide his client with core title agent services for which he assumes liability, and which includes at a minimum, the evaluation of the title search to determine insurability of the title, and the issuance of a title commitment where customary, the clearance of underwriting objections, and the actual issuance of the policy or policies on behalf of the title company. A may not be compensated for the mere re-examination of work performed by B. Here, A is not performing these services and may not be compensated as a title agent under section 8(c)(1)(B). Referral fees or splits of fees may not be disguised as title agent commissions when the core title agent work is not performed. Further, because B created the program and gave A the opportunity to collect fees (a thing of value) in exchange for the referral of settlement service business, it has violated section 8 of RESPA.

5. *Facts:* A, a ''mortgage originator,'' receives loan applications, funds the loans with its own money or with a wholesale line of credit for which A is liable, and closes the loans in A's own name. Subsequently, B, a mortgage lender, purchases the loans and compensates A for the value of the loans, as well as for any mortgage servicing rights.

Comments: Compensation for the sale of a mortgage loan and servicing rights constitutes a secondary market transaction,

rather than a referral fee, and is beyond the scope of section 8 of RESPA. For purposes of section 8, in determining whether a *bona fide* transfer of the loan obligation has taken place, the Bureau examines the real source of funding, and the real interest of the named settlement lender.

6. *Facts.* A, a credit reporting company, places a facsimile transmission machine (FAX) in the office of B, a mortgage lender, so that B can easily transmit requests for credit reports and A can respond. A supplies the FAX machine at no cost or at a reduced rental rate based on the number of credit reports ordered.

Comments: Either situation violates section 8 of RESPA. The FAX machine is a thing of value that A provides in exchange for the referral of business from B. Copying machines, computer terminals, printers, or other like items which have general use to the recipient and which are given in exchange for referrals of business also violate RESPA.

7. *Facts:* A, a real estate broker, refers title business to B, a company that is a licensed title agent for C, a title insurance company. A owns more than 1% of B. B performs the title search and examination, makes determinations of insurability, issues the commitment, clears underwriting objections, and issues a policy of title insurance on behalf of C, for which C pays B a commission. B pays annual dividends to its owners, including A, based on the relative amount of business each of its owners refers to B.

Comments: The facts involve an affiliated business arrangement. The payment of a commission by C to B is not a violation of section 8 of RESPA if the amount of the commission constitutes reasonable compensation for the services performed by B for C. The payment of a dividend or the giving of any other thing of value by B to A that is based on the amount of business referred to B by A does not meet the affiliated business agreement exemption provisions and such actions violate section 8. Similarly, if the amount of stock held by A in B (or, if B were a partnership, the distribution of partnership profits by B to A) varies based on the amount of business referred or expected to be referred, or if B retained any funds for subsequent distribution to A where such funds were generally in proportion to the amount of business A referred to B relative to the amount referred by other owners, such arrangements would violate section 8. The exemption for controlled business arrangements would not be available because the payments here would not be considered returns on ownership interests. Further, the required disclosure of the affiliated business arrangement and estimated charges have not been provided.

8. *Facts:* Same as illustration 7, but B pays annual dividends in proportion to the amount of stock held by its owners, including A, and the distribution of annual dividends is not based on the amount of business referred or expected to be referred.

Comments: If A and B meet the requirements of the affiliated business arrangement exemption there is not a violation of RESPA. Since the payment is a return on ownership interests, A and B will be exempt from section 8 if (1) A also did not require anyone to use the services of B, and (2) A disclosed its ownership interest in B on a separate disclosure form and provided an estimate of B's charges to each person referred by A to B (see appendix D of this part), and (3) B makes no payment (nor is there any other thing of value exchanged) to A other than dividends.

9. *Facts:* A, a franchisor for franchised real estate brokers, owns B, a provider of settlement services. C, a franchisee of A, refers business to B.

Comments: This is an affiliated business arrangement. A, B and C will all be exempt from section 8 if C discloses its franchise relationship with the owner of B on a separate disclosure form and provides an estimate of B's charges to each person referred to B (see appendix D of this part) and C does not require anyone to use B's services and A gives no thing a value to C under the franchise agreement (such as an adjusted level of franchise payment based on the referrals), and B makes no payments to A other than dividends representing a return on ownership interest (rather than, *e.g.*, an adjusted level of payment being based on the referrals). Nor may B pay C anything of value for the referral.

10. *Facts:* A is a real estate broker who refers business to its affiliate title company B. A makes all required written disclosures to the homebuyer of the arrangement and estimated charges and the homebuyer is not required to use B. B refers or contracts out business to C who does all the title work and splits the fee with B. B passes its fee to A in the form of dividends, a return on ownership interest.

Comments: The relationship between A and B is an affiliated business arrangement. However, the affiliated business arrangement exemption does not provide exemption between an affiliated entity, B, and a third party, C. Here, B is a mere ''shell'' and provides no substantive services for its portion of the fee. The arrangement between B and C would be in violation of section 8(a) and (b). Even if B had an affiliate relationship with C, the required exemption criteria have not been met and the relationship would be subject to section 8.

11. *Facts:* A, a mortgage lender is affiliated with B, a title company, and C, an escrow company and offers consumers a package of mortgage title and escrow services at a discount from the prices at which such services

would be sold if purchased separately. Neither A, B, nor C requires consumers to purchase the services of their sister companies and each company sells such services separately and as part of the package. A also pays its employees (*e.g.*, loan officers, secretaries, *etc.*) a bonus for each loan, title insurance or closing that A's employees generate for A, B, or C respectively. A pays such employee bonuses out of its own funds and receives no payments or reimbursements for such bonuses from B or C. At or before the time that customers are told by A or its employees about the services offered by B and C and/or the package of services that is available, the customers are provided with an affiliated business disclosure form.

Comments: A's selling of a package of settlement services at a discount to a settlement service purchaser does not violate section 8 of RESPA. A's employees are making appropriate affiliated business disclosures and since the services are available separately and as part of a package, there is not ''required use'' of the additional services. A's payments of bonuses to its employees for the referral of business to A or A's affiliates, B and C, are exempt from section 8 under §1024.14(g)(1). However, if B or C reimbursed A for any bonuses that A paid to its employees for referring business to B or C, such reimbursements would violate section 8. Similarly, if B or C paid bonuses to A's employees directly for generating business for them, such payments would violate section 8.

12. *Facts.* A is a mortgage broker who provides origination services to submit a loan to a lender for approval. The mortgage broker charges the borrower a uniform fee for the total origination services, as well as a direct up-front charge for reimbursement of credit reporting, appraisal services, or similar charges.

Comment. The mortgage broker's fee must be reflected in the Good Faith Estimate and on the HUD–1 Settlement Statement. Other charges which are paid for by the borrower and paid in advance are listed as P.O.C. on the HUD–1 Settlement Statement, and reflect the actual provider charge for such services.

13. *Facts.* A is a dealer in home improvements who has established funding arrangements with several lenders. Customers for home improvements receive a proposed contract from A. The proposal requires that customers both execute forms authorizing a credit check and employment verification, and frequently, execute a dealer consumer credit contract secured by a lien on the customer's (borrower's) 1- to 4-family residential property. Simultaneously with the completion and certification of the home improvement work, the note is assigned by the dealer to a funding lender.

Comments. The loan that is assigned to the funding lender is a loan covered by RESPA, when a lien is placed on the borrower's 1- to 4-family residential structure. The dealer loan or consumer credit contract originated by a dealer is also a RESPA-covered transaction, except when the dealer is not a ''creditor'' under the definition of ''federally related mortgage loan'' in §1024.2. The lender to whom the loan will be assigned is responsible for assuring that the lender or the dealer delivers to the borrower a Good Faith Estimate of closing costs consistent with Regulation X, and that the HUD–1 or HUD–1A Settlement Statement is used in conjunction with the settlement of the loan to be assigned. A dealer who, under §1024.2, is covered by RESPA as a creditor is responsible for the Good Faith Estimate of Closing Costs and the use of the appropriate settlement statement in connection with the loan.

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 80105, Dec. 31, 2013]

APPENDIX C TO PART 1024—INSTRUCTIONS FOR COMPLETING GOOD FAITH ESTIMATE (GFE) FORM

The following are instructions for completing the GFE required under section 5 of RESPA and 12 CFR 1024.7 of the Bureau regulations. The standardized form set forth in this Appendix is the required GFE form and must be provided exactly as specified; provided, however, preparers may replace HUD's OMB approval number listed on the form with the Bureau's OMB approval number when they reproduce the GFE form. The instructions for completion of the GFE are primarily for the benefit of the loan originator who prepares the form and need not be transmitted to the borrower(s) as an integral part of the GFE. The required standardized GFE form must be prepared completely and accurately. A separate GFE must be provided for each loan where a transaction will involve more than one mortgage loan.

GENERAL INSTRUCTIONS

The loan originator preparing the GFE may fill in information and amounts on the form by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Under these instructions, the ''form'' refers to the required standardized GFE form. Although the standardized GFE is a prescribed form, Blocks 3, 6, and 11 on page 2 may be adapted for use in particular loan situations, so that additional lines may be inserted there, and unused lines may be deleted.

All fees for categories of charges shall be disclosed in U.S. dollar and cent amounts.

SPECIFIC INSTRUCTIONS

Page 1

Top of the Form—The loan originator must enter its name, business address, telephone number, and email address, if any, on the top of the form, along with the applicant's name, the address or location of the property for which financing is sought, and the date of the GFE.

''*Purpose.*''—This section describes the general purpose of the GFE as well as additional information available to the applicant.

''*Shopping for your loan.*''—This section requires no loan originator action.

''*Important dates.*''—This section briefly states important deadlines after which the loan terms that are the subject of the GFE may not be available to the applicant. In Line 1, the loan originator must state the date and, if necessary, time until which the interest rate for the GFE will be available. In Line 2, the loan originator must state the date until which the estimate of all other settlement charges for the GFE will be available. This date must be at least 10 business days from the date of the GFE. In Line 3, the loan originator must state how many calendar days within which the applicant must go to settlement once the interest rate is locked. In Line 4, the loan originator must state how many calendar days prior to settlement the interest rate would have to be locked, if applicable.

''*Summary of your loan.*''—In this section, for all loans the loan originator must fill in, where indicated:

(i) The initial loan amount;

(ii) The loan term; and

(iii) The initial interest rate.

For reverse mortgage transactions:

(i) The initial loan amount disclosed on the GFE is the amount of the initial principal limit of the loan;

(ii) The loan term is disclosed as ''N/A'' when the loan term is conditioned upon the occurrence of a specified event, such as the death of the borrower or the borrower no longer occupying the property for a certain period of time; and

(iii) The initial interest rate is the interest rate indicated on the legal obligation.

The loan originator must fill in the initial monthly amount owed for principal, interest, and any mortgage insurance. The amount shown must be the greater of: (1) The required monthly payment for principal and interest for the first regularly scheduled payment, plus any monthly mortgage insurance payment; or (2) the accrued interest for the first regularly scheduled payment, plus any monthly mortgage insurance payment. For reverse mortgage transactions where there are no regular payment periods, the loan originator must disclose ''Not Applicable'' or ''N/A'' for the initial monthly amount owed for principal, interest, and any mortgage insurance.

The loan originator must indicate whether the interest rate can rise, and, if it can, must insert the maximum rate to which it can rise over the life of the loan. The loan originator must also indicate the period of time after which the interest rate can first change.

The loan originator must indicate whether the loan balance can rise even if the borrower makes payments on time, for example in the case of a loan with negative amortization. If it can, the loan originator must insert the maximum amount to which the loan balance can rise over the life of the loan. For Federal, State, local, or tribal housing programs that provide payment assistance, any repayment of such program assistance should be excluded from consideration in completing this item. If the loan balance will increase only because escrow items are being paid through the loan balance, the loan originator is not required to check the box indicating that the loan balance can rise. For reverse mortgage transactions, the loan originator must indicate that the loan balance can rise even if the borrower makes payments on time and the maximum amount to which the loan balance can rise must be disclosed as ''Unknown.''

The loan originator must indicate whether the monthly amount owed for principal, interest, and any mortgage insurance can rise even if the borrower makes payments on time. If the monthly amount owed can rise even if the borrower makes payments on time, the loan originator must indicate the period of time after which the monthly amount owed can first change, the maximum amount to which the monthly amount owed can rise at the time of the first change, and the maximum amount to which the monthly amount owed can rise over the life of the loan. The amount used for the monthly amount owed must be the greater of: (1) The required monthly payment for principal and interest for that month, plus any monthly mortgage insurance payment; or (2) the accrued interest for that month, plus any monthly mortgage insurance payment. For reverse mortgage transactions, the loan originator must disclose that the monthly amount owed for principal, interest, and any mortgage insurance cannot rise.

The loan originator must indicate whether the loan includes a prepayment penalty, and, if so, the maximum amount that it could be.

The loan originator must indicate whether the loan requires a balloon payment and, if so, the amount of the payment and in how many years it will be due. Reverse mortgage transactions are not considered to be balloon transactions for the purposes of this disclosure on the GFE.

''*Escrow account information.*''—The loan originator must indicate whether the loan includes an escrow account for property

taxes and other financial obligations. The amount shown in the ''Summary of your loan'' section for ''Your initial monthly amount owed for principal, interest, and any mortgage insurance'' must be entered in the space for the monthly amount owed in this section. For reverse mortgage transactions where the lender will establish an arrangement to pay for such items as property taxes and homeowner's insurance through draws from the principal limit, the loan originator must indicate that an escrow account is included and the amount shown in this section must be disclosed as 'N/A.'

''*Summary of your settlement charges.*''—On this line, the loan originator must state the Adjusted Origination Charges from subtotal A of page 2, the Charges for All Other Settlement Services from subtotal B of page 2, and the Total Estimated Settlement Charges from the bottom of page 2.

Page 2

''*Understanding your estimated settlement charges.*''—This section details 11 settlement cost categories and amounts associated with the mortgage loan. For purposes of determining whether a tolerance has been met, the amount on the GFE should be compared with the total of any amounts shown on the HUD–1 in the borrower's column and any amounts paid outside closing by or on behalf of the borrower.

''Your Adjusted Origination Charges''

Block 1, ''*Our origination charge.*''—The loan originator must state here all charges that all loan originators involved in this transaction will receive, except for any charge for the specific interest rate chosen (points). A loan originator may not separately charge any additional fees for getting this loan, including for application, processing, or underwriting. The amount stated in Block 1 is subject to zero tolerance, *i.e.*, the amount may not increase at settlement.

Block 2, ''*Your credit or charge (points) for the specific interest rate chosen.*''—For transactions involving mortgage brokers, the mortgage broker must indicate through check boxes whether there is a credit to the borrower for the interest rate chosen on the loan, the interest rate, and the amount of the credit, or whether there is an additional charge (points) to the borrower for the interest rate chosen on the loan, the interest rate, and the amount of that charge. Only one of the boxes may be checked; a credit and charge cannot occur together in the same transaction.

For transactions without a mortgage broker, the lender may choose not to separately disclose in this block any credit or charge for the interest rate chosen on the loan; however, if this block does not include any positive or negative figure, the lender must check the first box to indicate that ''The credit or charge for the interest rate you have chosen'' is included in ''Our origination charge'' above (see Block 1 instructions above), must insert the interest rate, and must also insert ''0'' in Block 2. Only one of the boxes may be checked; a credit and charge cannot occur together in the same transaction.

For a mortgage broker, the credit or charge for the specific interest rate chosen is the net payment to the mortgage broker from the lender (*i.e.*, the sum of all payments to the mortgage broker from the lender, including payments based on the loan amount, a flat rate, or any other computation, and in a table funded transaction, the loan amount less the price paid for the loan by the lender). When the net payment to the mortgage broker from the lender is positive, there is a credit to the borrower and it is entered as a negative amount in Block 2 of the GFE. When the net payment to the mortgage broker from the lender is negative, there is a charge to the borrower and it is entered as a positive amount in Block 2 of the GFE. If there is no net payment (*i.e.*, the credit or charge for the specific interest rate chosen is zero), the mortgage broker must insert '0' in Block 2 and may check either the box indicating there is a credit of '0' or the box indicating there is a charge of '0.'

The amount stated in Block 2 is subject to zero tolerance while the interest rate is locked, *i.e.*, any credit for the interest rate chosen cannot decrease in absolute value terms and any charge for the interest rate chosen cannot increase. (NOTE: An increase in the credit is allowed since this increase is a reduction in cost to the borrower. A decrease in the credit is not allowed since it is an increase in cost to the borrower.)

Line A, ''*Your Adjusted Origination Charges.*''—The loan originator must add the numbers in Blocks 1 and 2 and enter this subtotal at highlighted Line A. The subtotal at Line A will be a negative number if there is a credit in Block 2 that exceeds the charge in Block 1. The amount stated in Line A is subject to zero tolerance while the interest rate is locked.

In the case of ''no cost'' loans, where ''no cost'' refers only to the loan originator's fees, Line A must show a zero charge as the adjusted origination charge. In the case of ''no cost'' loans where ''no cost'' encompasses third party fees as well as the upfront payment to the loan originator, all of the third party fees listed in Block 3 through Block 11 to be paid for by the loan originator (or borrower, if any) must be itemized and listed on the GFE. The credit for the interest rate chosen must be large enough that the total for Line A will result in a negative number to cover the third party fees.

''*Your Charges for All Other Settlement Services*''

There is a 10 percent tolerance applied to the sum of the prices of each service listed in Block 3, Block 4, Block 5, Block 6, and Block 7, where the loan originator requires the use of a particular provider or the borrower uses a provider selected or identified by the loan originator. Any services in Block 4, Block 5, or Block 6 for which the borrower selects a provider other than one identified by the loan originator are not subject to any tolerance and, at settlement, would not be included in the sum of the charges on which the 10 percent tolerance is based. Where a loan originator permits a borrower to shop for third party settlement services, the loan originator must provide the borrower with a written list of settlement services providers at the time of the GFE, on a separate sheet of paper.

Block 3, ''*Required services that we select.*''—In this block, the loan originator must identify each third party settlement service required and selected by the loan originator (excluding title services), along with the estimated price to be paid to the provider of each service. Examples of such third party settlement services might include provision of credit reports, appraisals, flood checks, tax services, and any upfront mortgage insurance premium. The loan originator must identify the specific required services and provide an estimate of the price of each service. Loan originators are also required to add the individual charges disclosed in this block and place that total in the column of this block. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 4, ''*Title services and lender's title insurance.*''—In this block, the loan originator must state the estimated total charge for third party settlement service providers for all closing services, regardless of whether the providers are selected or paid for by the borrower, seller, or loan originator. The loan originator must also include any lender's title insurance premiums, when required, regardless of whether the provider is selected or paid for by the borrower, seller, or loan originator. All fees for title searches, examinations, and endorsements, for example, would be included in this total. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 5, ''*Owner's title insurance.*''—In this block, for all purchase transactions the loan originator must provide an estimate of the charge for the owner's title insurance and related endorsements, regardless of whether the providers are selected or paid for by the borrower, seller, or loan originator. For non-purchase transactions, the loan originator may enter ''NA'' or ''Not Applicable'' in this Block. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 6, ''*Required services that you can shop for.*''—In this block, the loan originator must identify each third party settlement service required by the loan originator where the borrower is permitted to shop for and select the settlement service provider (excluding title services), along with the estimated charge to be paid to the provider of each service. The loan originator must identify the specific required services (*e.g.*, survey, pest inspection) and provide an estimate of the charge of each service. The loan originator must also add the individual charges disclosed in this block and place the total in the column of this block. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 7, ''*Government recording charge.*''—In this block, the loan originator must estimate the State and local government fees for recording the loan and title documents that can be expected to be charged at settlement. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 8, ''*Transfer taxes.*''—In this block, the loan originator must estimate the sum of all State and local government fees on mortgages and home sales that can be expected to be charged at settlement, based upon the proposed loan amount or sales price and on the property address. A zero tolerance applies to the sum of these estimated fees.

Block 9, ''*Initial deposit for your escrow account.*''—In this block, the loan originator must estimate the amount that it will require the borrower to place into a reserve or escrow account at settlement to be applied to recurring charges for property taxes, homeowner's and other similar insurance, mortgage insurance, and other periodic charges. The loan originator must indicate through check boxes if the reserve or escrow account will cover future payments for all tax, all hazard insurance, and other obligations that the loan originator requires to be paid as they fall due. If the reserve or escrow account includes some, but not all, property taxes or hazard insurance, or if it includes mortgage insurance, the loan originator should check ''other'' and then list the items included.

Block 10, ''*Daily interest charges.*''—In this block, the loan originator must estimate the total amount that will be due at settlement for the daily interest on the loan from the date of settlement until the first day of the first period covered by scheduled mortgage payments. The loan originator must also indicate how this total amount is calculated by providing the amount of the interest charges per day and the number of days used in the calculation, based on a stated projected closing date.

Block 11, ''*Homeowner's insurance.*''—The loan originator must estimate in this block the total amount of the premiums for any hazard insurance policy and other similar insurance, such as fire or flood insurance that must be purchased at or before settlement to meet the loan originator's requirements. The loan originator must also separately indicate the nature of each type of insurance required along with the charges. To the extent a loan originator requires that such insurance be part of an escrow account, the amount of the initial escrow deposit must be included in Block 9.

Line B, ''*Your Charges for All Other Settlement Services.*''—The loan originator must add the numbers in Blocks 3 through 11 and enter this subtotal in the column at highlighted Line B.

Line A + B, ''*Total Estimated Settlement Charges.*''—The loan originator must add the subtotals in the right-hand column at highlighted Lines A and B and enter this total in the column at highlighted Line A + B.

Page 3

''Instructions''

''*Understanding which charges can change at settlement.*''—This section informs the applicant about which categories of settlement charges can increase at closing, and by how much, and which categories of settlement charges cannot increase at closing. This section requires no loan originator action.

''*Using the tradeoff table.*''—This section is designed to make borrowers aware of the relationship between their total estimated settlement charges on one hand, and the interest rate and resulting monthly payment on the other hand. The loan originator must complete the left hand column using the loan amount, interest rate, monthly payment figure, and the total estimated settlement charges from page 1 of the GFE. The loan originator, at its option, may provide the borrower with the same information for two alternative loans, one with a higher interest rate, if available, and one with a lower interest rate, if available, from the loan originator. The loan originator should list in the tradeoff table only alternative loans for which it would presently issue a GFE based on the same information the loan originator considered in issuing this GFE. The alternative loans must use the same loan amount and be otherwise identical to the loan in the GFE. The alternative loans must have, for example, the identical number of payment periods; the same margin, index, and adjustment schedule if the loans are adjustable rate mortgages; and the same requirements for prepayment penalty and balloon payments. If the loan originator fills in the tradeoff table, the loan originator must show the borrower the loan amount, alternative interest rate, alternative monthly payment, the change in the monthly payment from the loan in this GFE to the alternative loan, the change in the total settlement charges from the loan in this GFE to the alternative loan, and the total settlement charges for the alternative loan. If these options are available, an applicant may request a new GFE, and a new GFE must be provided by the loan originator.

''*Using the shopping chart.*''—This chart is a shopping tool to be provided by the loan originator for the borrower to complete, in order to compare GFEs.

''*If your loan is sold in the future.*''—This section requires no loan originator action.

OMB Approval No. 2502-0265

Good Faith Estimate (GFE)

Name of Originator	Borrower
Originator Address	Property Address
Originator Phone Number	
Originator Email	Date of GFE

Purpose

This GFE gives you an estimate of your settlement charges and loan terms if you are approved for this loan. For more information, see HUD's *Special Information Booklet* on settlement charges, your *Truth-in-Lending Disclosures*, and other consumer information at www.hud.gov/respa. If you decide you would like to proceed with this loan, contact us.

Shopping for your loan

Only you can shop for the best loan for you. Compare this GFE with other loan offers, so you can find the best loan. Use the shopping chart on page 3 to compare all the offers you receive.

Important dates

1. The interest rate for this GFE is available through [ ]. After this time, the interest rate, some of your loan Origination Charges, and the monthly payment shown below can change until you lock your interest rate.
2. This estimate for all other settlement charges is available through [ ].
3. After you lock your interest rate, you must go to settlement within [ ] days (your rate lock period) to receive the locked interest rate.
4. You must lock the interest rate at least [ ] days before settlement.

Summary of your loan

Your initial loan amount is	$
Your loan term is	years
Your initial interest rate is	%
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	$ per month
Can your interest rate rise?	☐ No ☐ Yes, it can rise to a maximum of %. The first change will be in .
Even if you make payments on time, can your loan balance rise?	☐ No ☐ Yes, it can rise to a maximum of $
Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?	☐ No ☐ Yes, the first increase can be in and the monthly amount owed can rise to $. The maximum it can ever rise to is $.
Does your loan have a prepayment penalty?	☐ No ☐ Yes, your maximum prepayment penalty is $.
Does your loan have a balloon payment?	☐ No ☐ Yes, you have a balloon payment of $ due in years.

Escrow account information

Some lenders require an escrow account to hold funds for paying property taxes or other property-related charges in addition to your monthly amount owed of $ [ ].
Do we require you to have an escrow account for your loan?
☐ No, you do not have an escrow account. You must pay these charges directly when due.
☐ Yes, you have an escrow account. It may or may not cover all of these charges. Ask us.

Summary of your settlement charges

A	Your Adjusted Origination Charges *(See page 2.)*	$
B	Your Charges for All Other Settlement Services *(See page 2.)*	$
A + B	Total Estimated Settlement Charges	$

Understanding your estimated settlement charges

Your Adjusted Origination Charges	
1. **Our origination charge** This charge is for getting this loan for you.	
2. **Your credit or charge (points) for the specific interest rate chosen** ☐ The credit or charge for the interest rate of [ ] % is included in "Our origination charge." (See item 1 above.) ☐ You receive a credit of $ [ ] for this interest rate of [ ] %. This credit **reduces** your settlement charges. ☐ You pay a charge of $ [ ] for this interest rate of [ ] %. This charge (points) **increases** your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.	
A Your Adjusted Origination Charges	$

Your Charges for All Other Settlement Services	
Some of these charges can change at settlement. See the top of page 3 for more information. 3. **Required services that we select** These charges are for services we require to complete your settlement. We will choose the providers of these services. *Service* / *Charge*	
4. **Title services and lender's title insurance** This charge includes the services of a title or settlement agent, for example, and title insurance to protect the lender, if required.	
5. **Owner's title insurance** You may purchase an owner's title insurance policy to protect your interest in the property.	
6. **Required services that you can shop for** These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below. *Service* / *Charge*	
7. **Government recording charges** These charges are for state and local fees to record your loan and title documents.	
8. **Transfer taxes** These charges are for state and local fees on mortgages and home sales.	
9. **Initial deposit for your escrow account** This charge is held in an escrow account to pay future recurring charges on your property and includes ☐ all property taxes, ☐ all insurance, and ☐ other [ ].	
10. **Daily interest charges** This charge is for the daily interest on your loan from the day of your settlement until the first day of the next month or the first day of your normal mortgage payment cycle. This amount is $ [ ] per day for [ ] days (if your settlement is [ ]).	
11. **Homeowner's insurance** This charge is for the insurance you must buy for the property to protect from a loss, such as fire. *Policy* / *Charge*	
B Your Charges for All Other Settlement Services	$
A + **B** Total Estimated Settlement Charges	$

Instructions

Understanding which charges can change at settlement

This GFE estimates your settlement charges. At your settlement, you will receive a HUD-1, a form that lists your actual costs. Compare the charges on the HUD-1 with the charges on this GFE. Charges can change if you select your own provider and do not use the companies we identify. (See below for details.)

These charges **cannot increase** at settlement:	The total of these charges **can increase up to 10%** at settlement:	These charges **can change** at settlement:
▪ Our origination charge ▪ Your credit or charge (points) for the specific interest rate chosen *(after you lock in your interest rate)* ▪ Your adjusted origination charges *(after you lock in your interest rate)* ▪ Transfer taxes	▪ Required services that we select ▪ Title services and lender's title insurance *(if we select them or you use companies we identify)* ▪ Owner's title insurance *(if you use companies we identify)* ▪ Required services that you can shop for *(if you use companies we identify)* ▪ Government recording charges	▪ Required services that you can shop for *(if you do not use companies we identify)* ▪ Title services and lender's title insurance *(if you do not use companies we identify)* ▪ Owner's title insurance *(if you do not use companies we identify)* ▪ Initial deposit for your escrow account ▪ Daily interest charges ▪ Homeowner's insurance

Using the tradeoff table

In this GFE, we offered you this loan with a particular interest rate and estimated settlement charges. However:

- If you want to choose this same loan with **lower settlement charges,** then you will have a **higher interest rate.**
- If you want to choose this same loan with a **lower interest rate,** then you will have **higher settlement charges.**

If you would like to choose an available option, you must ask us for a new GFE.

Loan originators have the option to complete this table. Please ask for additional information if the table is not completed.

	The loan in this GFE	The same loan with lower settlement charges	The same loan with a lower interest rate
Your initial loan amount	$	$	$
Your initial interest rate[1]	%	%	%
Your initial monthly amount owed	$	$	$
Change in the monthly amount owed from this GFE	No change	You will pay $ **more** every month	You will pay $ **less** every month
Change in the amount you will pay at settlement with this interest rate	No change	Your settlement charges will be **reduced** by $	Your settlement charges will **increase** by $
How much your total estimated settlement charges will be	$	$	$

[1] *For an adjustable rate loan, the comparisons above are for the initial interest rate before adjustments are made.*

Using the shopping chart

Use this chart to compare GFEs from different loan originators. Fill in the information by using a different column for each GFE you receive. By comparing loan offers, you can shop for the best loan.

	This loan	Loan 2	Loan 3	Loan 4
Loan originator name				
Initial loan amount				
Loan term				
Initial interest rate				
Initial monthly amount owed				
Rate lock period				
Can interest rate rise?				
Can loan balance rise?				
Can monthly amount owed rise?				
Prepayment penalty?				
Balloon payment?				
Total Estimated Settlement Charges				

If your loan is sold in the future

Some lenders may sell your loan after settlement. Any fees lenders receive in the future cannot change the loan you receive or the charges you paid at settlement.

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 80105, Dec. 31, 2013]

APPENDIX D TO PART 1024—AFFILIATED BUSINESS ARRANGEMENT DISCLOSURE STATEMENT FORMAT NOTICE

To: _____
From: _____
(Entity Making Statement)
Property: _____
Date: _____

This is to give you notice that [*referring party*] has a business relationship with [*settlement services provider(s)*]. [Describe the nature of the relationship between the referring party and the provider(s), including percentage of ownership interest, if applicable.] Because of this relationship, this referral may provide [*referring party*] a financial or other benefit.

[A.] Set forth below is the estimated charge or range of charges for the settlement services listed. You are NOT required to use the listed provider(s) as a condition for [settlement of your loan on] [or] [purchase, sale, or refinance of] the subject property. THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

[*provider and settlement service*] _____

[*charge or range of charges*] _____

[B.] Set forth below is the estimated charge or range of charges for the settlement services of an attorney, credit reporting agency, or real estate appraiser that we, as your lender, will require you to use, as a condition of your loan on this property, to represent our interests in the transaction.

[*provider and settlement service*] _____

[*charge or range of charges*] _____

ACKNOWLEDGMENT

I/we have read this disclosure form, and understand that *referring party* is referring me/us to purchase the above-described settlement service(s) and may receive a financial or other benefit as the result of this referral.

_____
Signature

[INSTRUCTIONS TO PREPARER:] [Use paragraph A for referrals other than those by a lender to an attorney, a credit reporting agency, or a real estate appraiser that a lender is requiring a borrower to use to represent the lender's interests in the transaction. Use paragraph B for those referrals to an attorney, credit reporting agency, or real estate appraiser that a lender is requiring a borrower to use to represent the lender's interests in the transaction. When applicable, use both paragraphs. Specific timing rules for delivery of the affiliated business disclosure statement are set forth in 12 CFR 1024.15(b)(1) of Regulation X). These INSTRUCTIONS TO PREPARER should not appear on the statement.]

APPENDIX E TO PART 1024—ARITHMETIC STEPS

I. EXAMPLE ILLUSTRATING AGGREGATE ANALYSIS

Assumptions

Disbursements:

$360 for school taxes disbursed on September 20
$1,200 for county property taxes:
$500 disbursed on July 25
$700 disbursed on December 10

Cushion: One-sixth of estimated annual disbursements

Settlement: May 15

First Payment: July 1

STEP 1—INITIAL TRIAL BALANCE

	Aggregate		
	pmt	disb	bal
Jun	0	0	0
Jul	130	500	−370
Aug	130	0	−240
Sep	130	360	−470
Oct	130	0	−340
Nov	130	0	−210
Dec	130	700	−780
Jan	130	0	−650
Feb	130	0	−520
Mar	130	0	−390
Apr	130	0	−260
May	130	0	−130
Jun	130	0	0

STEP 2—ADJUSTED TRIAL BALANCE

[Increase monthly balances to eliminate negative balances]

	Aggregate		
	pmt	disb	bal
Jun	0	0	780
Jul	130	500	410
Aug	130	0	540
Sep	130	360	310
Oct	130	0	440
Nov	130	0	570
Dec	130	700	0

STEP 2—ADJUSTED TRIAL BALANCE—Continued

[Increase monthly balances to eliminate negative balances]

	Aggregate		
	pmt	disb	bal
Jan	130	0	130
Feb	130	0	260
Mar	130	0	390
Apr	130	0	520
May	130	0	650
Jun	130	0	780

STEP 3—TRIAL BALANCE WITH CUSHION

	Aggregate		
	pmt	disb	bal
Jun	0	0	1040
Jul	130	500	670
Aug	130	0	800
Sep	130	360	570
Oct	130	0	700
Nov	130	0	830
Dec	130	700	260
Jan	130	0	390
Feb	130	0	520
Mar	130	0	650
Apr	130	0	780

STEP 3—TRIAL BALANCE WITH CUSHION—Continued

	Aggregate		
	pmt	disb	bal
May	130	0	910
Jun	130	0	1040

II. EXAMPLE ILLUSTRATING SINGLE-ITEM ANALYSIS

Assumptions

Disbursements:

$360 for school taxes disbursed on September 20

$1,200 for county property taxes:
$500 disbursed on July 25
$700 disbursed on December 10

Cushion: One-sixth of estimated annual disbursements

Settlement: May 15

First Payment: July 1

STEP 1—INITIAL TRIAL BALANCE

	Single-item					
	Taxes			School taxes		
	pmt	disb	bal	pmt	disb	bal
June	0	0	0	0	0	0
July	100	500	−400	30	0	30
August	100	0	−300	30	0	60
September	100	0	−200	30	360	−270
October	100	0	−100	30	0	−240
November	100	0	0	30	0	−210
December	100	700	−600	30	0	−180
January	100	0	−500	30	0	−150
February	100	0	−400	30	0	−120
March	100	0	−300	30	0	−90
April	100	0	−200	30	0	−60
May	100	0	−100	30	0	−30
June	100	0	0	30	0	0

STEP 2—ADJUSTED TRIAL BALANCE

[Increase monthly balances to eliminate negative balances]

	Single-item					
	Taxes			School taxes		
	pmt	disb	bal	pmt	disb	bal
Jun	0	0	600	0	0	270
Jul	100	500	200	30	0	300
Aug	100	0	300	30	0	330
Sep	100	0	400	30	360	0
Oct	100	0	500	30	0	30
Nov	100	0	600	30	0	60
Dec	100	700	0	30	0	90
Jan	100	0	100	30	0	120
Feb	100	0	200	30	0	150
Mar	100	0	300	30	0	180
Apr	100	0	400	30	0	210
May	100	0	500	30	0	240

STEP 2—ADJUSTED TRIAL BALANCE—Continued

[Increase monthly balances to eliminate negative balances]

	Single-item					
	Taxes			School taxes		
	pmt	disb	bal	pmt	disb	bal
Jun	100	0	600	30	0	270

STEP 3—TRIAL BALANCE WITH CUSHION

	Single-item					
	Taxes			School taxes		
	pmt	disb	bal	pmt	disb	bal
Jun	0	0	800	0	0	330
Jul	100	500	400	30	0	360
Aug	100	0	500	30	0	390
Sep	100	0	600	30	360	60
Oct	100	0	700	30	0	90
Nov	100	0	800	30	0	120
Dec	100	700	200	30	0	150
Jan	100	0	300	30	0	180
Feb	100	0	400	30	0	210
Mar	100	0	500	30	0	240
Apr	100	0	600	30	0	270
May	100	0	700	30	0	300
Jun	100	0	800	30	0	330

APPENDIX MS—MORTGAGE SERVICING

APPENDIX MS–1 TO PART 1024

[Sample language; use business stationery or similar heading]

[Date]

SERVICING DISCLOSURE STATEMENT NOTICE TO FIRST LIEN MORTGAGE LOAN APPLICANTS: THE RIGHT TO COLLECT YOUR MORTGAGE LOAN PAYMENTS MAY BE TRANSFERRED

You are applying for a mortgage loan covered by the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 *et seq.*). RESPA gives you certain rights under Federal law. This statement describes whether the servicing for this loan may be transferred to a different loan servicer. ''Servicing'' refers to collecting your principal, interest, and escrow payments, if any, as well as sending any monthly or annual statements, tracking account balances, and handling other aspects of your loan. You will be given advance notice before a transfer occurs.

Servicing Transfer Information

[We may assign, sell, or transfer the servicing of your loan while the loan is outstanding.]

[or]

[We do not service mortgage loans of the type for which you applied. We intend to assign, sell, or transfer the servicing of your mortgage loan before the first payment is due.]

[or]

[The loan for which you have applied will be serviced at this financial institution and we do not intend to sell, transfer, or assign the servicing of the loan.]

[INSTRUCTIONS TO PREPARER: Insert the date and select the appropriate language under ''Servicing Transfer Information.'' The model format may be annotated with further information that clarifies or enhances the model language.]

APPENDIX MS–2 TO PART 1024

NOTICE OF SERVICING TRANSFER

The servicing of your mortgage loan is being transferred, effective [Date]. This means that after this date, a new servicer will be collecting your mortgage loan payments from you. Nothing else about your mortgage loan will change.

[Name of present servicer] is now collecting your payments. [Name of present servicer] will stop accepting payments received from you after [Date].

[Name of new servicer] will collect your payments going forward. Your new servicer will start accepting payments received from you on [Date].

SEND ALL PAYMENTS DUE ON OR AFTER [DATE] TO [NAME OF NEW SERVICER] AT THIS ADDRESS: [NEW SERVICER ADDRESS].

If you have any questions for either your present servicer, [Name of present servicer] or your new servicer [Name of new servicer], about your mortgage loan or this transfer, please contact them using the information below:

Current Servicer:	New Servicer:
[Name of present servicer]	[Name of new servicer]
[Individual or Department]	[Individual or Department]
[Telephone Number]	[Telephone Number]
[Address]	[Address]

[Use this paragraph if appropriate; otherwise omit.] Important note about insurance: If you have mortgage life or disability insurance or any other type of optional insurance, the transfer of servicing rights may affect your insurance in the following way:

You should do the following to maintain coverage:

Under Federal law, during the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer on or before its due date may not be treated by the new servicer as late, and a late fee may not be imposed on you.

[NAME OF PRESENT SERVICER]

Date

[and] [or]

[NAME OF NEW SERVICER]

Date

[78 FR 10886, Feb. 14, 2013]

APPENDIX MS–3 TO PART 1024

MODEL FORCE-PLACED INSURANCE NOTICE FORMS

Table of Contents

MS–3(A)—Model Form for Force-Placed Insurance Notice Containing Information Required By §1024.37(c)(2)
MS–3(B)—Model Form for Force-Placed Insurance Notice Containing Information Required By §1024.37(d)(2)(i)
MS–3(C)—Model Form for Force-Placed Insurance Notice Containing Information Required By §1024.37(d)(2)(ii)
MS–3(D)— Model Form for Renewal or Replacement of Force-Placed Insurance Notice Containing Information Required by §1024.37(e)(2)

MS–3(A)—MODEL FORM FOR FORCE-PLACED INSURANCE NOTICE CONTAINING INFORMATION REQUIRED BY §1024.37(C)(2)

[Name and Mailing Address of Servicer]
[Date of Notice]
[Borrower's Name]
[Borrower's Mailing Address]
Subject: PLEASE PROVIDE INSURANCE INFORMATION FOR [Property Address]

Dear [Borrower's Name]:

Our records show that your [hazard] [Insurance Type] insurance [is expiring] [expired], and we do not have evidence that you have obtained new coverage. BECAUSE [HAZARD] [INSURANCE TYPE] INSURANCE IS REQUIRED ON YOUR PROPERTY, [WE BOUGHT INSURANCE FOR YOUR PROPERTY] [WE PLAN TO BUY INSURANCE FOR YOUR PROPERTY]. You must pay us for any period during which the insurance we buy is in effect but you do not have insurance.

You should immediately provide us with your insurance information. [Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

The insurance we [bought] [buy]:

• MAY BE MORE EXPENSIVE THAN THE INSURANCE YOU CAN BUY YOURSELF.

• MAY NOT PROVIDE AS MUCH COVERAGE AS AN INSURANCE POLICY YOU BUY YOURSELF.

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

MS–3(B)—MODEL FORM FOR FORCE-PLACED INSURANCE NOTICE CONTAINING INFORMATION REQUIRED BY §1024.37(D)(2)(I)

[Name and Mailing Address of Servicer]
[Date of Notice]
[Borrower's Name]
[Borrower's Mailing Address]

Subject: SECOND AND FINAL NOTICE—PLEASE PROVIDE INSURANCE INFORMATION FOR [Property Address]

Dear [Borrower's Name]:

This is your SECOND AND FINAL NOTICE that our records show that your [hazard] [Insurance Type] insurance [is expiring] [expired], and we do not have evidence that you have obtained new coverage. BECAUSE [HAZARD] [INSURANCE TYPE] INSURANCE IS REQUIRED ON YOUR PROPERTY, [WE BOUGHT INSURANCE FOR YOUR PROPERTY] [WE PLAN TO BUY INSURANCE FOR YOUR PROPERTY]. You must pay us for any period during which the insurance we buy is in effect but you do not have insurance.

You should immediately provide us with your insurance information. [Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

The insurance we [bought] [buy]:

• [COSTS $[PREMIUM CHARGE]] [WILL COST AN ESTIMATED $[PREMIUM CHARGE]] ANNUALLY, WHICH MAY BE MORE EXPENSIVE THAN INSURANCE YOU CAN BUY YOURSELF.

• MAY NOT PROVIDE AS MUCH COVERAGE AS AN INSURANCE POLICY YOU BUY YOURSELF.

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

MS–3(C)—MODEL FORM FOR FORCE-PLACED INSURANCE NOTICE CONTAINING INFORMATION REQUIRED BY §1024.37(D)(2)(II)

[Name and Mailing Address of Servicer]
[Date of Notice]
[Borrower's Name]
[Borrower's Mailing Address]
Subject: SECOND AND FINAL NOTICE—PLEASE PROVIDE INSURANCE INFORMATION FOR [Property Address]

Dear [Borrower's Name]:

We received the insurance information you provided, but we are unable to verify coverage from [Date Range].

PLEASE PROVIDE US WITH INSURANCE INFORMATION FOR [DATE RANGE] IMMEDIATELY.

We will charge you for insurance we [bought] [plan to buy] for [Date Range] unless we can verify that you have insurance coverage for [Date Range].

The insurance we [bought] [buy]:

• COSTS $[PREMIUM CHARGE]] [WILL COST AN ESTIMATED $[PREMIUM CHARGE]] ANNUALLY, WHICH MAY BE MORE EXPENSIVE THAN INSURANCE YOU CAN BUY YOURSELF.

• MAY NOT PROVIDE AS MUCH COVERAGE AS AN INSURANCE POLICY YOU BUY YOURSELF.

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

MS–3(D)— MODEL FORM FOR RENEWAL OR REPLACEMENT OF FORCE-PLACED INSURANCE NOTICE CONTAINING INFORMATION REQUIRED BY §1024.37(E)(2)

[Name and Mailing Address of Servicer]
[Date of Notice]
[Borrower's Name]
[Borrower's Mailing Address]
Subject: Please update insurance information for [Property Address]

Dear [Borrower's Name]:

Because we did not have evidence that you had [hazard] [Insurance Type] insurance on the property listed above, we bought insurance on your property and added the cost to your mortgage loan account.

The policy that we bought [expired] [is scheduled to expire]. Because [hazard][Insurance Type] insurance] is required on your property, we intend to maintain insurance on your property by renewing or replacing the insurance we bought.

The insurance we buy:

• [Costs $[premium charge]] [Will cost an estimated $[premium charge]] annually, which may be more expensive than insurance you can buy yourself.

• May not provide as much coverage as an insurance policy you buy yourself.

If you buy [hazard] [Insurance Type] insurance, you should immediately provide us with your insurance information.

[Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

[78 FR 10886, Feb. 14, 2013, as amended at 78 FR 60438, Oct. 1, 2013]

APPENDIX MS–4 TO PART 1024—MODEL CLAUSES FOR THE WRITTEN EARLY INTERVENTION NOTICE

MS–4(A)—STATEMENT ENCOURAGING THE BORROWER TO CONTACT THE SERVICER AND ADDITIONAL INFORMATION ABOUT LOSS MITIGATION OPTIONS (§1024.39(B)(2)(I), (II) AND (IV))

Call us today to learn more about your options and instructions for how to apply. [The longer you wait, or the further you fall behind on your payments, the harder it will be to find a solution.]
[Servicer Name]
[Servicer Address]
[Servicer Telephone Number]
[For more information, visit [Servicer Web site] [and][or] [Email Address]].

MS–4(B)—AVAILABLE LOSS MITIGATION OPTIONS (§1024.39(B)(2)(III))

[If you need help, the following options may be possible (most are subject to lender approval):]

• [Refinance your loan with us or another lender;]

• [Modify your loan terms with us;]

• [Payment forbearance temporarily gives you more time to pay your monthly payment;] [or]

• [If you are not able to continue paying your mortgage, your best option may be to find more affordable housing. As an alternative to foreclosure, you may be able to sell your home and use the proceeds to pay off your current loan.]

MS–4(C)—HOUSING COUNSELORS (§1024.39(B)(2)(V))

For help exploring your options, the Federal government provides contact information for housing counselors, which you can

access by contacting [the Consumer Financial Protection Bureau at [Bureau Housing Counselor List Web site]] [the Department of Housing and Urban Development at [HUD Housing Counselor List Web site]] or by calling [HUD Housing Counselor List Telephone Number].

[78 FR 10887, Feb. 14, 2013]

SUPPLEMENT I TO PART 1024—OFFICIAL BUREAU INTERPRETATIONS

Introduction

1. *Official status.* This commentary is the primary vehicle by which the Bureau of Consumer Financial Protection issues official interpretations of Regulation X. Good faith compliance with this commentary affords protection from liability under section 19(b) of the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. 2617(b).

2. *Requests for official interpretations.* A request for an official interpretation shall be in writing and addressed to the Associate Director, Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552. A request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents. Except in unusual circumstances, such official interpretations will not be issued separately but will be incorporated in the official commentary to this part, which will be amended periodically. No official interpretations will be issued approving financial institutions' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

3. *Unofficial oral interpretations.* Unofficial oral interpretations may be provided at the discretion of Bureau staff. Written requests for such interpretations should be sent to the address set forth for official interpretations. Unofficial oral interpretations provide no protection under section 19(b) of RESPA. Ordinarily, staff will not issue unofficial oral interpretations on matters adequately covered by this part or the official Bureau interpretations.

4. *Rules of construction.* (a) Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. In most cases, illustrative lists are introduced by phrases such as ''including, but not limited to,'' ''among other things,'' ''for example,'' or ''such as.''

(b) Throughout the commentary, reference to ''this section'' or ''this paragraph'' means the section or paragraph in the regulation that is the subject of the comment.

5. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph that the comment interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to §1024.37(c)(1) are further divided by subparagraph, such as comment 37(c)(1)(i)–1. In other cases, comments have more general application and are designated, for example, as comment 40(a)–1. This introduction may be cited as comments I–1 through I–5.

SUBPART A—GENERAL PROVISIONS

Section 1024.5 Coverage of RESPA

5(c) Relation to State laws.

Paragraph 5(c)(1).

1. State laws that are inconsistent with the requirements of RESPA or Regulation X may be preempted by RESPA or Regulation X. State laws that give greater protection to consumers are not inconsistent with and are not preempted by RESPA or Regulation X. In addition, nothing in RESPA or Regulation X should be construed to preempt the entire field of regulation of the practices covered by RESPA or Regulation X, including the regulations in Subpart C with respect to mortgage servicers or mortgage servicing.

SUBPART B—MORTGAGE SETTLEMENT AND ESCROW ACCOUNTS [RESERVED]

Section 1024.17 Escrow Accounts

17(k) Timely payments.

17(k)(5) Timely payment of hazard insurance.

17(k)(5)(ii) Inability to disburse funds.

17(k)(5)(ii)(A)When inability exists.

1. *Examples of reasonable basis to believe that a policy has been cancelled or not renewed.* The following are examples of where a servicer has a reasonable basis to believe that a borrower's hazard insurance policy has been canceled or not renewed for reasons other than the nonpayment of premium charges:

i. A borrower notifies a servicer that the borrower has cancelled the hazard insurance coverage, and the servicer has not received notification of other hazard insurance coverage.

ii. A servicer receives a notification of cancellation or non-renewal from the borrower's insurance company before payment is due on the borrower's hazard insurance.

iii. A servicer does not receive a payment notice by the expiration date of the borrower's hazard insurance policy.

17(k)(5)(ii)(C) Recoupment for advances.

1. *Month-to-month advances.* A servicer that advances the premium payment to be disbursed from an escrow account may advance the payment on a month-to-month basis, if

permitted by State or other applicable law and accepted by the borrower's hazard insurance company.

SUBPART C—MORTGAGE SERVICING

§ 1024.30—Scope

30(b) Exemptions.

1. *Exemption for Farm Credit System institutions.* Pursuant to 12 CFR 617.7000, certain servicers may be considered ''qualified lenders'' only with respect to loans discounted or pledged pursuant to 12 U.S.C. 2015(b)(1). To the extent a servicer, as defined in RESPA, services a mortgage loan that has not been discounted or pledged pursuant to 12 U.S.C. 2015(b)(1), and is not subject to the requirements set forth in 12 CFR 617, the servicer may be required to comply with the requirements of §§ 1024.38 through 41 with respect to that mortgage loan.

§ 1024.31—Definitions

Loss mitigation application.

1. *Borrower's representative.* A loss mitigation application is deemed to be submitted by a borrower if the loss mitigation application is submitted by an agent of the borrower. Servicers may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf.

Loss mitigation option.

1. *Types of loss mitigation options.* Loss mitigation options include temporary and long-term relief, including options that allow borrowers who are behind on their mortgage payments to remain in their homes or to leave their homes without a foreclosure, such as, without limitation, refinancing, trial or permanent modification, repayment of the amount owed over an extended period of time, forbearance of future payments, short-sale, deed-in-lieu of foreclosure, and loss mitigation programs sponsored by a locality, a State, or the Federal government.

2. *Available through the servicer.* A loss mitigation option available through the servicer refers to an option for which a borrower may apply, even if the borrower ultimately does not qualify for such option.

Qualified written request.

1. A qualified written request is a written notice a borrower provides to request a servicer either correct an error relating to the servicing of a mortgage loan or to request information relating to the servicing of the mortgage loan. A qualified written request is not required to include both types of requests. For example, a qualified written request may request information relating to the servicing of a mortgage loan but not assert that an error relating to the servicing of a loan has occurred.

2. A qualified written request is just one form that a written notice of error or information request may take. Thus, the error resolution and information request requirements in §§ 1024.35 and 1024.36 apply as set forth in those sections irrespective of whether the servicer receives a qualified written request.

Service provider.

1. Service providers may include attorneys retained to represent a servicer or an owner or assignee of a mortgage loan in a foreclosure proceeding, as well as other professionals retained to provide appraisals or inspections of properties.

§ 1024.33—Mortgage Servicing Transfers

33(a) Servicing disclosure statement.

1. *Terminology.* Although the servicing disclosure statement must be clear and conspicuous pursuant to § 1024.32(a), § 1024.33(a) does not set forth any specific rules for the format of the statement, and the specific language of the servicing disclosure statement in appendix MS–1 is not required to be used. The model format may be supplemented with additional information that clarifies or enhances the model language.

2. *Delivery to co-applicants.* If co-applicants indicate the same address on their application, one copy delivered to that address is sufficient. If different addresses are shown by co-applicants on the application, a copy must be delivered to each of the co-applicants.

3. *Lender servicing.* If the lender, mortgage broker who anticipates using table funding, or dealer in a first lien dealer loan knows at the time of making the disclosure whether it will service the mortgage loan for which the applicant has applied, the disclosure must, as applicable, state that such entity will service such loan and does not intend to sell, transfer, or assign the servicing of the loan, or that such entity intends to assign, sell, or transfer servicing of such mortgage loan before the first payment is due. In all other instances, a disclosure that states that the servicing of the loan may be assigned, sold, or transferred while the loan is outstanding complies with § 1024.33(a).

33(b) Notices of transfer of loan servicing.

Paragraph 33(b)(3).

1. *Delivery.* A servicer mailing the notice of transfer must deliver the notice to the mailing address (or addresses) listed by the borrower in the mortgage loan documents, unless the borrower has notified the servicer of a new address (or addresses) pursuant to the servicer's requirements for receiving a notice of a change of address.

33(c) Borrower payments during transfer of servicing.

33(c)(1) Payments not considered late.

1. *Late fees prohibited.* The prohibition in § 1024.33(c)(1) on treating a payment as late for any purpose would prohibit a late fee

from being imposed on the borrower with respect to any payment on the mortgage loan. *See* RESPA section 6(d) (12 U.S.C. 2605(d)).

2. *Compliance with §1024.39.* A transferee servicer's compliance with §1024.39 during the 60-day period beginning on the effective date of a servicing transfer does not constitute treating a payment as late for purposes of §1024.33(c)(1).

§1024.34—Timely Escrow Payments and Treatment of Escrow Balances

Paragraph 34(b)(1).

1. *Netting of funds.* Section 1024.34(b)(1) does not prohibit a servicer from netting any remaining funds in an escrow account against the outstanding balance of the borrower's mortgage loan.

Paragraph 34(b)(2).

1. *Refund always permissible.* A servicer is not required to credit funds in an escrow account to an escrow account for a new mortgage loan and may, in all circumstances, comply with the requirements of §1024.34(b) by refunding the funds in the escrow account to the borrower pursuant to §1024.34(b)(1).

2. *Borrower agreement.* A borrower may agree either orally or in writing to a servicer's crediting of any remaining balance in an escrow account to a new escrow account for a new mortgage loan pursuant to §1024.34(b)(2).

§1024.35—Error Resolution Procedures

35(a) Notice of error.

1. *Borrower's representative.* A notice of error is submitted by a borrower if the notice of error is submitted by an agent of the borrower. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring that a person that claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf. Upon receipt of such documentation, the servicer shall treat the notice of error as having been submitted by the borrower.

2. *Information request.* A servicer should not rely solely on the borrower's description of a submission to determine whether the submission constitutes a notice of error under §1024.35(a), an information request under §1024.36(a), or both. For example, a borrower may submit a letter that claims to be a ''Notice of Error'' that indicates that the borrower wants to receive the information set forth in an annual escrow account statement and asserts an error for the servicer's failure to provide the borrower an annual escrow statement. Such a letter may constitute an information request under §1024.36(a) that triggers an obligation by the servicer to provide an annual escrow statement. A servicer should not rely on the borrower's characterization of the letter as a ''Notice of Error,'' but must evaluate whether the letter fulfills the substantive requirements of a notice of error, information request, or both.

35(b) Scope of error resolution.

1. *Noncovered errors.* A servicer is not required to comply with §1024.35(d), (e) and (i) with respect to a borrower's assertion of an error that is not defined as an error in §1024.35(b). For example, the following are not errors for purposes of §1024.35:

i. An error relating to the origination of a mortgage loan;

ii. An error relating to the underwriting of a mortgage loan;

iii. An error relating to a subsequent sale or securitization of a mortgage loan;

iv. An error relating to a determination to sell, assign, or transfer the servicing of a mortgage loan. However, an error relating to the failure to transfer accurately and timely information relating to the servicing of a borrower's mortgage loan account to a transferee servicer is an error for purposes of §1024.35.

2. *Unreasonable basis.* For purposes of §1024.35(b)(5), a servicer lacks a reasonable basis to impose fees that are not bona fide, such as:

i. A late fee for a payment that was not late;

ii. A charge imposed by a service provider for a service that was not actually rendered;

iii. A default property management fee for borrowers that are not in a delinquency status that would justify the charge; or

iv. A charge for force-placed insurance in a circumstance not permitted by §1024.37.

35(c) Contact information for borrowers to assert errors.

1. *Exclusive address not required.* A servicer is not required to designate a specific address that a borrower must use to assert an error. If a servicer does not designate a specific address that a borrower must use to assert an error, a servicer must respond to a notice of error received by any office of the servicer.

2. *Notice of an exclusive address.* A notice establishing an address that a borrower must use to assert an error may be included with a different disclosure, such as a notice of transfer. The notice is subject to the clear and conspicuous requirement in §1024.32(a)(1). If a servicer establishes an address that a borrower must use to assert an error, a servicer must provide that address to the borrower in the following contexts:

i. The written notice designating the specific address, required pursuant to §1024.35(c) and §1024.36(b).

ii. Any periodic statement or coupon book required pursuant to 12 CFR 1026.41.

iii. Any Web site the servicer maintains in connection with the servicing of the loan.

iv. Any notice required pursuant to §§1024.39 or .41 that includes contact information for assistance.

3. *Multiple offices.* A servicer may designate multiple office addresses for receiving notices of errors. However, a servicer is required to comply with the requirements of §1024.35 with respect to a notice of error received at any such designated address regardless of whether that specific address was provided to a specific borrower asserting an error. For example, a servicer may designate an address to receive notices of error for borrowers located in California and a separate address to receive notices of errors for borrowers located in Texas. If a borrower located in California asserts an error through the address used by the servicer for borrowers located in Texas, the servicer is still considered to have received a notice of error and must comply with the requirements of §1024.35.

4. *Internet intake of notices of error.* A servicer may, but need not, establish a process for receiving notices of error through email, Web site form, or other online intake methods. Any such online intake process shall be in addition to, and not in lieu of, any process for receiving notices of error by mail. The process or processes established by the servicer for receiving notices of error through an online intake method shall be the exclusive online intake process or processes for receiving notices of error. A servicer is not required to provide a separate notice to a borrower to establish a specific online intake process as an exclusive online process for receiving such notices of error.

35(e) Response to notice of error.

35(e)(1) Investigation and response requirements.

Paragraph 35(e)(1)(i).

1. *Notices alleging multiple errors; separate responses permitted.* A servicer may respond to a notice of error that alleges multiple errors through either a single response or separate responses that address each asserted error.

Paragraph 35(e)(1)(ii).

1. *Different or additional errors; separate responses permitted.* A servicer may provide the response required by §1024.35(e)(1)(ii) for different or additional errors identified by the servicer in the same notice that responds to errors asserted by the borrower pursuant to §1024.35(e)(1)(i) or in a separate response that addresses the different or additional errors identified by the servicer.

35(e)(3) Time limits.

35(e)(3)(i) In general.

Paragraph 35(e)(3)(i)(B).

1. *Foreclosure sale timing.* If a servicer cannot comply with its obligations pursuant to §1024.35(e) by the earlier of a foreclosure sale or 30 days after receipt of the notice of error, a servicer may cancel or postpone a foreclosure sale, in which case the servicer would meet the time limit in §1024.35(e)(3)(i)(B) by complying with the requirements of §1024.35(e) before the earlier of 30 days after receipt of the notice of error (excluding legal public holidays, Saturdays, and Sundays) or the date of the rescheduled foreclosure sale.

35(e)(3)(ii) Extension of time limit.

1. *Notices alleging multiple errors; extension of time.* A servicer may treat a notice of error that alleges multiple errors as separate notices of error and may extend the time period for responding to each asserted error for which an extension is permissible under §1024.35(e)(3)(ii).

35(e)(4) Copies of documentation.

1. *Types of documents to be provided.* A servicer is required to provide only those documents actually relied upon by the servicer to determine that no error occurred. Such documents may include documents reflecting information entered in a servicer's collection system. For example, in response to an asserted error regarding payment allocation, a servicer may provide a printed screen-capture showing amounts credited to principal, interest, escrow, or other charges in the servicer's system for the borrower's mortgage loan account.

35(g) Requirements not applicable.

35(g)(1) In general.

Paragraph 35(g)(1)(i).

1. *New and material information.* A dispute between a borrower and a servicer with respect to whether information was previously reviewed by a servicer or with respect to whether a servicer properly determined that information reviewed was not material to its determination of the existence of an error, does not itself constitute new and material information.

Paragraph 35(g)(1)(ii).

1. *Examples of overbroad notices of error.* The following are examples of notices of error that are overbroad:

i. Assertions of errors regarding substantially all aspects of a mortgage loan, including errors relating to all aspects of mortgage origination, mortgage servicing, and foreclosure, as well as errors relating to the crediting of substantially every borrower payment and escrow account transaction;

ii. Assertions of errors in the form of a judicial action complaint, subpoena, or discovery request that purports to require servicers to respond to each numbered paragraph; and

iii. Assertions of errors in a form that is not reasonably understandable or is included with voluminous tangential discussion or requests for information, such that a servicer cannot reasonably identify from the notice of error any error for which §1024.35 requires a response.

35(h) Payment requirements prohibited.

1. *Borrower obligation to make payments.* Section 1024.35(h) prohibits a servicer from requiring a borrower to make a payment that may be owed on a borrower's account as

a prerequisite to investigating or responding to a notice of error submitted by a borrower, but does not alter or otherwise affect a borrower's obligation to make payments owed pursuant to the terms of a mortgage loan. For example, if a borrower makes a monthly payment in February for a mortgage loan, but asserts an error relating to the servicer's acceptance of the February payment, §1024.35(h) does not alter a borrower's obligation to make a monthly payment that the borrower owes for March. A servicer, however, may not require that a borrower make the March payment as a condition for complying with its obligations under §1024.35 with respect to the notice of error on the February payment.

§1024.36—Requests for Information

36(a) Information request.

1. *Borrower's representative.* An information request is submitted by a borrower if the information request is submitted by an agent of the borrower. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring that a person that claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf. Upon receipt of such documentation, the servicer shall treat the request for information as having been submitted by the borrower.

2. *Owner or assignee of a mortgage loan.* A servicer complies with §1024.36(d) by responding to an information request for the owner or assignee of a mortgage loan by identifying the person on whose behalf the servicer receives payments from the borrower. Although investors or guarantors, including among others the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, may be exposed to risks related to the mortgage loans held by a trust either in connection with an investment in securities issued by the trust or the issuance of a guaranty agreement to the trust, such investors or guarantors are not the owners or assignees of the mortgage loans solely as a result of their roles as such. In certain circumstances, however, a party such as a guarantor may assume multiple roles for a securitization transaction. For example, the Federal National Mortgage Association may act as trustee, master servicer, and guarantor in connection with a securitization transaction in which a trust owns a mortgage loan subject to a request. In this example, because the Federal National Mortgage Association is the trustee of the trust that owns the mortgage loan, a servicer complies with §1024.36(d) by responding to a borrower's request for information regarding the owner or assignee of the mortgage loan by providing the name of the trust, and the name, address, and appropriate contact information for the Federal National Mortgage Association as the trustee. The following examples identify the owner or assignee for different forms of mortgage loan ownership:

i. A servicer services a mortgage loan that is owned by the servicer, or an affiliate of the servicer, in portfolio. The servicer therefore receives the borrower's payments on behalf of itself or its affiliate. A servicer complies with §1024.36(d) by responding to a borrower's request for information regarding the owner or assignee of the mortgage loan with the name, address, and appropriate contact information for the servicer or the affiliate, as applicable.

ii. A servicer services a mortgage loan that has been securitized. In general, in a securitization transaction, a special purpose vehicle, such as a trust, is the owner or assignee of a mortgage loan. Thus, the servicer receives the borrower's payments on behalf of the trust. If a securitization transaction is structured such that a trust is the owner or assignee of a mortgage loan and the trust is administered by an appointed trustee, a servicer complies with §1024.36(d) by responding to a borrower's request for information regarding the owner or assignee of the mortgage loan by providing the borrower with the name of the trust and the name, address, and appropriate contract information for the trustee. Assume, for example, a mortgage loan is owned by Mortgage Loan Trust, Series ABC–1, for which XYZ Trust Company is the trustee. The servicer complies with §1024.36(d) by responding to a borrower's request for information regarding the owner or assignee of the mortgage loan by identifying the owner as Mortgage Loan Trust, Series ABC–1, and providing the name, address, and appropriate contact information for XYZ Trust Company as the trustee.

36(b) Contact information for borrowers to request information.

1. *Exclusive address not required.* A servicer is not required to designate a specific address that a borrower must use to request information. If a servicer does not designate a specific address that a borrower must use to request information, a servicer must respond to an information request received by any office of the servicer.

2. *Notice of an exclusive address.* A notice establishing an address that a borrower must use to request information may be included with a different disclosure, such as a notice of transfer. The notice is subject to the clear and conspicuous requirement in

§1024.32(a)(1). If a servicer establishes an address that a borrower must use to request information, a servicer must provide that address to the borrower in the following contexts:

i. The written notice designating the specific address, required pursuant to §1024.35(c) and §1024.36(b).

ii. Any periodic statement or coupon book required pursuant to 12 CFR 1026.41.

iii. Any Web site the servicer maintains in connection with the servicing of the loan.

iv. Any notice required pursuant to §§1024.39 or .41 that includes contact information for assistance.

3. *Multiple offices.* A servicer may designate multiple office addresses for receiving information requests. However, a servicer is required to comply with the requirements of §1024.36 with respect to an information request received at any such address regardless of whether that specific address was provided to a specific borrower requesting information. For example, a servicer may designate an address to receive information requests for borrowers located in California and a separate address to receive information requests for borrowers located in Texas. If a borrower located in California requests information through the address used by the servicer for borrowers located in Texas, the servicer is still considered to have received an information request and must comply with the requirements of §1024.36.

4. *Internet intake of information requests.* A servicer may, but need not, establish a process for receiving information requests through email, Web site form, or other online intake methods. Any such online intake process shall be in addition to, and not in lieu of, any process for receiving information requests by mail. The process or processes established by the servicer for receiving information requests through an online intake method shall be the exclusive online intake process or processes for receiving information requests. A servicer is not required to provide a separate notice to a borrower to establish a specific online intake process as an exclusive online process for receiving information requests.

36(d) Response to information request.

36(d)(1) Investigation and response requirements.

Paragraph 36(d)(1)(ii).

1. *Information not available.* Information is not available if:

i. The information is not in the servicer's control or possession, or

ii. The information cannot be retrieved in the ordinary course of business through reasonable efforts.

2. *Examples.* The following examples illustrate when information is available (or not available) to a servicer under §1024.36(d)(1)(ii):

i. A borrower requests a copy of a telephonic communication with a servicer. The servicer's personnel have access in the ordinary course of business to audio recording files with organized recordings or transcripts of borrower telephone calls and can identify the communication referred to by the borrower through reasonable business efforts. The information requested by the borrower is available to the servicer.

ii. A borrower requests information stored on electronic back-up media. Information on electronic back-up media is not accessible by the servicer's personnel in the ordinary course of business without undertaking extraordinary efforts to identify and restore the information from the electronic back-up media. The information requested by the borrower is not available to the servicer.

iii. A borrower requests information stored at an offsite document storage facility. A servicer has a right to access documents at the offsite document storage facility and servicer personnel can access those documents through reasonable efforts in the ordinary course of business. The information requested by the borrower is available to the servicer assuming that the information can be found within the offsite documents with reasonable efforts.

36(f) Requirements not applicable.

36(f)(1) In general.

Paragraph 36(f)(1)(i).

1. A borrower's request for a type of information that can change over time is not substantially the same as a previous information request for the same type of information if the subsequent request covers a different time period than the prior request.

Paragraph 36(f)(1)(ii).

1. *Confidential, proprietary or privileged information.* A request for confidential, proprietary or privileged information of a servicer is not an information request for which the servicer is required to comply with the requirements of §1024.36(c) and (d). Confidential, proprietary or privileged information may include information requests relating to, for example:

i. Information regarding management or profitability of a servicer, including information provided to investors in the servicer.

ii. Compensation, bonuses, or personnel actions relating to servicer personnel, including personnel responsible for servicing a borrower's mortgage loan account;

iii. Records of examination reports, compliance audits, borrower complaints, and internal investigations or external investigations; or

iv. Information protected by the attorney-client privilege.

Paragraph 36(f)(1)(iii).

1. *Examples of irrelevant information.* The following are examples of irrelevant information:

i. Information that relates to the servicing of mortgage loans other than a borrower's mortgage loan, including information reported to the owner of a mortgage loan regarding individual or aggregate collections for mortgage loans owned by that entity;

ii. The servicer's training program for servicing personnel;

iii. The servicer's servicing program guide; or

iv. Investor instructions or requirements for servicers regarding criteria for negotiating or approving any program with a borrower, including any loss mitigation option.

Paragraph 36(f)(1)(iv).

1. *Examples of overbroad or unduly burdensome requests for information.* The following are examples of requests for information that are overbroad or unduly burdensome:

i. Requests for information that seek documents relating to substantially all aspects of mortgage origination, mortgage servicing, mortgage sale or securitization, and foreclosure, including, for example, requests for all mortgage loan file documents, recorded mortgage instruments, servicing information and documents, and sale or securitization information and documents;

ii. Requests for information that are not reasonably understandable or are included with voluminous tangential discussion or assertions of errors;

iii. Requests for information that purport to require servicers to provide information in specific formats, such as in a transcript, letter form in a columnar format, or spreadsheet, when such information is not ordinarily stored in such format; and

iv. Requests for information that are not reasonably likely to assist a borrower with the borrower's account, including, for example, a request for copies of the front and back of all physical payment instruments (such as checks, drafts, or wire transfer confirmations) that show payments made by the borrower to the servicer and payments made by a servicer to an owner or assignee of a mortgage loan.

§ 1024.37—Force-Placed Insurance

37(a) Definition of force-placed insurance.

37(a)(2) Types of insurance not considered force-placed insurance.

Paragraph 37(a)(2)(iii).

1. *Servicer's discretion.* Hazard insurance paid by a servicer at its discretion refers to circumstances in which a servicer pays a borrower's hazard insurance even though the servicer is not required by §1024.17(k)(1), (2), or (5) to do so.

37(b) Basis for charging force-placed insurance.

1. *Reasonable basis to believe.* Section §1024.37(b) prohibits a servicer from assessing on a borrower a premium charge or fee related to force-placed insurance unless the servicer has a reasonable basis to believe that the borrower has failed to comply with the loan contract's requirement to maintain hazard insurance. Information about a borrower's hazard insurance received by a servicer from the borrower, the borrower's insurance provider, or the borrower's insurance agent, may provide a servicer with a reasonable basis to believe that the borrower has either complied with or failed to comply with the loan contract's requirement to maintain hazard insurance. If a servicer receives no such information, the servicer may satisfy the reasonable basis to believe standard if the servicer acts with reasonable diligence to ascertain a borrower's hazard insurance status and does not receive from the borrower, or otherwise have evidence of insurance coverage as provided in §1024.37(c)(1)(iii). A servicer that complies with the notification requirements set forth in §1024.37(c)(1)(i) and (ii) has acted with reasonable diligence.

37(c) Requirements before charging borrower for force-placed insurance.

37(c)(1) In general.

Paragraph 37(c)(1)(i).

1. *Assessing premium charge or fee.* Subject to the requirements of §1024.37(c)(1)(i) through (iii), if not prohibited by State or other applicable law, a servicer may charge a borrower for force-placed insurance the servicer purchased, retroactive to the first day of any period of time in which the borrower did not have hazard insurance in place.

Paragraph 37(c)(1)(iii).

1. *Extension of time.* Applicable law, such as State law or the terms and conditions of a borrower's insurance policy, may provide for an extension of time to pay the premium on a borrower's hazard insurance after the due date. If a premium payment is made within such time, and the insurance company accepts the payment with no lapse in insurance coverage, then the borrower's hazard insurance is deemed to have had hazard insurance coverage continuously for purposes of §1024.37(c)(1)(iii).

2. *Evidence demonstrating insurance.* As evidence of continuous hazard insurance coverage that complies with the loan contract's requirements, a servicer may require a copy of the borrower's hazard insurance policy declaration page, the borrower's insurance certificate, the borrower's insurance policy, or other similar forms of written confirmation. A servicer may reject evidence of hazard insurance coverage submitted by the borrower if neither the borrower's insurance provider nor insurance agent provides confirmation of the insurance information submitted by the borrower, or if the terms and conditions of the borrower's hazard insurance policy do not comply with the borrower's loan contract requirements.

Paragraph 37(c)(2)(v).

1. *Identifying type of hazard insurance.* If the terms of a mortgage loan contract requires a

borrower to purchase both a homeowners' insurance policy and a separate hazard insurance policy to insure against loss resulting from hazards not covered under the borrower's homeowners' insurance policy, a servicer must disclose whether it is the borrower's homeowners' insurance policy or the separate hazard insurance policy for which it lacks evidence of coverage to comply with §1024.37(c)(2)(v).

37(d) Reminder notice.

37(d)(1) In general.

1. When a servicer is required to deliver or place in the mail the written notice pursuant to §1024.37(d)(1), the content of the reminder notice will be different depending on the insurance information the servicer has received from the borrower. For example:

i. Assume that, on June 1, the servicer places in the mail the written notice required by §1024.37(c)(1)(i) to Borrower A. The servicer does not receive any insurance information from Borrower A. The servicer must deliver to Borrower A or place in the mail a reminder notice, with the information required by §1024.37(d)(2)(i), at least 30 days after June 1 and at least 15 days before the servicer charges Borrower A for force-placed insurance.

ii. Assume the same example, except that Borrower A provides the servicer with insurance information on June 18, but the servicer cannot verify that Borrower A has hazard insurance in place continuously based on the information Borrower A provided (*e.g.*, the servicer cannot verify that Borrower A had coverage between June 10 and June 15). The servicer must either deliver to Borrower A or place in the mail a reminder notice, with the information required by in §1024.37(d)(2)(ii), at least 30 days after June 1 and at least 15 days before charging Borrower A for force-placed insurance it obtains for the period between June 10 and June 15.

37(d)(2) Content of reminder notice.

37(d)(2)(i) Servicer receiving no insurance information.

Paragraph 37(d)(2)(i)(D).

1. *Reasonable estimate of the cost of force-placed insurance.* Differences between the amount of the estimated cost disclosed under §1024.37(d)(2)(i)(D) and the actual cost later assessed to the borrower are permissible, so long as the estimated cost is based on the information reasonably available to the servicer at the time the disclosure is provided. For example, a mortgage investor's requirements may provide that the amount of coverage for force-placed insurance depends on the borrower's delinquency status (the number of days the borrower's mortgage payment is past due). The amount of coverage affects the cost of force-placed insurance. A servicer that provides an estimate of the cost of force-placed insurance based on the borrower's delinquency status at the time the disclosure is made complies with §1024.37(d)(2)(i)(D).

37(d)(4) Updating notice with borrower information.

1. *Reasonable time.* A servicer may have to prepare the written notice required by §1024.37(c)(1)(ii) in advance of delivering or placing the notice in the mail. If the notice has already been put into production, the servicer is not required to update the notice with new insurance information received about the borrower so long as the written notice was put into production within a reasonable time prior to the servicer delivering or placing the notice in the mail. For purposes of §1024.37(d)(4), five days (excluding legal holidays, Saturdays, and Sundays) is a reasonable time.

37(e) Renewal or replacing force-placed insurance.

37(e)(1) In general.

1. For purposes of §1024.37(e)(1), as evidence that the borrower has purchased hazard insurance coverage that complies with the loan contract's requirements, a servicer may require a borrower to provide a form of written confirmation as described in comment 37(c)(1)(iii)–2, and may reject evidence of coverage submitted by the borrower for the reasons described in comment 37(c)(1)(iii)–2.

37(e)(1)(iii) Charging before end of notice period.

1. *Example.* Section 1024.37(e)(1)(iii) permits a servicer to assess on a borrower a premium charge or fee related to renewing or replacing existing force-placed insurance promptly after the servicer receives evidence demonstrating that the borrower lacked hazard insurance coverage in compliance with the loan contract's requirements to maintain hazard insurance for any period of time following the expiration of the existing force-placed insurance. To illustrate, assume that on January 2, the servicer sends the notice required by §1024.37(e)(1)(i). At 12:01 a.m. on January 12, the existing force-placed insurance the servicer had purchased on the borrower's property expires and the servicer replaces the expired force-placed insurance policy with a new policy. On February 5, the servicer receives evidence demonstrating the borrower has hazard insurance effective since 12:01 a.m. on January 31. The servicer may charge the borrower for force-placed insurance covering the period from 12:01 a.m. January 12 to 12:01 a.m. January 31, as early as February 5.

Paragraph 37(e)(2)(vii).

1. *Reasonable estimate of the cost of force-placed insurance.* The reasonable estimate requirement set forth in §1024.37(e)(2)(vii) is the same reasonable estimate requirement set forth in §1024.37(d)(2)(i)(D). See comment 37(d)(2)(i)(D)–1 regarding the reasonable estimate.

37(g) Cancellation of force-placed insurance.

Paragraph 37(g)(2).

1. *Period of overlapping insurance coverage.* Section 1024.37(g)(2) requires a servicer to refund to a borrower all force-placed insurance premium charges and related fees paid by the borrower for any period of overlapping insurance coverage and remove from the borrower's account all force-placed insurance charges and related fees for such period. A period of overlapping insurance coverage means the period of time during which the force-placed insurance purchased by a servicer and the hazard insurance purchased by a borrower were in effect at the same time.

Section 1024.38—General Servicing Policies, Procedures, and Requirements

38(a) Reasonable policies and procedures.

1. *Policies and procedures.* A servicer may determine the specific policies and procedures it will adopt and the methods by which it will implement those policies and procedures so long as they are reasonably designed to achieve the objectives set forth in §1024.38(b). A servicer has flexibility to determine such policies and procedures and methods in light of the size, nature, and scope of the servicer's operations, including, for example, the volume and aggregate unpaid principal balance of mortgage loans serviced, the credit quality, including the default risk, of the mortgage loans serviced, and the servicer's history of consumer complaints.

2. *Procedures used.* The term ''procedures'' refers to the actual practices followed by a servicer for achieving the objectives set forth in §1024.38(b).

38(b) Objectives.

38(b)(1) Accessing and providing timely and accurate information.

Paragraph 38(b)(1)(ii).

1. *Errors committed by service providers.* A servicer's policies and procedures must be reasonably designed to provide for promptly obtaining information from service providers to facilitate achieving the objective of correcting errors resulting from actions of service providers, including obligations arising pursuant to §1024.35.

Paragraph 38(b)(1)(iv).

1. *Accurate and current information for owners or assignees of mortgage loans relating to loan modifications.* The relevant current information to owners or assignees of mortgage loans includes, among other things, information about a servicer's evaluation of borrowers for loss mitigation options and a servicer's agreements with borrowers on loss mitigation options, including loan modifications. Such information includes, for example, information regarding the date, terms, and features of loan modifications, the components of any capitalized arrears, the amount of any servicer advances, and any assumptions regarding the value of a property used in evaluating any loss mitigation options.

38(b)(2) Properly evaluating loss mitigation applications.

Paragraph 38(b)(2)(ii).

1. *Means of identifying all available loss mitigation options.* Servicers must develop policies and procedures that are reasonably designed to enable servicer personnel to identify all loss mitigation options available for mortgage loans currently serviced by the mortgage servicer. For example, a servicer's policies and procedures must be reasonably designed to address how a servicer specifically identifies, with respect to each owner or assignee, all of the loss mitigation options that the servicer may consider when evaluating any borrower for a loss mitigation option and the criteria that should be applied by a servicer when evaluating a borrower for such options. In addition, a servicer's policies and procedures must be reasonably designed to address how the servicer will apply any specific thresholds for eligibility for a particular loss mitigation option established by an owner or assignee of a mortgage loan (*e.g.*, if the owner or assignee requires that a servicer only make a particular loss mitigation option available to a certain percentage of the loans that the servicer services for that owner or assignee, then the servicer's policies and procedures must be reasonably designed to determine in advance how the servicer will apply that threshold to those mortgage loans). A servicer's policies and procedures must also be reasonably designed to ensure that such information is readily accessible to the servicer personnel involved with loss mitigation, including personnel made available to the borrower as described in §1024.40.

Paragraph 38(b)(2)(v).

1. *Owner or assignee requirements.* A servicer must have policies and procedures reasonably designed to evaluate a borrower for a loss mitigation option consistent with any owner or assignee requirements, even where the requirements of §1024.41 may be inapplicable. For example, an owner or assignee may require that a servicer implement certain procedures to review a loss mitigation application submitted by a borrower less than 37 days before a foreclosure sale. Further, an owner or assignee may require that a servicer implement certain procedures to re-evaluate a borrower who has demonstrated a material change in the borrower's financial circumstances for a loss mitigation option after the servicer's initial evaluation. A servicer must have policies and procedures reasonably designed to implement these requirements even if such loss mitigation evaluations may not be required pursuant to §1024.41.

38(b)(4) Facilitating transfer of information during servicing transfers.

Paragraph 38(b)(4)(i).

1. *Electronic document transfers.* A transferor servicer's policies and procedures may provide for transferring documents and information electronically, provided that the transfer is conducted in a manner that is reasonably designed to ensure the accuracy of the information and documents transferred and that enables a transferee servicer to comply with its obligations to the owner or assignee of the loan and with applicable law. For example, a transferor servicer must have policies and procedures reasonably designed to ensure that data can be properly and promptly boarded by a transferee servicer's electronic systems and that all necessary documents and information are available to, and can be appropriately identified by, a transferee servicer.

2. *Loss mitigation documents.* A transferor servicer's policies and procedures must be reasonably designed to ensure that the transfer includes any information reflecting the current status of discussions with a borrower regarding loss mitigation options, any agreements entered into with a borrower on a loss mitigation option, and any analysis by a servicer with respect to potential recovery from a non-performing mortgage loan, as appropriate.

Paragraph 38(b)(4)(ii).

1. *Missing loss mitigation documents and information.* A transferee servicer must have policies and procedures reasonably designed to ensure, in connection with a servicing transfer, that the transferee servicer receives information regarding any loss mitigation discussions with a borrower, including any copies of loss mitigation agreements. Further, the transferee servicer's policies and procedures must address obtaining any such missing information or documents from a transferor servicer before attempting to obtain such information from a borrower. For example, assume a servicer receives documents or information from a transferor servicer indicating that a borrower has made payments consistent with a trial or permanent loan modification but has not received information about the existence of a trial or permanent loan modification agreement. The servicer must have policies and procedures reasonably designed to identify whether any such loan modification agreement exists with the transferor servicer and to obtain any such agreement from the transferor servicer.

38(b)(5) Informing borrowers of written error resolution and information request procedures.

1. *Manner of informing borrowers.* A servicer may comply with the requirement to maintain policies and procedures reasonably designed to inform borrowers of the procedures for submitting written notices of error set forth in §1024.35 and written information requests set forth in §1024.36 by informing borrowers, through a notice (mailed or delivered electronically) or a Web site. For example, a servicer may comply with §1024.38(b)(5) by including in the periodic statement required pursuant to §1026.41 a brief statement informing borrowers that borrowers have certain rights under Federal law related to resolving errors and requesting information about their account, and that they may learn more about their rights by contacting the servicer, and a statement directing borrowers to a Web site that provides a description of the procedures set forth in §§1024.35 and 1024.36. Alternatively, a servicer may also comply with §1024.38(b)(5) by including a description of the procedures set forth in §§1024.35 and 1024.36 in the written notice required by §1024.35(c) and §1024.36(b).

2. *Oral complaints and requests.* A servicer's policies and procedures must be reasonably designed to provide information to borrowers who are not satisfied with the resolution of a complaint or request for information submitted orally about the procedures for submitting written notices of error set forth in §1024.35 and for submitting written requests for information set forth in §1024.36.

3. *Notices of error incorrectly sent to addresses associated with submission of loss mitigation applications or the continuity of contact.* A servicer's policies and procedures must be reasonably designed to ensure that if a borrower incorrectly submits an assertion of an error to any address given to the borrower in connection with submission of a loss mitigation application or the continuity of contact pursuant to §1024.40, the servicer will inform the borrower of the procedures for submitting written notices of error set forth in §1024.35, including the correct address. Alternatively, the servicer could redirect such notices to the correct address.

38(c) Standard requirements.

38(c)(1)Record retention.

1. Methods of retaining records. Retaining records that document actions taken with respect to a borrower's mortgage loan account does not necessarily mean actual paper copies of documents. The records may be retained by any method that reproduces the records accurately (including computer programs) and that ensures that the servicer can easily access the records (including a contractual right to access records possessed by another entity).

38(c)(2) Servicing file.

1. *Timing.* A servicer complies with §1024.38(c)(2) if it maintains information in a manner that facilitates compliance with §1024.38(c)(2) beginning on or after January 10, 2014. A servicer is not required to comply with §1024.38(c)(2) with respect to information created prior to January 10, 2014. For example, if a mortgage loan was originated on January 1, 2013, a servicer is not required by §1024.38(c)(2) to maintain information regarding transactions credited or debited to that mortgage loan account in any particular manner for payments made prior to

January 10, 2014. However, for payments made on or after January 10, 2014, a servicer must maintain such information in a manner that facilitates compiling such information into a servicing file within five days.

2. *Borrower requests for servicing file.* Section 1024.38(c)(2) does not confer upon any borrower an independent right to access information contained in the servicing file. Upon receipt of a borrower's request for a servicing file, a servicer shall provide the borrower with a copy of the information contained in the servicing file for the borrower's mortgage loan, subject to the procedures and limitations set forth in §1024.36.

Paragraph 38(c)(2)(iv).

1. *Report of data fields.* A report of the data fields relating to a borrower's mortgage loan account created by the servicer's electronic systems in connection with servicing practices means a report listing the relevant data fields by name, populated with any specific data relating to the borrower's mortgage loan account. Examples of data fields relating to a borrower's mortgage loan account created by the servicer's electronic systems in connection with servicing practices include fields used to identify the terms of the borrower's mortgage loan, fields used to identify the occurrence of automated or manual collection calls, fields reflecting the evaluation of a borrower for a loss mitigation option, fields used to identify the owner or assignee of a mortgage loan, and any credit reporting history.

§1024.39—Early Intervention Requirements for Certain Borrowers

39(a) Live contact.

1. *Delinquency.* A borrower is delinquent for purposes of §1024.39 as follows:

i. Delinquency begins on the day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid, even if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee. For example, if a payment due date is January 1 and the amount due is not fully paid during the 36-day period after January 1, the servicer must establish or make good faith efforts to establish live contact not later than 36 days after January 1—*i.e.,* by February 6.

ii. A borrower who is performing as agreed under a loss mitigation option designed to bring the borrower current on a previously missed payment is not delinquent for purposes of §1024.39.

iii. During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage loan, a borrower is not delinquent for purposes of §1024.39 if the transferee servicer learns that the borrower has made a timely payment that has been misdirected to the transferor servicer and the transferee servicer documents its files accordingly. *See* §1024.33(c)(1) and comment 33(c)(1)–2.

iv. A servicer need not establish live contact with a borrower unless the borrower is delinquent during the 36 days after a payment due date. If the borrower satisfies a payment in full before the end of the 36-day period, the servicer need not establish live contact with the borrower. For example, if a borrower misses a January 1 due date but makes that payment on February 1, a servicer need not establish or make good faith efforts to establish live contact by February 6.

2. *Establishing live contact.* Live contact provides servicers an opportunity to discuss the circumstances of a borrower's delinquency. Live contact with a borrower includes telephoning or conducting an in-person meeting with the borrower, but not leaving a recorded phone message. A servicer may, but need not, rely on live contact established at the borrower's initiative to satisfy the live contact requirement in §1024.39(a). Good faith efforts to establish live contact consist of reasonable steps under the circumstances to reach a borrower and may include telephoning the borrower on more than one occasion or sending written or electronic communication encouraging the borrower to establish live contact with the servicer.

3. *Promptly inform if appropriate.*

i. *Servicer's determination.* It is within a servicer's reasonable discretion to determine whether informing a borrower about the availability of loss mitigation options is appropriate under the circumstances. The following examples demonstrate when a servicer has made a reasonable determination regarding the appropriateness of providing information about loss mitigation options.

A. A servicer provides information about the availability of loss mitigation options to a borrower who notifies a servicer during live contact of a material adverse change in the borrower's financial circumstances that is likely to cause the borrower to experience a long-term delinquency for which loss mitigation options may be available.

B. A servicer does not provide information about the availability of loss mitigation options to a borrower who has missed a January 1 payment and notified the servicer that full late payment will be transmitted to the servicer by February 15.

ii. *Promptly inform.* If appropriate, a servicer may inform borrowers about the availability of loss mitigation options orally, in writing, or through electronic communication, but the servicer must provide such information promptly after the servicer establishes live contact. A servicer need not notify a borrower about any particular loss mitigation options at this time; if appropriate, a servicer need only inform borrowers

generally that loss mitigation options may be available. If appropriate, a servicer may satisfy the requirement in §1024.39(a) to inform a borrower about loss mitigation options by providing the written notice required by §1024.39(b)(1), but the servicer must provide such notice promptly after the servicer establishes live contact.

4. *Borrower's representative.* Section 1024.39 does not prohibit a servicer from satisfying the requirements §1024.39 by establishing live contact with and, if applicable, providing information about loss mitigation options to a person authorized by the borrower to communicate with the servicer on the borrower's behalf. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring a person that claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf.

39(b) Written notice.

39(b)(1) Notice required.

1. *Delinquency.* For guidance on the circumstances under which a borrower is delinquent for purposes of §1024.39, see comment 39(a)–1. For example, if a payment due date is January 1 and the payment remains unpaid during the 45-day period after January 1, the servicer must provide the written notice within 45 days after January 1—*i.e.,* by February 15. However, if a borrower satisfies a late payment in full before the end of the 45-day period, the servicer need not provide the written notice. For example, if a borrower misses a January 1 due date but makes that payment on February 1, a servicer need not provide the written notice by February 15.

2. *Frequency of the written notice.* A servicer need not provide the written notice under §1024.39(a) more than once during a 180-day period beginning on the date on which the written notice is provided. For example, a borrower has a payment due on March 1. The amount due is not fully paid during the 45 days after March 1 and the servicer provides the written notice within 45 days after March 1—*i.e.,* by April 15. If the borrower subsequently fails to make a payment due April 1 and the amount due is not fully paid during the 45 days after April 1, the servicer need not provide the written notice again during the 180-day period beginning on April 15.

3. *Borrower's representative.* See comment 39(a)–4.

4. *Relationship to §1024.39(a).* The written notice required under §1024.39(b)(1) must be provided even if the servicer provided information about loss mitigation and foreclosure previously during an oral communication with the borrower under §1024.39(a).

39(b)(2) Content of the written notice.

1. *Minimum requirements.* Section 1024.39(b)(2) contains minimum content requirements for the written notice. A servicer may provide additional information that the servicer determines would be helpful or which may be required by applicable law or the owner or assignee of the mortgage loan.

2. *Format.* Any color, number of pages, size and quality of paper, size and type of print, and method of reproduction may be used, provided each of the statements required by §1024.39(b)(2) satisfies the clear and conspicuous standard in §1024.32(a)(1).

3. *Delivery.* A servicer may satisfy the requirement to provide the written notice by combining other notices that satisfy the content requirements of §1024.39(b)(2) into a single mailing, provided each of the statements required by §1024.39(b)(2) satisfies the clear and conspicuous standard in §1024.32(a)(1).

Paragraph 39(b)(2)(iii).

1. *Number of examples.* Section 1024.39(b)(2)(iii) does not require that a specific number of examples be disclosed, but borrowers are likely to benefit from examples of options that would permit them to retain ownership of their home and examples of options that may require borrowers to end their ownership to avoid foreclosure. The servicer may include a generic list of loss mitigation options that it offers to borrowers. The servicer may include a statement that not all borrowers will qualify for the listed options.

2. *Brief description.* An example of a loss mitigation option may be described in one or more sentences. If a servicer offers a loss mitigation option comprising several loss mitigation programs, the servicer may provide a generic description of the option without providing detailed descriptions of each program. For example, if the servicer offers several loan modification programs, the servicer may provide a generic description of ''loan modification.''

Paragraph 39(b)(2)(iv).

1. *Explanation of how the borrower may obtain more information about loss mitigation options.* A servicer may comply with §1024.39(b)(2)(iv) by directing the borrower to contact the servicer for more detailed information on how to apply for loss mitigation options. For example, a general statement such as, ''contact us for instructions on how to apply'' would satisfy the requirement to inform the borrower how to obtain more information about loss mitigation options. However, to expedite the borrower's timely application for any loss mitigation options, servicers may provide more detailed instructions, such as by listing representative documents the borrower should make available to the servicer (such as tax filings or income statements), and an estimate of how quickly the servicer expects to evaluate a completed application and make a decision on loss

mitigation options. Servicers may also supplement the written notice required by §1024.39(b)(1) with a loss mitigation application form.

39(d)(1) Borrowers in bankruptcy.

1. Commencing a case. The requirements of §1024.39 do not apply once a petition is filed under Title 11 of the United States Code, commencing a case in which the borrower is a debtor.

2. Obligation to resume early intervention requirements. i. With respect to any portion of the mortgage debt that is not discharged, a servicer must resume compliance with §1024.39 after the first delinquency that follows the earliest of any of three potential outcomes in the borrower's bankruptcy case: the case is dismissed, the case is closed, or the borrower receives a discharge under 11 U.S.C. 727, 1141, 1228, or 1328. However, this requirement to resume compliance with §1024.39 does not require a servicer to communicate with a borrower in a manner that would be inconsistent with applicable bankruptcy law or a court order in a bankruptcy case. To the extent permitted by such law or court order, a servicer may adapt the requirements of §1024.39 in any manner believed necessary.

ii. Compliance with §1024.39 is not required for any portion of the mortgage debt that is discharged under applicable provisions of the U.S. Bankruptcy Code. If the borrower's bankruptcy case is revived—for example if the court reinstates a previously dismissed case, reopens the case, or revokes a discharge—the servicer is again exempt from the requirement in §1024.39.

3. Joint obligors. When two or more borrowers are joint obligors with primary liability on a mortgage loan subject to §1024.39, the exemption in §1024.39(d)(1) applies if any of the borrowers is in bankruptcy. For example, if a husband and wife jointly own a home, and the husband files for bankruptcy, the servicer is exempt from complying with §1024.39 as to both the husband and the wife.

§1024.40—Continuity of Contact

40(a) In general.

1. *Delinquent borrower.* A borrower is not considered delinquent if the borrower has refinanced the mortgage loan, paid off the mortgage loan, brought the mortgage loan current by paying all amounts owed in arrears, or if title to the borrower's property has been transferred to a new owner through, for example, a deed-in-lieu of foreclosure, a sale of the borrower's property, including, as applicable, a short sale, or a foreclosure sale. For purposes of responding to a borrower's inquiries and assisting a borrower with loss mitigation options, the term ''borrower'' includes a person authorized by the borrower to act on the borrower's behalf. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example by requiring that a person who claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf.

2. *Assignment of personnel.* A servicer has discretion to determine whether to assign a single person or a team of personnel to respond to a delinquent borrower. The personnel a servicer assigns to the borrower as described in §1024.40(a)(1) may be single-purpose or multi-purpose personnel. Single-purpose personnel are personnel whose primary responsibility is to respond to a delinquent borrower's inquiries, and as applicable, assist the borrower with available loss mitigation options. Multi-purpose personnel can be personnel that do not have a primary responsibility at all, or personnel for whom responding to a delinquent borrower's inquiries, and as applicable, assisting the borrower with available loss mitigation options is not the personnel's primary responsibility. If the delinquent borrower files for bankruptcy, a servicer may assign personnel with specialized knowledge in bankruptcy law to assist the borrower.

3. *Delinquency.* For purposes of §1024.40(a), delinquency begins on the day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid, even if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee. *See* the example set forth in comment 39(a)–1.i.

§1024.41—Loss Mitigation Procedures

41(b) Receipt of a loss mitigation application.

41(b)(1) Complete loss mitigation application.

1. *In general.* A servicer has flexibility to establish its own application requirements and to decide the type and amount of information it will require from borrowers applying for loss mitigation options.

2. *When an inquiry or prequalification request becomes an application.* A servicer is encouraged to provide borrowers with information about loss mitigation programs. If in giving information to the borrower, the borrower expresses an interest in applying for a loss mitigation option and provides information the servicer would evaluate in connection with a loss mitigation application, the borrower's inquiry or prequalification request has become a loss mitigation application. A loss mitigation application is considered expansively and includes any ''prequalification'' for a loss mitigation option. For example, if a borrower requests that a servicer determine if the borrower is ''prequalified'' for a loss mitigation program by evaluating the borrower against preliminary criteria to determine eligibility for a

loss mitigation option, the request constitutes a loss mitigation application.

3. *Examples of inquiries that are not applications.* The following examples illustrate situations in which only an inquiry has taken place and no loss mitigation application has been submitted:

i. A borrower calls to ask about loss mitigation options and servicer personnel explain the loss mitigation options available to the borrower and the criteria for determining the borrower's eligibility for any such loss mitigation option. The borrower does not, however, provide any information that a servicer would consider for evaluating a loss mitigation application.

ii. A borrower calls to ask about the process for applying for a loss mitigation option but the borrower does not provide any information that a servicer would consider for evaluating a loss mitigation application.

4. *Diligence requirements.* Although a servicer has flexibility to establish its own requirements regarding the documents and information necessary for a loss mitigation application, the servicer must act with reasonable diligence to collect information needed to complete the application. Further, a servicer must request information necessary to make a loss mitigation application complete promptly after receiving the loss mitigation application. Reasonable diligence includes, without limitation, the following actions:

i. A servicer requires additional information from the applicant, such as an address or a telephone number to verify employment; the servicer contacts the applicant promptly to obtain such information after receiving a loss mitigation application;

ii. Servicing for a mortgage loan is transferred to a servicer and the borrower makes an incomplete loss mitigation application to the transferee servicer after the transfer; the transferee servicer reviews documents provided by the transferor servicer to determine if information required to make the loss mitigation application complete is contained within documents transferred by the transferor servicer to the servicer; and

iii. A servicer offers a borrower a payment forbearance program based on an incomplete loss mitigation application; the servicer notifies the borrower that he or she is being offered a payment forbearance program based on an evaluation of an incomplete application, and that the borrower has the option of completing the application to receive a full evaluation of all loss mitigation options available to the borrower. If a servicer provides such a notification, the borrower remains in compliance with the payment forbearance program, and the borrower does not request further assistance, the servicer could suspend reasonable diligence efforts until near the end of the payment forbearance program. Near the end of the program, and prior to the end of the forbearance period, it may be necessary for the servicer to contact the borrower to determine if the borrower wishes to complete the application and proceed with a full loss mitigation evaluation.

5. *Information not in the borrower's control.* A loss mitigation application is complete when a borrower provides all information required from the borrower notwithstanding that additional information may be required by a servicer that is not in the control of a borrower. For example, if a servicer requires a consumer report for a loss mitigation evaluation, a loss mitigation application is considered complete if a borrower has submitted all information required from the borrower without regard to whether a servicer has obtained a consumer report that a servicer has requested from a consumer reporting agency.

41(b) Receipt of loss mitigation application.

41(b)(1) Complete loss mitigation application.

41(b)(2)Review of loss mitigation application submission.

41(b)(2)(i) Requirements.

Paragraph 41(b)(2)(i)(B).

1. *Later discovery of additional information required to evaluate application.* Even if a servicer has informed a borrower that an application is complete (or notified the borrower of specific information necessary to complete an incomplete application), if the servicer determines, in the course of evaluating the loss mitigation application submitted by the borrower, that additional information or a corrected version of a previously submitted document is required, the servicer must promptly request the additional information or corrected document from the borrower pursuant to the reasonable diligence obligation in §1024.41(b)(1). See §1024.41(c)(2)(iv) addressing facially complete applications.

41(b)(2)(ii) Time period disclosure.

1. *Reasonable date.* Section 1024.41(b)(2)(ii) requires that a notice informing a borrower that a loss mitigation application is incomplete must include a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete. In determining a reasonable date, a servicer should select the deadline that preserves the maximum borrower rights under §1024.41 based on the milestones listed below, except when doing so would be impracticable to permit the borrower sufficient time to obtain and submit the type of documentation needed. Generally, it would be impracticable for a borrower to obtain and submit documents in less than seven days. In setting a date, the following milestones should be considered (if the date of a foreclosure sale is not known, a servicer may use a reasonable estimate of the date for which a foreclosure sale may be scheduled):

i. The date by which any document or information submitted by a borrower will be

considered stale or invalid pursuant to any requirements applicable to any loss mitigation option available to the borrower;

ii. The date that is the 120th day of the borrower's delinquency;

iii. The date that is 90 days before a foreclosure sale;

iv. The date that is 38 days before a foreclosure sale.

41(b)(3) Determining Protections.

1. *Foreclosure sale not scheduled.* If no foreclosure sale has been scheduled as of the date that a complete loss mitigation application is received, the application is considered to have been received more than 90 days before any foreclosure sale.

2. *Foreclosure sale re-scheduled.* The protections under §1024.41 that have been determined to apply to a borrower pursuant to §1024.41(b)(3) remain in effect thereafter, even if a foreclosure sale is later scheduled or rescheduled.

41(c) Review of loss mitigation applications.

41(c)(1) Complete loss mitigation application.

1. *Definition of ''evaluation.''* The conduct of a servicer's evaluation with respect to any loss mitigation option is in the sole discretion of a servicer. A servicer meets the requirements of §1024.41(c)(1)(i) if the servicer makes a determination regarding the borrower's eligibility for a loss mitigation program. Consistent with §1024.41(a), because nothing in section 1024.41 should be construed to permit a borrower to enforce the terms of any agreement between a servicer and the owner or assignee of a mortgage loan, including with respect to the evaluation for, or provision of, any loss mitigation option, §1024.41(c)(1) does not require that an evaluation meet any standard other than the discretion of the servicer.

2. *Loss mitigation options available to a borrower.* The loss mitigation options available to a borrower are those options offered by an owner or assignee of the borrower's mortgage loan. Loss mitigation options administered by a servicer for an owner or assignee of a mortgage loan other than the owner or assignee of the borrower's mortgage loan are not available to the borrower solely because such options are administered by the servicer. For example:

i. A servicer services mortgage loans for two different owners or assignees of mortgage loans. Those entities each have different loss mitigation programs. loss mitigation options not offered by the owner or assignee of the borrower's mortgage loan are not available to the borrower; or

ii. The owner or assignee of a borrower's mortgage loan has established pilot programs, temporary programs, or programs that are limited by the number of participating borrowers. Such loss mitigation options are available to a borrower. However, a servicer evaluates whether a borrower is eligible for any such program consistent with criteria established by an owner or assignee of a mortgage loan. For example, if an owner or assignee has limited a pilot program to a certain geographic area or to a limited number of participants, and the servicer determines that a borrower is not eligible based on any such requirement, the servicer shall inform the borrower that the investor requirement for the program is the basis for the denial.

3. *Offer of a non-home retention option.* A servicer's offer of a non-home retention option may be conditional upon receipt of further information not in the borrower's possession and necessary to establish the parameters of a servicer's offer. For example, a servicer complies with the requirement for evaluating the borrower for a short sale option if the servicer offers the borrower the opportunity to enter into a listing or marketing period agreement but indicates that specifics of an acceptable short sale transaction may be subject to further information obtained from an appraisal or title search.

41(c)(2) Incomplete loss mitigation application evaluation.

41(c)(2)(i) In general.

1. *Offer of a loss mitigation option without an evaluation of a loss mitigation application.* Nothing in §1024.41(c)(2)(i) prohibits a servicer from offering loss mitigation options to a borrower who has not submitted a loss mitigation application. Further, nothing in §1024.41(c)(2)(i) prohibits a servicer from offering a loss mitigation option to a borrower who has submitted an incomplete loss mitigation application where the offer of the loss mitigation option is not based on any evaluation of information submitted by the borrower in connection with such loss mitigation application. For example, if a servicer offers trial loan modification programs to all borrowers who become 150 days delinquent without an application or consideration of any information provided by a borrower in connection with a loss mitigation application, the servicer's offer of any such program does not violate §1024.41(c)(2)(i), and a servicer is not required to comply with §1024.41 with respect to any such program, because the offer of the loss mitigation option is not based on an evaluation of a loss mitigation application.

2. Servicer discretion. Although a review of a borrower's incomplete loss mitigation application is within a servicer's discretion, and is not required by §1024.41, a servicer may be required separately, in accordance with policies and procedures maintained pursuant to §1024.38(b)(2)(v), to properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options available to the borrower pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan.

Such evaluation may be subject to requirements applicable to loss mitigation applications otherwise considered incomplete pursuant to §1024.41.

41(c)(2)(ii) Reasonable time.

1. *Significant period of time.* A significant period of time under the circumstances may include consideration of the timing of the foreclosure process. For example, if a borrower is less than 50 days before a foreclosure sale, an application remaining incomplete for 15 days may be a more significant period of time under the circumstances than if the borrower is still less than 120 days delinquent on a mortgage loan obligation.

41(c)(2)(iii) Payment forbearance.

1. *Short-term payment forbearance program.* The exemption in §1024.41(c)(2)(iii) applies to short-term payment forbearance programs. A payment forbearance program is a loss mitigation option for which a servicer allows a borrower to forgo making certain payments or portions of payments for a period of time. A short-term payment forbearance program allows the forbearance of payments due over periods of no more than six months. Such a program would be short-term regardless of the amount of time a servicer allows the borrower to make up the missing payments.

2. *Payment forbearance and incomplete applications.* Section 1024.41(c)(2)(iii) allows a servicer to offer a borrower a short-term payment forbearance program based on an evaluation of an incomplete loss mitigation application. Such an incomplete loss mitigation application is still subject to the other obligations in §1024.41, including the obligation in §1024.41(b)(2) to review the application to determine if it is complete, the obligation in §1024.41(b)(1) to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application (see comment 41(b)(1)–4.iii), and the obligation to provide the borrower with the §1024.41(b)(2)(i)(B) notice that the servicer acknowledges the receipt of the application and has determined the application is incomplete.

3. *Payment forbearance and complete applications.* Even if a servicer offers a borrower a payment forbearance program based on an evaluation of an incomplete loss mitigation application, the servicer must still comply with all the requirements in §1024.41 if the borrower completes his or her loss mitigation application.

41(c)(2)(iv) Facially complete application.

1. *Reasonable opportunity.* Section 1024.41(c)(2)(iv) requires a servicer to treat a facially complete application as complete for the purposes of paragraphs (f)(2) and (g) until the borrower has been given a reasonable opportunity to complete the application. A reasonable opportunity requires the servicer to notify the borrower of what additional information or corrected documents are required, and to afford the borrower sufficient time to gather the information and documentation necessary to complete the application and submit it to the servicer. The amount of time that is sufficient for this purpose will depend on the facts and circumstances.

2. *Borrower fails to complete the application.* If the borrower fails to complete the application within the timeframe provided under §1024.41(c)(2)(iv), the application shall be considered incomplete.

41(d) Denial of loan modification options.

1. *Investor requirements.* If a trial or permanent loan modification option is denied because of a requirement of an owner or assignee of a mortgage loan, the specific reasons in the notice provided to the borrower must identify the owner or assignee of the mortgage loan and the requirement that is the basis of the denial. A statement that the denial of a loan modification option is based on an investor requirement, without additional information specifically identifying the relevant investor or guarantor and the specific applicable requirement, is insufficient. However, where an owner or assignee has established an evaluation criteria that sets an order ranking for evaluation of loan modification options (commonly known as a waterfall) and a borrower has qualified for a particular loan modification option in the ranking established by the owner or assignee, it is sufficient for the servicer to inform the borrower, with respect to other loan modification options ranked below any such option offered to a borrower, that the investor's requirements include the use of such a ranking and that an offer of a loan modification option necessarily results in a denial for any other loan modification options below the option for which the borrower is eligible in the ranking.

2. *Net present value calculation.* If a trial or permanent loan modification is denied because of a net present value calculation, the specific reasons in the notice provided to the borrower must include the inputs used in the net present value calculation.

(c)(1)(4) Other notices. A servicer may combine other notices required by applicable law, including, without limitation, a notice with respect to an adverse action required by Regulation B (12 CFR 1002 *et seq.*) or a notice required pursuant to the Fair Credit Reporting Act, with the notice required pursuant to §1024.41(d), unless otherwise prohibited by applicable law.

3. *Determination not to offer a loan modification option constitutes a denial.* A servicer's determination not to offer a borrower a loan modification available to the borrower constitutes a denial of the borrower for that loan modification option, notwithstanding whether a servicer offers a borrower a different loan modification option or other loss mitigation option.

4. *Reasons listed.* A servicer is required to disclose the actual reason or reasons for the denial. If a servicer's systems establish a hierarchy of eligibility criteria and reach the first criterion that causes a denial but do not evaluate the borrower based on additional criteria, a servicer complies with the rule by providing only the reason or reasons with respect to which the borrower was actually evaluated and rejected as well as notification that the borrower was not evaluated on other criteria. A servicer is not required to determine or disclose whether a borrower would have been denied on the basis of additional criteria if such criteria were not actually considered.

41(f) Prohibition on foreclosure referral.

1. *Prohibited activities.* Section 1024.41(f) prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process under certain circumstances. Whether a document is considered the first notice or filing is determined on the basis of foreclosure procedure under the applicable State law.

i. Where foreclosure procedure requires a court action or proceeding, a document is considered the first notice or filing if it is the earliest document required to be filed with a court or other judicial body to commence the action or proceeding (e.g., a complaint, petition, order to docket, or notice of hearing).

ii. Where foreclosure procedure does not require an action or court proceeding, such as under a power of sale, a document is considered the first notice or filing if it is the earliest document required to be recorded or published to initiate the foreclosure process.

iii. Where foreclosure procedure does not require any court filing or proceeding, and also does not require any document to be recorded or published, a document is considered the first notice or filing if it is the earliest document that establishes, sets, or schedules a date for the foreclosure sale.

iv. A document provided to the borrower but not initially required to be filed, recorded, or published is not considered the first notice or filing on the sole basis that the document must later be included as an attachment accompanying another document that is required to be filed, recorded, or published to carry out a foreclosure.

41(g) Prohibition on foreclosure sale.

1. *Dispositive motion.* The prohibition on a servicer moving for judgment or order of sale includes making a dispositive motion for foreclosure judgment, such as a motion for default judgment, judgment on the pleadings, or summary judgment, which may directly result in a judgment of foreclosure or order of sale. A servicer that has made any such motion before receiving a complete loss mitigation application has not moved for a foreclosure judgment or order of sale if the servicer takes reasonable steps to avoid a ruling on such motion or issuance of such order prior to completing the procedures required by §1024.41, notwithstanding whether any such action successfully avoids a ruling on a dispositive motion or issuance of an order of sale.

2. *Proceeding with the foreclosure process.* Nothing in §1024.41(g) prevents a servicer from proceeding with the foreclosure process, including any publication, arbitration, or mediation requirements established by applicable law, when the first notice or filing for a foreclosure proceeding occurred before a servicer receives a complete loss mitigation application so long as any such steps in the foreclosure process do not cause or directly result in the issuance of a foreclosure judgment or order of sale, or the conduct of a foreclosure sale, in violation of §1024.41.

3. *Interaction with foreclosure counsel.* A servicer is responsible for promptly instructing foreclosure counsel retained by the servicer not to proceed with filing for foreclosure judgment or order of sale, or to conduct a foreclosure sale, in violation of §1024.41(g) when a servicer has received a complete loss mitigation application, which may include instructing counsel to move for a continuance with respect to the deadline for filing a dispositive motion.

4. *Loss mitigation applications submitted 37 days or less before foreclosure sale.* Although a servicer is not required to comply with the requirements in §1024.41 with respect to a loss mitigation application submitted 37 days or less before a foreclosure sale, a servicer is required separately, in accordance with policies and procedures maintained pursuant to §1024.38(b)(2)(v) to properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options available to the borrower pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan. Such evaluation may be subject to requirements applicable to a review of a loss mitigation application submitted by a borrower 37 days or less before a foreclosure sale.

Paragraph 41(g)(3).

1. *Short sale listing period.* An agreement for a short sale transaction, or other similar loss mitigation option, typically includes marketing or listing periods during which a servicer will allow a borrower to market a short sale transaction. A borrower is deemed to be performing under an agreement on a short sale, or other similar loss mitigation option, during the term of a marketing or listing period.

2. *Short sale agreement.* If a borrower has not obtained an approved short sale transaction at the end of any marketing or listing

period, a servicer may determine that a borrower has failed to perform under an agreement on a loss mitigation option. An approved short sale transaction is a short sale transaction that has been approved by all relevant parties, including the servicer, other affected lienholders, or insurers, if applicable, and the servicer has received proof of funds or financing, unless circumstances otherwise indicate that an approved short sale transaction is not likely to occur.

41(h) Appeal process.

Paragraph 41(h)(3).

1. *Supervisory personnel.* The appeal may be evaluated by supervisory personnel that are responsible for oversight of the personnel that conducted the initial evaluation, as long as the supervisory personnel were not directly involved in the initial evaluation of the borrower's complete loss mitigation application.

41(i) Duplicative requests.

1. *Servicing transfers.* A transferee servicer is required to comply with the requirements of §1024.41 regardless of whether a borrower received an evaluation of a complete loss mitigation application from a transferor servicer. Documents and information transferred from a transferor servicer to a transferee servicer may constitute a loss mitigation application to the transferee servicer and may cause a transferee servicer to be required to comply with the requirements of §1024.41 with respect to a borrower's mortgage loan account.

2. *Application in process during servicing transfer.* A transferee servicer must obtain documents and information submitted by a borrower in connection with a loss mitigation application during a servicing transfer, consistent with policies and procedures adopted pursuant to §1024.38. A servicer that obtains the servicing of a mortgage loan for which an evaluation of a complete loss mitigation option is in process should continue the evaluation to the extent practicable. For purposes of §1024.41(e)(1), 1024.41(f), 1024.41(g), and 1024.41(h), a transferee servicer must consider documents and information received from a transferor servicer that constitute a complete loss mitigation application for the transferee servicer to have been received by the transferee servicer as of the date such documents and information were provided to the transferor servicer.

APPENDIX MS—MORTGAGE SERVICING MODEL FORMS AND CLAUSES

1. *In general.* This appendix contains model forms and clauses for mortgage servicing disclosures required by §§1024.33, 37, and 39. Each of the model forms is designated for uses in a particular set of circumstances as indicated by the title of that model form or clause. Although use of the model forms and clauses is not required, servicers using them appropriately will be in compliance with disclosure requirements of §§1024.33, 37, and 39. To use the forms appropriately, information required by regulation must be set forth in the disclosures.

2. *Permissible changes.* Servicers may make certain changes to the format or content of the forms and clauses and may delete any disclosures that are inapplicable without losing the protection from liability so long as those changes do not affect the substance, clarity, or meaningful sequence of the forms and clauses. Servicers making revisions to that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

i. Use of ''borrower'' and ''servicer'' instead of pronouns.

ii. Substitution of the words ''lender'' and ''servicer'' for each other.

iii. Addition of graphics or icons, such as the servicer's corporate logo.

APPENDIX MS–3—MODEL FORCE-PLACED INSURANCE NOTICE FORMS

1. Where the model forms MS–3(A), MS–3(B), MS–3(C), and MS–3(D) use the term ''hazard insurance,'' the servicer may substitute ''hazard insurance'' with ''homeowners' insurance'' or ''property insurance.''

APPENDIX MS–4—MODEL CLAUSES FOR THE WRITTEN EARLY INTERVENTION NOTICE

1. *Model MS–4(A).* These model clauses illustrate how a servicer may provide its contact information, how a servicer may request that the borrower contact the servicer, and how the servicer may inform the borrower how to obtain additional information about loss mitigation options, as required by §1024.39(b)(2)(i), (ii), and (iv).

2. *Model MS–4(B).* These model clauses illustrate how the servicer may inform the borrower of loss mitigation options that may be available, as required by §1024.39(b)(2)(iii), if applicable. A servicer may include clauses describing particular loss mitigation options to the extent such options are available. Model MS–4(B) does not contain sample clauses for all loss mitigation options that may be available. The language in the model clauses contained in square brackets is optional; a servicer may comply with the disclosure requirements of §1024.39(b)(2)(iii) by using language substantially similar to the language in the model clauses, providing additional detail about the options, or by adding or substituting applicable loss mitigation options for options not represented in these model clauses, provided the information disclosed is accurate and clear and conspicuous.

3. *Model MS–4(C).* These model clauses illustrate how a servicer may provide contact information for housing counselors, as required by §1024.39(b)(2)(v). A servicer may, at

its option, provide the Web site and telephone number for either the Bureau's or the Department of Housing and Urban Development's housing counselors list, as provided by paragraphs §1024.39(b)(2)(v).

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PART 1025 [RESERVED]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
List of CFR Sections Affected

Table of CFR Titles and Chapters

(Revised as of January 1, 2016)

Title 1—General Provisions

I Administrative Committee of the Federal Register (Parts 1—49)
II Office of the Federal Register (Parts 50—299)
III Administrative Conference of the United States (Parts 300—399)
IV Miscellaneous Agencies (Parts 400—500)

Title 2—Grants and Agreements

SUBTITLE A—OFFICE OF MANAGEMENT AND BUDGET GUIDANCE FOR GRANTS AND AGREEMENTS
I Office of Management and Budget Governmentwide Guidance for Grants and Agreements (Parts 2—199)
II Office of Management and Budget Guidance (Parts 200—299)
SUBTITLE B—FEDERAL AGENCY REGULATIONS FOR GRANTS AND AGREEMENTS
III Department of Health and Human Services (Parts 300—399)
IV Department of Agriculture (Parts 400—499)
VI Department of State (Parts 600—699)
VII Agency for International Development (Parts 700—799)
VIII Department of Veterans Affairs (Parts 800—899)
IX Department of Energy (Parts 900—999)
X Department of the Treasury (Parts 1000—1099)
XI Department of Defense (Parts 1100—1199)
XII Department of Transportation (Parts 1200—1299)
XIII Department of Commerce (Parts 1300—1399)
XIV Department of the Interior (Parts 1400—1499)
XV Environmental Protection Agency (Parts 1500—1599)
XVIII National Aeronautics and Space Administration (Parts 1800—1899)
XX United States Nuclear Regulatory Commission (Parts 2000—2099)
XXII Corporation for National and Community Service (Parts 2200—2299)
XXIII Social Security Administration (Parts 2300—2399)
XXIV Housing and Urban Development (Parts 2400—2499)
XXV National Science Foundation (Parts 2500—2599)
XXVI National Archives and Records Administration (Parts 2600—2699)
XXVII Small Business Administration (Parts 2700—2799)

Title 2—Grants and Agreements—Continued

Chap.

XXVIII Department of Justice (Parts 2800—2899)
XXIX Department of Labor (Parts 2900—2999)
XXX Department of Homeland Security (Parts 3000—3099)
XXXI Institute of Museum and Library Services (Parts 3100—3199)
XXXII National Endowment for the Arts (Parts 3200—3299)
XXXIII National Endowment for the Humanities (Parts 3300—3399)
XXXIV Department of Education (Parts 3400—3499)
XXXV Export-Import Bank of the United States (Parts 3500—3599)
XXXVI Office of National Drug Control Policy, Executive Office of the President (Parts 3600—3699)
XXXVII Peace Corps (Parts 3700—3799)
LVIII Election Assistance Commission (Parts 5800—5899)
LIX Gulf Coast Ecosystem Restoration Council (Parts 5900—5999)

Title 3—The President

I Executive Office of the President (Parts 100—199)

Title 4—Accounts

I Government Accountability Office (Parts 1—199)

Title 5—Administrative Personnel

I Office of Personnel Management (Parts 1—1199)
II Merit Systems Protection Board (Parts 1200—1299)
III Office of Management and Budget (Parts 1300—1399)
IV Office of Personnel Management and Office of the Director of National Intelligence (Parts 1400—1499)
V The International Organizations Employees Loyalty Board (Parts 1500—1599)
VI Federal Retirement Thrift Investment Board (Parts 1600—1699)
VIII Office of Special Counsel (Parts 1800—1899)
IX Appalachian Regional Commission (Parts 1900—1999)
XI Armed Forces Retirement Home (Parts 2100—2199)
XIV Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)
XVI Office of Government Ethics (Parts 2600—2699)
XXI Department of the Treasury (Parts 3100—3199)
XXII Federal Deposit Insurance Corporation (Parts 3200—3299)
XXIII Department of Energy (Parts 3300—3399)
XXIV Federal Energy Regulatory Commission (Parts 3400—3499)
XXV Department of the Interior (Parts 3500—3599)
XXVI Department of Defense (Parts 3600—3699)
XXVIII Department of Justice (Parts 3800—3899)

Title 5—Administrative Personnel—Continued

Chap.	
XXIX	Federal Communications Commission (Parts 3900—3999)
XXX	Farm Credit System Insurance Corporation (Parts 4000—4099)
XXXI	Farm Credit Administration (Parts 4100—4199)
XXXIII	Overseas Private Investment Corporation (Parts 4300—4399)
XXXIV	Securities and Exchange Commission (Parts 4400—4499)
XXXV	Office of Personnel Management (Parts 4500—4599)
XXXVII	Federal Election Commission (Parts 4700—4799)
XL	Interstate Commerce Commission (Parts 5000—5099)
XLI	Commodity Futures Trading Commission (Parts 5100—5199)
XLII	Department of Labor (Parts 5200—5299)
XLIII	National Science Foundation (Parts 5300—5399)
XLV	Department of Health and Human Services (Parts 5500—5599)
XLVI	Postal Rate Commission (Parts 5600—5699)
XLVII	Federal Trade Commission (Parts 5700—5799)
XLVIII	Nuclear Regulatory Commission (Parts 5800—5899)
XLIX	Federal Labor Relations Authority (Parts 5900—5999)
L	Department of Transportation (Parts 6000—6099)
LII	Export-Import Bank of the United States (Parts 6200—6299)
LIII	Department of Education (Parts 6300—6399)
LIV	Environmental Protection Agency (Parts 6400—6499)
LV	National Endowment for the Arts (Parts 6500—6599)
LVI	National Endowment for the Humanities (Parts 6600—6699)
LVII	General Services Administration (Parts 6700—6799)
LVIII	Board of Governors of the Federal Reserve System (Parts 6800—6899)
LIX	National Aeronautics and Space Administration (Parts 6900—6999)
LX	United States Postal Service (Parts 7000—7099)
LXI	National Labor Relations Board (Parts 7100—7199)
LXII	Equal Employment Opportunity Commission (Parts 7200—7299)
LXIII	Inter-American Foundation (Parts 7300—7399)
LXIV	Merit Systems Protection Board (Parts 7400—7499)
LXV	Department of Housing and Urban Development (Parts 7500—7599)
LXVI	National Archives and Records Administration (Parts 7600—7699)
LXVII	Institute of Museum and Library Services (Parts 7700—7799)
LXVIII	Commission on Civil Rights (Parts 7800—7899)
LXIX	Tennessee Valley Authority (Parts 7900—7999)
LXX	Court Services and Offender Supervision Agency for the District of Columbia (Parts 8000—8099)
LXXI	Consumer Product Safety Commission (Parts 8100—8199)
LXXIII	Department of Agriculture (Parts 8300—8399)
LXXIV	Federal Mine Safety and Health Review Commission (Parts 8400—8499)
LXXVI	Federal Retirement Thrift Investment Board (Parts 8600—8699)

Title 5—Administrative Personnel—Continued

Chap.

LXXVII Office of Management and Budget (Parts 8700—8799)

LXXX Federal Housing Finance Agency (Parts 9000—9099)

LXXXIII Special Inspector General for Afghanistan Reconstruction (Parts 9300—9399)

LXXXIV Bureau of Consumer Financial Protection (Parts 9400—9499)

LXXXVI National Credit Union Administration (Parts 9600—9699)

XCVII Department of Homeland Security Human Resources Management System (Department of Homeland Security—Office of Personnel Management) (Parts 9700—9799)

XCVII Council of the Inspectors General on Integrity and Efficiency (Parts 9800—9899)

XCIX Military Compensation and Retirement Modernization Commission (Parts 9900—9999)

C National Council on Disability (Partys 10000—10049)

Title 6—Domestic Security

I Department of Homeland Security, Office of the Secretary (Parts 1—199)

X Privacy and Civil Liberties Oversight Board (Parts 1000—1099)

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE (PARTS 0—26)

SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE

I Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

II Food and Nutrition Service, Department of Agriculture (Parts 210—299)

III Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

IV Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

V Agricultural Research Service, Department of Agriculture (Parts 500—599)

VI Natural Resources Conservation Service, Department of Agriculture (Parts 600—699)

VII Farm Service Agency, Department of Agriculture (Parts 700—799)

VIII Grain Inspection, Packers and Stockyards Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)

IX Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

X Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

Title 7—Agriculture—Continued

Chap.

XI Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

XIV Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

XV Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)

XVI Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)

XVII Rural Utilities Service, Department of Agriculture (Parts 1700—1799)

XVIII Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)

XX Local Television Loan Guarantee Board (Parts 2200—2299)

XXV Office of Advocacy and Outreach, Department of Agriculture (Parts 2500—2599)

XXVI Office of Inspector General, Department of Agriculture (Parts 2600—2699)

XXVII Office of Information Resources Management, Department of Agriculture (Parts 2700—2799)

XXVIII Office of Operations, Department of Agriculture (Parts 2800—2899)

XXIX Office of Energy Policy and New Uses, Department of Agriculture (Parts 2900—2999)

XXX Office of the Chief Financial Officer, Department of Agriculture (Parts 3000—3099)

XXXI Office of Environmental Quality, Department of Agriculture (Parts 3100—3199)

XXXII Office of Procurement and Property Management, Department of Agriculture (Parts 3200—3299)

XXXIII Office of Transportation, Department of Agriculture (Parts 3300—3399)

XXXIV National Institute of Food and Agriculture (Parts 3400—3499)

XXXV Rural Housing Service, Department of Agriculture (Parts 3500—3599)

XXXVI National Agricultural Statistics Service, Department of Agriculture (Parts 3600—3699)

XXXVII Economic Research Service, Department of Agriculture (Parts 3700—3799)

XXXVIII World Agricultural Outlook Board, Department of Agriculture (Parts 3800—3899)

XLI [Reserved]

XLII Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture (Parts 4200—4299)

Title 8—Aliens and Nationality

I Department of Homeland Security (Immigration and Naturalization) (Parts 1—499)

Title 8—Aliens and Nationality—Continued

Chap.

V Executive Office for Immigration Review, Department of Justice (Parts 1000—1399)

Title 9—Animals and Animal Products

I Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

II Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs), Department of Agriculture (Parts 200—299)

III Food Safety and Inspection Service, Department of Agriculture (Parts 300—599)

Title 10—Energy

I Nuclear Regulatory Commission (Parts 0—199)

II Department of Energy (Parts 200—699)

III Department of Energy (Parts 700—999)

X Department of Energy (General Provisions) (Parts 1000—1099)

XIII Nuclear Waste Technical Review Board (Parts 1300—1399)

XVII Defense Nuclear Facilities Safety Board (Parts 1700—1799)

XVIII Northeast Interstate Low-Level Radioactive Waste Commission (Parts 1800—1899)

Title 11—Federal Elections

I Federal Election Commission (Parts 1—9099)

II Election Assistance Commission (Parts 9400—9499)

Title 12—Banks and Banking

I Comptroller of the Currency, Department of the Treasury (Parts 1—199)

II Federal Reserve System (Parts 200—299)

III Federal Deposit Insurance Corporation (Parts 300—399)

IV Export-Import Bank of the United States (Parts 400—499)

V Office of Thrift Supervision, Department of the Treasury (Parts 500—599)

VI Farm Credit Administration (Parts 600—699)

VII National Credit Union Administration (Parts 700—799)

VIII Federal Financing Bank (Parts 800—899)

IX Federal Housing Finance Board (Parts 900—999)

X Bureau of Consumer Financial Protection (Parts 1000—1099)

XI Federal Financial Institutions Examination Council (Parts 1100—1199)

XII Federal Housing Finance Agency (Parts 1200—1299)

XIII Financial Stability Oversight Council (Parts 1300—1399)

XIV Farm Credit System Insurance Corporation (Parts 1400—1499)

Title 12—Banks and Banking—Continued

Chap.

XV Department of the Treasury (Parts 1500—1599)

XVI Office of Financial Research (Parts 1600—1699)

XVII Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development (Parts 1700—1799)

XVIII Community Development Financial Institutions Fund, Department of the Treasury (Parts 1800—1899)

Title 13—Business Credit and Assistance

I Small Business Administration (Parts 1—199)

III Economic Development Administration, Department of Commerce (Parts 300—399)

IV Emergency Steel Guarantee Loan Board (Parts 400—499)

V Emergency Oil and Gas Guaranteed Loan Board (Parts 500—599)

Title 14—Aeronautics and Space

I Federal Aviation Administration, Department of Transportation (Parts 1—199)

II Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)

III Commercial Space Transportation, Federal Aviation Administration, Department of Transportation (Parts 400—1199)

V National Aeronautics and Space Administration (Parts 1200—1299)

VI Air Transportation System Stabilization (Parts 1300—1399)

Title 15—Commerce and Foreign Trade

SUBTITLE A—OFFICE OF THE SECRETARY OF COMMERCE (PARTS 0—29)

SUBTITLE B—REGULATIONS RELATING TO COMMERCE AND FOREIGN TRADE

I Bureau of the Census, Department of Commerce (Parts 30—199)

II National Institute of Standards and Technology, Department of Commerce (Parts 200—299)

III International Trade Administration, Department of Commerce (Parts 300—399)

IV Foreign-Trade Zones Board, Department of Commerce (Parts 400—499)

VII Bureau of Industry and Security, Department of Commerce (Parts 700—799)

VIII Bureau of Economic Analysis, Department of Commerce (Parts 800—899)

IX National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)

XI Technology Administration, Department of Commerce (Parts 1100—1199)

XIII East-West Foreign Trade Board (Parts 1300—1399)

Title 15—Commerce and Foreign Trade—Continued

Chap.

XIV Minority Business Development Agency (Parts 1400—1499)

SUBTITLE C—REGULATIONS RELATING TO FOREIGN TRADE AGREEMENTS

XX Office of the United States Trade Representative (Parts 2000—2099)

SUBTITLE D—REGULATIONS RELATING TO TELECOMMUNICATIONS AND INFORMATION

XXIII National Telecommunications and Information Administration, Department of Commerce (Parts 2300—2399)

Title 16—Commercial Practices

I Federal Trade Commission (Parts 0—999)

II Consumer Product Safety Commission (Parts 1000—1799)

Title 17—Commodity and Securities Exchanges

I Commodity Futures Trading Commission (Parts 1—199)

II Securities and Exchange Commission (Parts 200—399)

IV Department of the Treasury (Parts 400—499)

Title 18—Conservation of Power and Water Resources

I Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

III Delaware River Basin Commission (Parts 400—499)

VI Water Resources Council (Parts 700—799)

VIII Susquehanna River Basin Commission (Parts 800—899)

XIII Tennessee Valley Authority (Parts 1300—1399)

Title 19—Customs Duties

I U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury (Parts 0—199)

II United States International Trade Commission (Parts 200—299)

III International Trade Administration, Department of Commerce (Parts 300—399)

IV U.S. Immigration and Customs Enforcement, Department of Homeland Security (Parts 400—599)

Title 20—Employees' Benefits

I Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)

II Railroad Retirement Board (Parts 200—399)

III Social Security Administration (Parts 400—499)

IV Employees' Compensation Appeals Board, Department of Labor (Parts 500—599)

Title 20—Employees' Benefits—Continued

Chap.

V Employment and Training Administration, Department of Labor (Parts 600—699)

VI Office of Workers' Compensation Programs, Department of Labor (Parts 700—799)

VII Benefits Review Board, Department of Labor (Parts 800—899)

VIII Joint Board for the Enrollment of Actuaries (Parts 900—999)

IX Office of the Assistant Secretary for Veterans' Employment and Training Service, Department of Labor (Parts 1000—1099)

Title 21—Food and Drugs

I Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

II Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

III Office of National Drug Control Policy (Parts 1400—1499)

Title 22—Foreign Relations

I Department of State (Parts 1—199)

II Agency for International Development (Parts 200—299)

III Peace Corps (Parts 300—399)

IV International Joint Commission, United States and Canada (Parts 400—499)

V Broadcasting Board of Governors (Parts 500—599)

VII Overseas Private Investment Corporation (Parts 700—799)

IX Foreign Service Grievance Board (Parts 900—999)

X Inter-American Foundation (Parts 1000—1099)

XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)

XII United States International Development Cooperation Agency (Parts 1200—1299)

XIII Millennium Challenge Corporation (Parts 1300—1399)

XIV Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499)

XV African Development Foundation (Parts 1500—1599)

XVI Japan-United States Friendship Commission (Parts 1600—1699)

XVII United States Institute of Peace (Parts 1700—1799)

Title 23—Highways

I Federal Highway Administration, Department of Transportation (Parts 1—999)

II National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)

Title 23—Highways—Continued

Chap.

III National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

Title 24—Housing and Urban Development

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (PARTS 0—99)

SUBTITLE B—REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT

I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

II Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)

IV Office of Housing and Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development (Parts 400—499)

V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600—699) [Reserved]

VII Office of the Secretary, Department of Housing and Urban Development (Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

VIII Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs, Section 202 Direct Loan Program, Section 202 Supportive Housing for the Elderly Program and Section 811 Supportive Housing for Persons With Disabilities Program) (Parts 800—899)

IX Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—1699)

X Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700—1799)

XII Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)

XV Emergency Mortgage Insurance and Loan Programs, Department of Housing and Urban Development (Parts 2700—2799) [Reserved]

XX Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)

XXIV Board of Directors of the HOPE for Homeowners Program (Parts 4000—4099) [Reserved]

XXV Neighborhood Reinvestment Corporation (Parts 4100—4199)

Title 25—Indians

Chap.

I Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

II Indian Arts and Crafts Board, Department of the Interior (Parts 300—399)

III National Indian Gaming Commission, Department of the Interior (Parts 500—599)

IV Office of Navajo and Hopi Indian Relocation (Parts 700—799)

V Bureau of Indian Affairs, Department of the Interior, and Indian Health Service, Department of Health and Human Services (Part 900)

VI Office of the Assistant Secretary-Indian Affairs, Department of the Interior (Parts 1000—1199)

VII Office of the Special Trustee for American Indians, Department of the Interior (Parts 1200—1299)

Title 26—Internal Revenue

I Internal Revenue Service, Department of the Treasury (Parts 1—End)

Title 27—Alcohol, Tobacco Products and Firearms

I Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury (Parts 1—399)

II Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice (Parts 400—699)

Title 28—Judicial Administration

I Department of Justice (Parts 0—299)

III Federal Prison Industries, Inc., Department of Justice (Parts 300—399)

V Bureau of Prisons, Department of Justice (Parts 500—599)

VI Offices of Independent Counsel, Department of Justice (Parts 600—699)

VII Office of Independent Counsel (Parts 700—799)

VIII Court Services and Offender Supervision Agency for the District of Columbia (Parts 800—899)

IX National Crime Prevention and Privacy Compact Council (Parts 900—999)

XI Department of Justice and Department of State (Parts 1100—1199)

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR (PARTS 0—99)

SUBTITLE B—REGULATIONS RELATING TO LABOR

I National Labor Relations Board (Parts 100—199)

Title 29—Labor—Continued

Chap.

II Office of Labor-Management Standards, Department of Labor (Parts 200—299)

III National Railroad Adjustment Board (Parts 300—399)

IV Office of Labor-Management Standards, Department of Labor (Parts 400—499)

V Wage and Hour Division, Department of Labor (Parts 500—899)

IX Construction Industry Collective Bargaining Commission (Parts 900—999)

X National Mediation Board (Parts 1200—1299)

XII Federal Mediation and Conciliation Service (Parts 1400—1499)

XIV Equal Employment Opportunity Commission (Parts 1600—1699)

XVII Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

XX Occupational Safety and Health Review Commission (Parts 2200—2499)

XXV Employee Benefits Security Administration, Department of Labor (Parts 2500—2599)

XXVII Federal Mine Safety and Health Review Commission (Parts 2700—2799)

XL Pension Benefit Guaranty Corporation (Parts 4000—4999)

Title 30—Mineral Resources

I Mine Safety and Health Administration, Department of Labor (Parts 1—199)

II Bureau of Safety and Environmental Enforcement, Department of the Interior (Parts 200—299)

IV Geological Survey, Department of the Interior (Parts 400—499)

V Bureau of Ocean Energy Management, Department of the Interior (Parts 500—599)

VII Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

XII Office of Natural Resources Revenue, Department of the Interior (Parts 1200—1299)

Title 31—Money and Finance: Treasury

SUBTITLE A—OFFICE OF THE SECRETARY OF THE TREASURY (PARTS 0—50)

SUBTITLE B—REGULATIONS RELATING TO MONEY AND FINANCE

I Monetary Offices, Department of the Treasury (Parts 51—199)

II Fiscal Service, Department of the Treasury (Parts 200—399)

IV Secret Service, Department of the Treasury (Parts 400—499)

V Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600—699)

VII Federal Law Enforcement Training Center, Department of the Treasury (Parts 700—799)

Title 31—Money and Finance: Treasury—Continued

Chap.

VIII Office of International Investment, Department of the Treasury (Parts 800—899)

IX Federal Claims Collection Standards (Department of the Treasury—Department of Justice) (Parts 900—999)

X Financial Crimes Enforcement Network, Department of the Treasury (Parts 1000—1099)

Title 32—National Defense

SUBTITLE A—DEPARTMENT OF DEFENSE

I Office of the Secretary of Defense (Parts 1—399)

V Department of the Army (Parts 400—699)

VI Department of the Navy (Parts 700—799)

VII Department of the Air Force (Parts 800—1099)

SUBTITLE B—OTHER REGULATIONS RELATING TO NATIONAL DEFENSE

XII Defense Logistics Agency (Parts 1200—1299)

XVI Selective Service System (Parts 1600—1699)

XVII Office of the Director of National Intelligence (Parts 1700—1799)

XVIII National Counterintelligence Center (Parts 1800—1899)

XIX Central Intelligence Agency (Parts 1900—1999)

XX Information Security Oversight Office, National Archives and Records Administration (Parts 2000—2099)

XXI National Security Council (Parts 2100—2199)

XXIV Office of Science and Technology Policy (Parts 2400—2499)

XXVII Office for Micronesian Status Negotiations (Parts 2700—2799)

XXVIII Office of the Vice President of the United States (Parts 2800—2899)

Title 33—Navigation and Navigable Waters

I Coast Guard, Department of Homeland Security (Parts 1—199)

II Corps of Engineers, Department of the Army (Parts 200—399)

IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

Title 34—Education

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF EDUCATION (PARTS 1—99)

SUBTITLE B—REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION

I Office for Civil Rights, Department of Education (Parts 100—199)

II Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

III Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

Title 34—Education—Continued

Chap.

IV Office of Career, Technical and Adult Education, Department of Education (Parts 400—499)

V Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599) [Reserved]

VI Office of Postsecondary Education, Department of Education (Parts 600—699)

VII Office of Educational Research and Improvement, Department of Education (Parts 700—799) [Reserved]

SUBTITLE C—REGULATIONS RELATING TO EDUCATION

XI [Reserved]

XII National Council on Disability (Parts 1200—1299)

Title 35 [Reserved]

Title 36—Parks, Forests, and Public Property

I National Park Service, Department of the Interior (Parts 1—199)

II Forest Service, Department of Agriculture (Parts 200—299)

III Corps of Engineers, Department of the Army (Parts 300—399)

IV American Battle Monuments Commission (Parts 400—499)

V Smithsonian Institution (Parts 500—599)

VI [Reserved]

VII Library of Congress (Parts 700—799)

VIII Advisory Council on Historic Preservation (Parts 800—899)

IX Pennsylvania Avenue Development Corporation (Parts 900—999)

X Presidio Trust (Parts 1000—1099)

XI Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)

XII National Archives and Records Administration (Parts 1200—1299)

XV Oklahoma City National Memorial Trust (Parts 1500—1599)

XVI Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation (Parts 1600—1699)

Title 37—Patents, Trademarks, and Copyrights

I United States Patent and Trademark Office, Department of Commerce (Parts 1—199)

II U.S. Copyright Office, Library of Congress (Parts 200—299)

III Copyright Royalty Board, Library of Congress (Parts 300—399)

IV Assistant Secretary for Technology Policy, Department of Commerce (Parts 400—599)

Title 38—Pensions, Bonuses, and Veterans' Relief

I Department of Veterans Affairs (Parts 0—199)

II Armed Forces Retirement Home (Parts 200—299)

Title 39—Postal Service

Chap.

I United States Postal Service (Parts 1—999)

III Postal Regulatory Commission (Parts 3000—3099)

Title 40—Protection of Environment

I Environmental Protection Agency (Parts 1—1099)

IV Environmental Protection Agency and Department of Justice (Parts 1400—1499)

V Council on Environmental Quality (Parts 1500—1599)

VI Chemical Safety and Hazard Investigation Board (Parts 1600—1699)

VII Environmental Protection Agency and Department of Defense; Uniform National Discharge Standards for Vessels of the Armed Forces (Parts 1700—1799)

VIII Gulf Coast Ecosystem Restoration Council (Parts 1800—1899)

Title 41—Public Contracts and Property Management

SUBTITLE A—FEDERAL PROCUREMENT REGULATIONS SYSTEM [NOTE]

SUBTITLE B—OTHER PROVISIONS RELATING TO PUBLIC CONTRACTS

50 Public Contracts, Department of Labor (Parts 50–1—50–999)

51 Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51–1—51–99)

60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60–1—60–999)

61 Office of the Assistant Secretary for Veterans' Employment and Training Service, Department of Labor (Parts 61–1—61–999)

62—100 [Reserved]

SUBTITLE C—FEDERAL PROPERTY MANAGEMENT REGULATIONS SYSTEM

101 Federal Property Management Regulations (Parts 101–1—101–99)

102 Federal Management Regulation (Parts 102–1—102–299)

103—104 [Reserved]

105 General Services Administration (Parts 105–1—105–999)

109 Department of Energy Property Management Regulations (Parts 109–1—109–99)

114 Department of the Interior (Parts 114–1—114–99)

115 Environmental Protection Agency (Parts 115–1—115–99)

128 Department of Justice (Parts 128–1—128–99)

129—200 [Reserved]

SUBTITLE D—OTHER PROVISIONS RELATING TO PROPERTY MANAGEMENT [RESERVED]

SUBTITLE E—FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATIONS SYSTEM [RESERVED]

SUBTITLE F—FEDERAL TRAVEL REGULATION SYSTEM

300 General (Parts 300–1—300–99)

301 Temporary Duty (TDY) Travel Allowances (Parts 301–1—301–99)

Title 41—Public Contracts and Property Management—Continued

Chap.

302 Relocation Allowances (Parts 302–1—302–99)

303 Payment of Expenses Connected with the Death of Certain Employees (Part 303–1—303–99)

304 Payment of Travel Expenses from a Non-Federal Source (Parts 304–1—304–99)

Title 42—Public Health

I Public Health Service, Department of Health and Human Services (Parts 1—199)

IV Centers for Medicare & Medicaid Services, Department of Health and Human Services (Parts 400—599)

V Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

Title 43—Public Lands: Interior

SUBTITLE A—OFFICE OF THE SECRETARY OF THE INTERIOR (PARTS 1—199)

SUBTITLE B—REGULATIONS RELATING TO PUBLIC LANDS

I Bureau of Reclamation, Department of the Interior (Parts 400—999)

II Bureau of Land Management, Department of the Interior (Parts 1000—9999)

III Utah Reclamation Mitigation and Conservation Commission (Parts 10000—10099)

Title 44—Emergency Management and Assistance

I Federal Emergency Management Agency, Department of Homeland Security (Parts 0—399)

IV Department of Commerce and Department of Transportation (Parts 400—499)

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH AND HUMAN SERVICES (PARTS 1—199)

SUBTITLE B—REGULATIONS RELATING TO PUBLIC WELFARE

II Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

III Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (Parts 300—399)

IV Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services (Parts 400—499)

V Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500—599)

Title 45—Public Welfare—Continued

Chap.

VI National Science Foundation (Parts 600—699)

VII Commission on Civil Rights (Parts 700—799)

VIII Office of Personnel Management (Parts 800—899)

X Office of Community Services, Administration for Children and Families, Department of Health and Human Services (Parts 1000—1099)

XI National Foundation on the Arts and the Humanities (Parts 1100—1199)

XII Corporation for National and Community Service (Parts 1200—1299)

XIII Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

XVI Legal Services Corporation (Parts 1600—1699)

XVII National Commission on Libraries and Information Science (Parts 1700—1799)

XVIII Harry S. Truman Scholarship Foundation (Parts 1800—1899)

XXI Commission on Fine Arts (Parts 2100—2199)

XXIII Arctic Research Commission (Part 2301)

XXIV James Madison Memorial Fellowship Foundation (Parts 2400—2499)

XXV Corporation for National and Community Service (Parts 2500—2599)

Title 46—Shipping

I Coast Guard, Department of Homeland Security (Parts 1—199)

II Maritime Administration, Department of Transportation (Parts 200—399)

III Coast Guard (Great Lakes Pilotage), Department of Homeland Security (Parts 400—499)

IV Federal Maritime Commission (Parts 500—599)

Title 47—Telecommunication

I Federal Communications Commission (Parts 0—199)

II Office of Science and Technology Policy and National Security Council (Parts 200—299)

III National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)

IV National Telecommunications and Information Administration, Department of Commerce, and National Highway Traffic Safety Administration, Department of Transportation (Parts 400—499)

Title 48—Federal Acquisition Regulations System

1 Federal Acquisition Regulation (Parts 1—99)

2 Defense Acquisition Regulations System, Department of Defense (Parts 200—299)

Title 48—Federal Acquisition Regulations System—Continued

Chap.

3 Health and Human Services (Parts 300—399)

4 Department of Agriculture (Parts 400—499)

5 General Services Administration (Parts 500—599)

6 Department of State (Parts 600—699)

7 Agency for International Development (Parts 700—799)

8 Department of Veterans Affairs (Parts 800—899)

9 Department of Energy (Parts 900—999)

10 Department of the Treasury (Parts 1000—1099)

12 Department of Transportation (Parts 1200—1299)

13 Department of Commerce (Parts 1300—1399)

14 Department of the Interior (Parts 1400—1499)

15 Environmental Protection Agency (Parts 1500—1599)

16 Office of Personnel Management, Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)

17 Office of Personnel Management (Parts 1700—1799)

18 National Aeronautics and Space Administration (Parts 1800—1899)

19 Broadcasting Board of Governors (Parts 1900—1999)

20 Nuclear Regulatory Commission (Parts 2000—2099)

21 Office of Personnel Management, Federal Employees Group Life Insurance Federal Acquisition Regulation (Parts 2100—2199)

23 Social Security Administration (Parts 2300—2399)

24 Department of Housing and Urban Development (Parts 2400—2499)

25 National Science Foundation (Parts 2500—2599)

28 Department of Justice (Parts 2800—2899)

29 Department of Labor (Parts 2900—2999)

30 Department of Homeland Security, Homeland Security Acquisition Regulation (HSAR) (Parts 3000—3099)

34 Department of Education Acquisition Regulation (Parts 3400—3499)

51 Department of the Army Acquisition Regulations (Parts 5100—5199)

52 Department of the Navy Acquisition Regulations (Parts 5200—5299)

53 Department of the Air Force Federal Acquisition Regulation Supplement (Parts 5300—5399) [Reserved]

54 Defense Logistics Agency, Department of Defense (Parts 5400—5499)

57 African Development Foundation (Parts 5700—5799)

61 Civilian Board of Contract Appeals, General Services Administration (Parts 6100—6199)

63 Department of Transportation Board of Contract Appeals (Parts 6300—6399)

99 Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

Title 49—Transportation

Chap.

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION (PARTS 1—99)

SUBTITLE B—OTHER REGULATIONS RELATING TO TRANSPORTATION

I Pipeline and Hazardous Materials Safety Administration, Department of Transportation (Parts 100—199)

II Federal Railroad Administration, Department of Transportation (Parts 200—299)

III Federal Motor Carrier Safety Administration, Department of Transportation (Parts 300—399)

IV Coast Guard, Department of Homeland Security (Parts 400—499)

V National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

VI Federal Transit Administration, Department of Transportation (Parts 600—699)

VII National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)

VIII National Transportation Safety Board (Parts 800—999)

X Surface Transportation Board, Department of Transportation (Parts 1000—1399)

XI Research and Innovative Technology Administration, Department of Transportation (Parts 1400—1499) [Reserved]

XII Transportation Security Administration, Department of Homeland Security (Parts 1500—1699)

Title 50—Wildlife and Fisheries

I United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

III International Fishing and Related Activities (Parts 300—399)

IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400—499)

V Marine Mammal Commission (Parts 500—599)

VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

Alphabetical List of Agencies Appearing in the CFR

(Revised as of January 1, 2016)

Agency	CFR Title, Subtitle or Chapter
Administrative Committee of the Federal Register	1, I
Administrative Conference of the United States	1, III
Advisory Council on Historic Preservation	36, VIII
Advocacy and Outreach, Office of	7, XXV
Afghanistan Reconstruction, Special Inspector General for	5, LXXXIII
African Development Foundation	22, XV
Federal Acquisition Regulation	48, 57
Agency for International Development	2, VII; 22, II
Federal Acquisition Regulation	48, 7
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agriculture Department	2, IV; 5, LXXIII
Advocacy and Outreach, Office of	7, XXV
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Animal and Plant Health Inspection Service	7, III; 9, I
Chief Financial Officer, Office of	7, XXX
Commodity Credit Corporation	7, XIV
Economic Research Service	7, XXXVII
Energy Policy and New Uses, Office of	2, IX; 7, XXIX
Environmental Quality, Office of	7, XXXI
Farm Service Agency	7, VII, XVIII
Federal Acquisition Regulation	48, 4
Federal Crop Insurance Corporation	7, IV
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Forest Service	36, II
Grain Inspection, Packers and Stockyards Administration	7, VIII; 9, II
Information Resources Management, Office of	7, XXVII
Inspector General, Office of	7, XXVI
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
National Institute of Food and Agriculture	7, XXXIV
Natural Resources Conservation Service	7, VI
Operations, Office of	7, XXVIII
Procurement and Property Management, Office of	7, XXXII
Rural Business-Cooperative Service	7, XVIII, XLII
Rural Development Administration	7, XLII
Rural Housing Service	7, XVIII, XXXV
Rural Telephone Bank	7, XVI
Rural Utilities Service	7, XVII, XVIII, XLII
Secretary of Agriculture, Office of	7, Subtitle A
Transportation, Office of	7, XXXIII
World Agricultural Outlook Board	7, XXXVIII
Air Force Department	32, VII
Federal Acquisition Regulation Supplement	48, 53
Air Transportation Stabilization Board	14, VI
Alcohol and Tobacco Tax and Trade Bureau	27, I
Alcohol, Tobacco, Firearms, and Explosives, Bureau of	27, II
AMTRAK	49, VII
American Battle Monuments Commission	36, IV
American Indians, Office of the Special Trustee	25, VII

Agency	CFR Title, Subtitle or Chapter
Animal and Plant Health Inspection Service	7, III; 9, I
Appalachian Regional Commission	5, IX
Architectural and Transportation Barriers Compliance Board	36, XI
Arctic Research Commission	45, XXIII
Armed Forces Retirement Home	5, XI
Army Department	32, V
Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 51
Bilingual Education and Minority Languages Affairs, Office of	34, V
Blind or Severely Disabled, Committee for Purchase from People Who Are	41, 51
Broadcasting Board of Governors	22, V
Federal Acquisition Regulation	48, 19
Career, Technical and Adult Education, Office of	34, IV
Census Bureau	15, I
Centers for Medicare & Medicaid Services	42, IV
Central Intelligence Agency	32, XIX
Chemical Safety and Hazardous Investigation Board	40, VI
Chief Financial Officer, Office of	7, XXX
Child Support Enforcement, Office of	45, III
Children and Families, Administration for	45, II, III, IV, X
Civil Rights, Commission on	5, LXVIII; 45, VII
Civil Rights, Office for	34, I
Council of the Inspectors General on Integrity and Efficiency	5, XCVIII
Court Services and Offender Supervision Agency for the District of Columbia	5, LXX
Coast Guard	33, I; 46, I; 49, IV
Coast Guard (Great Lakes Pilotage)	46, III
Commerce Department	2, XIII; 44, IV; 50, VI
Census Bureau	15, I
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Emergency Management and Assistance	44, IV
Federal Acquisition Regulation	48, 13
Foreign-Trade Zones Board	15, IV
Industry and Security, Bureau of	15, VII
International Trade Administration	15, III; 19, III
National Institute of Standards and Technology	15, II
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Telecommunications and Information Administration	15, XXIII; 47, III, IV
National Weather Service	15, IX
Patent and Trademark Office, United States	37, I
Productivity, Technology and Innovation, Assistant Secretary for	37, IV
Secretary of Commerce, Office of	15, Subtitle A
Technology Administration	15, XI
Technology Policy, Assistant Secretary for	37, IV
Commercial Space Transportation	14, III
Commodity Credit Corporation	7, XIV
Commodity Futures Trading Commission	5, XLI; 17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services, Office of	45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Financial Protection Bureau	5, LXXXIV; 12, X
Consumer Product Safety Commission	5, LXXI; 16, II
Copyright Royalty Board	37, III
Corporation for National and Community Service	2, XXII; 45, XII, XXV
Cost Accounting Standards Board	48, 99
Council on Environmental Quality	40, V
Court Services and Offender Supervision Agency for the District of Columbia	5, LXX; 28, VIII
Customs and Border Protection	19, I
Defense Contract Audit Agency	32, I

Agency	CFR Title, Subtitle or Chapter
Defense Department	2, XI; 5, XXVI; 32, Subtitle A; 40, VII
Advanced Research Projects Agency	32, I
Air Force Department	32, VII
Army Department	32, V; 33, II; 36, III; 48, 51
Defense Acquisition Regulations System	48, 2
Defense Intelligence Agency	32, I
Defense Logistics Agency	32, I, XII; 48, 54
Engineers, Corps of	33, II; 36, III
National Imagery and Mapping Agency	32, I
Navy Department	32, VI; 48, 52
Secretary of Defense, Office of	2, XI; 32, I
Defense Contract Audit Agency	32, I
Defense Intelligence Agency	32, I
Defense Logistics Agency	32, XII; 48, 54
Defense Nuclear Facilities Safety Board	10, XVII
Delaware River Basin Commission	18, III
District of Columbia, Court Services and Offender Supervision Agency for the	5, LXX; 28, VIII
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Economic Research Service	7, XXXVII
Education, Department of	2, XXXIV; 5, LIII
Bilingual Education and Minority Languages Affairs, Office of	34, V
Career, Technical and Adult Education, Office of	34, IV
Civil Rights, Office for	34, I
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Federal Acquisition Regulation	48, 34
Postsecondary Education, Office of	34, VI
Secretary of Education, Office of	34, Subtitle A
Special Education and Rehabilitative Services, Office of	34, III
Career, Technical, and Adult Education, Office of	34, IV
Educational Research and Improvement, Office of	34, VII
Election Assistance Commission	2, LVIII; 11, II
Elementary and Secondary Education, Office of	34, II
Emergency Oil and Gas Guaranteed Loan Board	13, V
Emergency Steel Guarantee Loan Board	13, IV
Employee Benefits Security Administration	29, XXV
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Energy, Department of	2, IX; 5, XXIII; 10, II, III, X
Federal Acquisition Regulation	48, 9
Federal Energy Regulatory Commission	5, XXIV; 18, I
Property Management Regulations	41, 109
Energy, Office of	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Environmental Protection Agency	2, XV; 5, LIV; 40, I, IV, VII
Federal Acquisition Regulation	48, 15
Property Management Regulations	41, 115
Environmental Quality, Office of	7, XXXI
Equal Employment Opportunity Commission	5, LXII; 29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Environmental Quality, Council on	40, V
Management and Budget, Office of	2, Subtitle A; 5, III, LXXVII; 14, VI; 48, 99

Agency	CFR Title, Subtitle or Chapter
National Drug Control Policy, Office of	2, XXXVI; 21, III
National Security Council	32, XXI; 47, 2
Presidential Documents	3
Science and Technology Policy, Office of	32, XXIV; 47, II
Trade Representative, Office of the United States	15, XX
Export-Import Bank of the United States	2, XXXV; 5, LII; 12, IV
Family Assistance, Office of	45, II
Farm Credit Administration	5, XXXI; 12, VI
Farm Credit System Insurance Corporation	5, XXX; 12, XIV
Farm Service Agency	7, VII, XVIII
Federal Acquisition Regulation	48, 1
Federal Aviation Administration	14, I
Commercial Space Transportation	14, III
Federal Claims Collection Standards	31, IX
Federal Communications Commission	5, XXIX; 47, I
Federal Contract Compliance Programs, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	5, XXII; 12, III
Federal Election Commission	5, XXXVII; 11, I
Federal Emergency Management Agency	44, I
Federal Employees Group Life Insurance Federal Acquisition Regulation	48, 21
Federal Employees Health Benefits Acquisition Regulation	48, 16
Federal Energy Regulatory Commission	5, XXIV; 18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Highway Administration	23, I, II
Federal Home Loan Mortgage Corporation	1, IV
Federal Housing Enterprise Oversight Office	12, XVII
Federal Housing Finance Agency	5, LXXX; 12, XII
Federal Housing Finance Board	12, IX
Federal Labor Relations Authority	5, XIV, XLIX; 22, XIV
Federal Law Enforcement Training Center	31, VII
Federal Management Regulation	41, 102
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	5, LXXIV; 29, XXVII
Federal Motor Carrier Safety Administration	49, III
Federal Prison Industries, Inc.	28, III
Federal Procurement Policy Office	48, 99
Federal Property Management Regulations	41, 101
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II
Board of Governors	5, LVIII
Federal Retirement Thrift Investment Board	5, VI, LXXVI
Federal Service Impasses Panel	5, XIV
Federal Trade Commission	5, XLVII; 16, I
Federal Transit Administration	49, VI
Federal Travel Regulation System	41, Subtitle F
Financial Crimes Enforcement Network	31, X
Financial Research Office	12, XVI
Financial Stability Oversight Council	12, XIII
Fine Arts, Commission on	45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of the United States	45, V
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV

Agency	CFR Title, Subtitle or Chapter
Forest Service	36, II
General Services Administration	5, LVII; 41, 105
Contract Appeals, Board of	48, 61
Federal Acquisition Regulation	48, 5
Federal Management Regulation	41, 102
Federal Property Management Regulations	41, 101
Federal Travel Regulation System	41, Subtitle F
General	41, 300
Payment From a Non-Federal Source for Travel Expenses	41, 304
Payment of Expenses Connected With the Death of Certain Employees	41, 303
Relocation Allowances	41, 302
Temporary Duty (TDY) Travel Allowances	41, 301
Geological Survey	30, IV
Government Accountability Office	4, I
Government Ethics, Office of	5, XVI
Government National Mortgage Association	24, III
Grain Inspection, Packers and Stockyards Administration	7, VIII; 9, II
Gulf Coast Ecosystem Restoration Council	2, LIX; 40, VIII
Harry S. Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	2, III; 5, XLV; 45, Subtitle A,
Centers for Medicare & Medicaid Services	42, IV
Child Support Enforcement, Office of	45, III
Children and Families, Administration for	45, II, III, IV, X
Community Services, Office of	45, X
Family Assistance, Office of	45, II
Federal Acquisition Regulation	48, 3
Food and Drug Administration	21, I
Human Development Services, Office of	45, XIII
Indian Health Service	25, V
Inspector General (Health Care), Office of	42, V
Public Health Service	42, I
Refugee Resettlement, Office of	45, IV
Homeland Security, Department of	2, XXX; 6, I; 8, I
Coast Guard	33, I; 46, I; 49, IV
Coast Guard (Great Lakes Pilotage)	46, III
Customs and Border Protection	19, I
Federal Emergency Management Agency	44, I
Human Resources Management and Labor Relations Systems	5, XCVII
Immigration and Customs Enforcement Bureau	19, IV
Transportation Security Administration	49, XII
HOPE for Homeowners Program, Board of Directors of	24, XXIV
Housing and Urban Development, Department of	2, XXIV; 5, LXV; 24, Subtitle B
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Acquisition Regulation	48, 24
Federal Housing Enterprise Oversight, Office of	12, XVII
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Housing, Office of, and Multifamily Housing Assistance Restructuring, Office of	24, IV
Inspector General, Office of	24, XII
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Secretary, Office of	24, Subtitle A, VII
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Housing, Office of, and Multifamily Housing Assistance Restructuring, Office of	24, IV
Human Development Services, Office of	45, XIII
Immigration and Customs Enforcement Bureau	19, IV
Immigration Review, Executive Office for	8, V
Independent Counsel, Office of	28, VII

Agency	CFR Title, Subtitle or Chapter
Independent Counsel, Offices of	28, VI
Indian Affairs, Bureau of	25, I, V
Indian Affairs, Office of the Assistant Secretary	25, VI
Indian Arts and Crafts Board	25, II
Indian Health Service	25, V
Industry and Security, Bureau of	15, VII
Information Resources Management, Office of	7, XXVII
Information Security Oversight Office, National Archives and Records Administration	32, XX
Inspector General	
Agriculture Department	7, XXVI
Health and Human Services Department	42, V
Housing and Urban Development Department	24, XII, XV
Institute of Peace, United States	22, XVII
Inter-American Foundation	5, LXIII; 22, X
Interior Department	2, XIV
American Indians, Office of the Special Trustee	25, VII
Endangered Species Committee	50, IV
Federal Acquisition Regulation	48, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, IV
Indian Affairs, Bureau of	25, I, V
Indian Affairs, Office of the Assistant Secretary	25, VI
Indian Arts and Crafts Board	25, II
Land Management, Bureau of	43, II
National Indian Gaming Commission	25, III
National Park Service	36, I
Natural Resource Revenue, Office of	30, XII
Ocean Energy Management, Bureau of	30, V
Reclamation, Bureau of	43, I
Safety and Enforcement Bureau, Bureau of	30, II
Secretary of the Interior, Office of	2, XIV; 43, Subtitle A
Surface Mining Reclamation and Enforcement, Office of	30, VII
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico, United States Section	22, XI
International Development, United States Agency for	22, II
Federal Acquisition Regulation	48, 7
International Development Cooperation Agency, United States	22, XII
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	5, XL
Investment Security, Office of	31, VIII
James Madison Memorial Fellowship Foundation	45, XXIV
Japan–United States Friendship Commission	22, XVI
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	2, XXVIII; 5, XXVIII; 28, I, XI; 40, IV
Alcohol, Tobacco, Firearms, and Explosives, Bureau of	27, II
Drug Enforcement Administration	21, II
Federal Acquisition Regulation	48, 28
Federal Claims Collection Standards	31, IX
Federal Prison Industries, Inc.	28, III
Foreign Claims Settlement Commission of the United States	45, V
Immigration Review, Executive Office for	8, V
Independent Counsel, Offices of	28, VI
Prisons, Bureau of	28, V
Property Management Regulations	41, 128
Labor Department	2, XXIX; 5, XLII
Employee Benefits Security Administration	29, XXV
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V

Agency	CFR Title, Subtitle or Chapter
Employment Standards Administration	20, VI
Federal Acquisition Regulation	48, 29
Federal Contract Compliance Programs, Office of	41, 60
Federal Procurement Regulations System	41, 50
Labor-Management Standards, Office of	29, II, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Veterans' Employment and Training Service, Office of the Assistant Secretary for	41, 61; 20, IX
Wage and Hour Division	29, V
Workers' Compensation Programs, Office of	20, I, VII
Labor-Management Standards, Office of	29, II, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Royalty Board	37, III
U.S. Copyright Office	37, II
Local Television Loan Guarantee Board	7, XX
Management and Budget, Office of	5, III, LXXVII; 14, VI; 48, 99
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II, LXIV
Micronesian Status Negotiations, Office for	32, XXVII
Military Compensation and Retirement Modernization Commission	5, XCIX
Millennium Challenge Corporation	22, XIII
Mine Safety and Health Administration	30, I
Minority Business Development Agency	15, XIV
Miscellaneous Agencies	1, IV
Monetary Offices	31, I
Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation	36, XVI
Museum and Library Services, Institute of	2, XXXI
National Aeronautics and Space AdministrationI722, XVIII; 5, LIX; 14, V	
Federal Acquisition Regulation	48, 18
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
National and Community Service, Corporation for	2, XXII; 45, XII, XXV
National Archives and Records Administration	2, XXVI; 5, LXVI; 36, XII
Information Security Oversight Office	32, XX
National Capital Planning Commission	1, IV
National Commission for Employment Policy	1, IV
National Commission on Libraries and Information Science	45, XVII
National Council on Disability	5, C; 34, XII
National Counterintelligence Center	32, XVIII
National Credit Union Administration	5, LXXXVI; 12, VII
National Crime Prevention and Privacy Compact Council	28, IX
National Drug Control Policy, Office of	2, XXXVI; 21, III
National Endowment for the Arts	2, XXXII
National Endowment for the Humanities	2, XXXIII
National Foundation on the Arts and the Humanities	45, XI
National Geospatial-Intelligence Agency	32, I
National Highway Traffic Safety Administration	23, II, III; 47, VI; 49, V
National Imagery and Mapping Agency	32, I
National Indian Gaming Commission	25, III
National Institute of Food and Agriculture	7, XXXIV
National Institute of Standards and Technology	15, II
National Intelligence, Office of Director of	5, IV; 32, XVII
National Labor Relations Board	5, LXI; 29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI

Agency	CFR Title, Subtitle or Chapter
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Railroad Passenger Corporation (AMTRAK)	49, VII
National Science Foundation	2, XXV; 5, XLIII; 45, VI
Federal Acquisition Regulation	48, 25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII; 47, III, IV
National Transportation Safety Board	49, VIII
Natural Resources Conservation Service	7, VI
Natural Resource Revenue, Office of	30, XII
Navajo and Hopi Indian Relocation, Office of	25, IV
Navy Department	32, VI
Federal Acquisition Regulation	48, 52
Neighborhood Reinvestment Corporation	24, XXV
Northeast Interstate Low-Level Radioactive Waste Commission	10, XVIII
Nuclear Regulatory Commission	2, XX; 5, XLVIII; 10, I
Federal Acquisition Regulation	48, 20
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Ocean Energy Management, Bureau of	30, V
Oklahoma City National Memorial Trust	36, XV
Operations Office	7, XXVIII
Overseas Private Investment Corporation	5, XXXIII; 22, VII
Patent and Trademark Office, United States	37, I
Payment From a Non-Federal Source for Travel Expenses	41, 304
Payment of Expenses Connected With the Death of Certain Employees	41, 303
Peace Corps	2, XXXVII; 22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension Benefit Guaranty Corporation	29, XL
Personnel Management, Office of	5, I, XXXV; 5, IV; 45, VIII
Human Resources Management and Labor Relations Systems, Department of Homeland Security	5, XCVII
Federal Acquisition Regulation	48, 17
Federal Employees Group Life Insurance Federal Acquisition Regulation	48, 21
Federal Employees Health Benefits Acquisition Regulation	48, 16
Pipeline and Hazardous Materials Safety Administration	49, I
Postal Regulatory Commission	5, XLVI; 39, III
Postal Service, United States	5, LX; 39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Presidio Trust	36, X
Prisons, Bureau of	28, V
Privacy and Civil Liberties Oversight Board	6, X
Procurement and Property Management, Office of	7, XXXII
Productivity, Technology and Innovation, Assistant Secretary	37, IV
Public Contracts, Department of Labor	41, 50
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Public Health Service	42, I
Railroad Retirement Board	20, II
Reclamation, Bureau of	43, I
Refugee Resettlement, Office of	45, IV
Relocation Allowances	41, 302
Research and Innovative Technology Administration	49, XI
Rural Business-Cooperative Service	7, XVIII, XLII
Rural Development Administration	7, XLII
Rural Housing Service	7, XVIII, XXXV
Rural Telephone Bank	7, XVI
Rural Utilities Service	7, XVII, XVIII, XLII

Agency	CFR Title, Subtitle or Chapter
Safety and Environmental Enforcement, Bureau of	30, II
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office of	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	5, XXXIV; 17, II
Selective Service System	32, XVI
Small Business Administration	2, XXVII; 13, I
Smithsonian Institution	36, V
Social Security Administration	2, XXIII; 20, III; 48, 23
Soldiers' and Airmen's Home, United States	5, XI
Special Counsel, Office of	5, VIII
Special Education and Rehabilitative Services, Office of	34, III
State Department	2, VI; 22, I; 28, XI
Federal Acquisition Regulation	48, 6
Surface Mining Reclamation and Enforcement, Office of	30, VII
Surface Transportation Board	49, X
Susquehanna River Basin Commission	18, VIII
Technology Administration	15, XI
Technology Policy, Assistant Secretary for	37, IV
Tennessee Valley Authority	5, LXIX; 18, XIII
Thrift Supervision Office, Department of the Treasury	12, V
Trade Representative, United States, Office of	15, XX
Transportation, Department of	2, XII; 5, L
Commercial Space Transportation	14, III
Contract Appeals, Board of	48, 63
Emergency Management and Assistance	44, IV
Federal Acquisition Regulation	48, 12
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II
Federal Motor Carrier Safety Administration	49, III
Federal Railroad Administration	49, II
Federal Transit Administration	49, VI
Maritime Administration	46, II
National Highway Traffic Safety Administration	23, II, III; 47, IV; 49, V
Pipeline and Hazardous Materials Safety Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary of Transportation, Office of	14, II; 49, Subtitle A
Surface Transportation Board	49, X
Transportation Statistics Bureau	49, XI
Transportation, Office of	7, XXXIII
Transportation Security Administration	49, XII
Transportation Statistics Bureau	49, XI
Travel Allowances, Temporary Duty (TDY)	41, 301
Treasury Department	2, X;5, XXI; 12, XV; 17, IV; 31, IX
Alcohol and Tobacco Tax and Trade Bureau	27, I
Community Development Financial Institutions Fund	12, XVIII
Comptroller of the Currency	12, I
Customs and Border Protection	19, I
Engraving and Printing, Bureau of	31, VI
Federal Acquisition Regulation	48, 10
Federal Claims Collection Standards	31, IX
Federal Law Enforcement Training Center	31, VII
Financial Crimes Enforcement Network	31, X
Fiscal Service	31, II
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
Investment Security, Office of	31, VIII
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
Thrift Supervision, Office of	12, V
Truman, Harry S. Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States and Mexico, International Boundary and Water Commission, United States Section	22, XI

Agency	CFR Title, Subtitle or Chapter
U.S. Copyright Office	37, II
Utah Reclamation Mitigation and Conservation Commission	43, III
Veterans Affairs Department	2, VIII; 38, I
Federal Acquisition Regulation	48, 8
Veterans' Employment and Training Service, Office of the Assistant Secretary for	41, 61; 20, IX
Vice President of the United States, Office of	32, XXVIII
Wage and Hour Division	29, V
Water Resources Council	18, VI
Workers' Compensation Programs, Office of	20, I, VII
World Agricultural Outlook Board	7, XXXVIII

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations (CFR) that were made by documents published in the FEDERAL REGISTER since January 1, 2011 are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters, parts and subparts as well as sections for revisions.

For changes to this volume of the CFR prior to this listing, consult the annual edition of the monthly List of CFR Sections Affected (LSA). The LSA is available at *www.fdsys.gov*. For changes to this volume of the CFR prior to 2001, see the ''List of CFR Sections Affected, 1949–1963, 1964–1972, 1973–1985, and 1986–2000'' published in 11 separate volumes. The ''List of CFR Sections Affected 1986–2000'' is available at *www.fdsys.gov*.

2011

12 CFR

76 FR Page

Chapter IX

907.9 Removed 7481
908 Removed 53607
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932.3 Revised 11674
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Chapter X

Enforceable rules and orders list 31222, 43569
Established 44242
1002 Added; interim 79445
1003 Added; interim 78468
1004 Added 44242
1005 Added 81023
1006 Added; interim 78124
1007 Added; interim 78487
1008 Added; interim 78487
1009 Added; interim 78129
1010 Added; interim 79489
1011 Added; interim 79522
1012 Added; interim 79524
1013 Added; interim 78502
Supplement I corrected 81790

12 CFR—Continued

76 FR Page

Chapter X—Continued

1014 Added; interim 78133
1015 Added; interim 78133
1016 Added; interim 79028
1022 Added; interim 79312
1024 Added; interim 78981

2012

12 CFR

77 FR Page

Chapter IX

905 Removed 73264

Chapter X

Policy statement 37558
1003 Supplement I amended ... 8722, 76840
1005 Authority citation revised; eff. 2-7-13 ..... 6285, 50282
1005.1—1005.20 (Subpart A) Designated as Subpart A; heading added; eff. 2-7-13 6285
1005.1 (b) revised; eff. 2-7-13 6285
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1005.31 (a)(3)(ii), (iii), (5)(ii), (iii), (b)(2)(v), (vi) and (3) revised; (a)(3)(iv), (5)(iv) and (b)(2)(vii) added; eff. 2-7-13; eff. 2-7-13 50282

12 CFR—Continued

77 FR Page

Chapter X—Continued
1005.32 (b) and (c) introductory text revised; (d) added; eff. 2-7-13 50283
1005.33 (a)(1)(i) revised; eff. 2-7-13 50284
1005.36 Heading, (a) and (b) revised; (d) added; eff. 2-7-13 50284
1005 Appendix A amended; eff. 2-7-13 6290
Supplement I amended; eff. 2-7-13 ..... 6297, 50285
Appendix A corrected; eff. 2-7-13 40459
1012 Heading correctly revised 26154
1013 Authority citation revised 69736
1013 Supplement I amended 69736
1022 Appendix I correctly revised 67745
Appendix K correctly revised 67747
Appendix M correctly revised 67750
Appendix N correctly revised 67754

2013

12 CFR

78 FR Page

Chapter IX
911 Removed 39958
Subchapter D Removed 2322
Subchapter F Removed 2322
952 Removed 2322
Subchapter H Removed 2322
975—978 (Subchapter I) Removed 2322
Subchapter J Removed 2322
Subchapter K Removed 2322
995—997 (Subchapter L) Removed 2322
998 Removed 15870

Chapter X
Chapter X Policy statement 21218, 60697
1002.4 (d)(2) revised 7248
Regulation at 78 FR 7248 confirmed 69793
1002.14 Revised 7248
Regulation at 78 FR 7248 confirmed 69793
1002 Appendix C amended 7248
Supplement I amended 7248, 60437
Appendix A amended 60437
Regulation at 78 FR 7248 confirmed 69793
1003 Supplement I amended 79286

12 CFR—Continued

78 FR Page

Chapter X—Continued
1005 Regulation at 77 FR 6285 eff. date delayed indefinitely 6025
Regulation at 77 FR 50282 eff. date delayed indefinitely 6025
Regulation at 77 FR 6285 confirmed 30662
Regulation at 77 FR 50282 confirmed 30662
Safe harbor list 66251
1005.1—1005.20 (Subpart A) Regulation at 77 FR 6285 eff. date delayed indefinitely 6025
Regulation at 77 FR 6285 confirmed 30662
1005.1 Regulation at 77 FR 6285 eff. date delayed indefinitely 6025
Regulation at 77 FR 6285 confirmed 30662
1005.2 Regulation at 77 FR 6285 eff. date delayed indefinitely 6025
Regulation at 77 FR 6285 confirmed 30662
1005.3 Regulation at 77 FR 6285 eff. date delayed indefinitely 6025
Regulation at 77 FR 40459 eff. date delayed indefinitely 6025
Regulation at 77 FR 6285 confirmed 30662
Regulation at 77 FR 40459 confirmed 30662
1005.16 (b), (c) and (d) revised 18224
1005.30—1005.36 (Subpart B) Regulation at 77 FR 6285 eff. date delayed indefinitely 6025
Regulation at 77 FR 6285 confirmed 30662
1005.30 Regulation at 77 FR 50282 eff. date delayed indefinitely 6025
Regulation at 77 FR 50282 confirmed 30662
Introductory text and (h) added 30703
Regulation at 78 FR 30703 confirmed 69793
1005.31 Regulation at 77 FR 50282 eff. date delayed indefinitely 6025
Regulation at 77 FR 50282 confirmed 30662
(a)(1), (b)(1)(ii), (v), (vi), (vii), (2)(i), (c)(1), (2), (3), (f) and (g)(1) revised; (b)(1)(viii) added 30703
Regulation at 78 FR 30703 confirmed 69793

12 CFR—Continued

78 FR Page

Chapter X—Continued
1005.32 Regulation at 77 FR 50283 eff. date delayed indefinitely....6025
Regulation at 77 FR 50283 confirmed....30662
(b)(2)(ii), (c)(3) and (4) revised; (b)(3) added; (c)(5) removed....30704
Regulation at 78 FR 30704 confirmed....69793
1005.33 Regulation at 77 FR 50284 eff. date delayed indefinitely....6025
Regulation at 77 FR 50284 confirmed....30662
(a)(1)(iii), (iv)(B), (c)(2) introductory text, (ii) introductory text, (A)(*2*) and (B) revised; (c)(2)(iii) redesignated as (c)(2)(iv); (a)(1)(iv)(D), (c)(2)(iii) and (h) added....30704
(c)(2)(iii) correctly revised....49366
Regulation at 78 FR 30704 confirmed....69793
1005.36 Regulation at 77 FR 50284 eff. date delayed indefinitely....6025
Regulation at 77 FR 50284 confirmed....30662
1005 Supplement I amended....18224, 30714
Regulation at 77 FR 6290 eff. date delayed indefinitely....6025
Regulation at 77 FR 6297 eff. date delayed indefinitely....6025
Regulation at 77 FR 40459 eff. date delayed indefinitely....6025
Regulation at 77 FR 50285 eff. date delayed indefinitely....6025
Regulation at 77 FR 6290 confirmed....30662
Regulation at 77 FR 6297 confirmed....30662
Regulation at 77 FR 40459 confirmed....30662
Regulation at 77 FR 50285 confirmed....30662
Appendix A amended....30705
Supplement I correctly amended....49366
Regulation at 78 FR 30705 confirmed....69793
Regulation at 78 FR 30714 confirmed....69793
1013 Supplement I amended....70194
1024 Authority citation revised; eff. 1-10-14....10873
Technical correction....45842
Policy statement; eff. 1-10-14....68343
Regulation at 78 FR 10873 confirmed....69793
1024.1—1024.5 (Subpart A) Designated as Subpart A; eff. 1-10-14....10873
Heading revised; eff. 1-10-14....44717
Regulation at 78 FR 10873 confirmed....69793
1024.2 (b) amended; eff. 1-10-14....10873
Regulation at 78 FR 10873 confirmed....69793
1024.3 Revised; 1-10-14....10874
Regulation at 78 FR 10874 confirmed....69793
1024.4 Heading and (a)(1) revised; (b) removed; (c) redesignated as (b); eff. 1-10-14....10874
Regulation at 78 FR 10874 confirmed....69793
1024.5 (b)(7) revised; eff. 1-10-14....10874
(c) added; eff. 1-10-14....44717
Regulation at 78 FR 10874 confirmed....69793
(a) revised; (b)(1) removed; (d) added; eff. 8-1-15....80104
1024.6—1024.20 (Subpart B) Designated as Subpart B; eff. 1-10-14....10875
Regulation at 78 FR 10875 confirmed....69793
1024.7 (f)(3) revised; 1-10-14....10875
Regulation at 78 FR 10875 confirmed....69793
1024.13 Heading and (d) revised; 1-10-14....10875
Removed; eff. 1-10-14....44717
Regulation at 78 FR 10875 confirmed....69793
1024.17 (c)(8), (f)(2)(ii), (4)(iii), (i)(2) and (4)(iii) revised; (k)(5) added; (l) removed; (m) redesignated as (l); eff. 1-10-14....10875
Regulation at 78 FR 10875 confirmed....69793
1024.18 Removed; eff. 1-10-14....10876
Regulation at 78 FR 10876 confirmed....69793
1024.19 Removed; eff. 1-10-14....10876
Regulation at 78 FR 10876 confirmed....69793
1024.20 Added....6961
1024.21 Removed; eff. 1-10-14....10876
Regulation at 78 FR 10876 confirmed....69793

12 CFR—Continued

78 FR Page

Chapter X—Continued
1024.22 Removed; eff. 1-10-14 10876
Regulation at 78 FR 10876 confirmed 69793
1024.23 Removed; eff. 1-10-14 10876
Regulation at 78 FR 10876 confirmed 69793
1024.30—1024.41 (Subpart C) added; eff. 1-10-14 10876
Regulation at 78 FR 10876 confirmed 69793
1024.30 (a) revised; eff. 1-10-14 60437
(c)(1) revised; eff. 8-1-15 80104
1024.33 (a) revised; eff. 8-1-15 80104
1024.35 (g)(1)(iii)(B) revised; eff. 1-10-14 60437
1024.36 (f)(1)(v)(B) revised; eff. 1-10-14 60437
1024.39 (b)(1) and (3) revised; eff. 1-10-14 60437
(d) added; interim; eff. 1-10-14 63004
1024.41 (b)(2)(ii), (c)(1)(ii), (2)(i), (d), (f)(1), (h)(4) and (j) revised; (b)(3), (c)(2)(iii) and (iv) added; eff. 1-10-14 60437
1024 Appendix MS-1 amended; eff. 1-10-14 10886
Appendix MS-2 revised; eff. 1-10-14 10886
Appendix MS-3 added; eff. 1-10-14 10886
Appendix MS-3 amended; eff. 1-10-14 60438
Appendix MS-4 added; eff. 1-10-14 10887
Supplement I added; eff. 1-10-14 10887
Supplement I amended; eff. 1-10-14 ..... 44717, 60438, 63005
Supplement I corrected; interim; eff. 1-10-14 63005
Regulation at 78 FR 10886 confirmed 69793
Regulation at 78 FR 10887 confirmed 69793
Appendix A amended; eff. 8-1-15 80104
Appendices B and C amended; eff. 8-1-15 80105

2014

12 CFR

79 FR Page

Chapter IX
907 Removed 64665

12 CFR—Continued

79 FR Page

Chapter X
1003 Supplement I amended 77855
1005.32 (a)(2) revised 55991
1005.33 (a)(1)(iv)(B) and (c)(2)(iii) revised 55991
1005 Appendix A amended 55991
Supplement I amended 55993
1013 Authority citation revised 56483
1013 Supplement I amended 56483
1016.1 (b)(1) revised 64081
1016.9 (c) revised 64081
1024 Policy statement 63295

2015

12 CFR

80 FR Page

Chapter IX
914—917 (Subchapter C) Removed 72336
931 Removed 12755
933 Removed 12755
Chapter X
1001 Added 37526
1003 Technical correction 69567
1003.1 (c) revised; eff. 1-1-18 66308
1003.2 Amended; eff. 1-1-17 66308
Revised; eff. 1-1-18 66308
1003.3 Heading revised; (c) added; eff. 1-1-18 66309
1003.4 Revised; eff. 1-1-18 66310
1003.5 (b) through (f) revised; eff. 1-1-18 66312
Revised; eff. 1-1-19 66312
(a)(1)(ii) added; eff. 1-1-20 66313
1003.6 Revised; eff. 1-1-19 66313
1003 Appendix A amended; eff. 1-1-18 66313
Appendix A removed; eff. 1-1-19 66314
Appendix B revised; eff. 1-1-18 66314
Appendix C added; eff. 1-1-18 66316
Supplement I revised; eff. 1-1-18 66317
Supplement I amended; eff. 1-1-19 66339
Supplement I amended 79674
1010 Policy statement 49127
1013 Supplement I amended 73947
1024 Policy statement 22091
1024.5 (d) introductory text revised 8775
Regulations at 78 FR 80104 and 80 FR 8776 eff. date delayed 43911
1024.30 Regulation at 78 FR 80104 eff. date delayed 43911

List of CFR Sections Affected

12 CFR—Continued

	80 FR Page
Chapter X—Continued	
1024.33 Regulation at 78 FR 80104 eff. date delayed	43911

12 CFR—Continued

	80 FR Page
Chapter X—Continued	
1024 Regulation at 78 FR 80104 and 80105 eff. date delayed	43911