

Chapter 19

CONSUMER COMPLIANCE

TABLE OF CONTENTS

CONSUMER COMPLIANCE	19-1
Examination Objectives	19-1
Risk Categories	19-1
Overview	19-1
Consumer Compliance Program	19-2
Field Examiners	19-2
Compliance Subject Matter Examiners	19-2
Regional Compliance Analysts	19-3
Compliance Program Officer (E&I).....	19-4
Examination Procedures	19-4
State Chartered Credit Unions	19-5
Additional Information	19-5
APPENDIX 19A - Credit Practices Rule.....	19A-1
APPENDIX 19B - Equal Credit Opportunity Act	19B-1
APPENDIX 19C - Home Mortgage Disclosure Act.....	19C-1
APPENDIX 19D – Expedited Funds Availability Act	19D-1
APPENDIX 19E – Children’s Online Privacy Protection Act	19E-1
APPENDIX 19F – Electronic Funds Transfer Act	19F-1
APPENDIX 19G – E-Sign Act	19G-1
APPENDIX 19H – Fair Credit Reporting Act.....	19H-1
APPENDIX 19I – Fair Debt Collection Practices Act.....	19I –1
APPENDIX 19J – Fair Housing Act.....	19J-1
APPENDIX 19K – Flood Disaster Protection Act	19K-1
APPENDIX 19L – Homeowners Protection Act	19L-1
APPENDIX 19M – Consumer Leasing Act.....	19M-1
APPENDIX 19N – Privacy of Consumer Financial Information	19N-1
APPENDIX 19O – Real Estate Settlement Procedures Act	19O-1
APPENDIX 19P – Right To Financial Privacy	19P-1
APPENDIX 19Q – Soldiers’ and Sailors’ Civil Relief Act.....	19Q-1
APPENDIX 19R – Homeownership and Equity Protection Act	19R-1
APPENDIX 19S – Truth In Lending Act	19S-1
APPENDIX 19T – Truth in Savings Act	19T-1

Chapter 19

CONSUMER COMPLIANCE

Examination Objectives

- Determine whether the credit union complies with consumer compliance regulations
- Determine whether the credit union protects its members from violations of their consumer rights
- Determine whether the credit union initiates corrective action if it becomes aware of consumer compliance violations

Risk Categories

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with appropriate consumer compliance regulations;
- Reputation risk can occur when the credit union incurs fines, penalties, and poor publicity as a result of failure to comply with the appropriate consumer compliance regulations; and
- Strategic risk can occur when management fails to perform adequate planning and due diligence regarding consumer compliance regulations.

Overview

NCUA is the federal agency assigned with the enforcement authority for a broad range of consumer regulations that apply to federally-chartered credit unions and, to a lesser degree, federally insured state-chartered credit unions. This authority confers to examiners responsibility for providing a satisfactory level of oversight for compliance activities. This oversight is necessary in order to:

- Assure credit union members that their credit union meets the required statutory and regulatory requirements for which NCUA has oversight enforcement responsibility; and
- Provide adequate reporting to Congress.

Compliance risk obviously exists in blatant violations of law. However, it may also arise in situations where ambiguous or untested laws or rules govern certain credit union products or member activities. Compliance risk exposes the credit union to fines, civil money

penalties, payment of damages, and the voiding of contracts. It can result in diminished reputation, limited opportunities, reduced field of membership expansion potential, and lack of contract enforceability.

**Consumer
Compliance
Program**

NCUA's Consumer Compliance Program uses a tiered approach to compliance using field examiners, compliance subject matter examiners (SMEs), regional compliance analysts, and the Office of Examination and Insurance compliance program officers. The program strives to balance (1) examiners' knowledge of consumer compliance laws, (2) the need for an efficient, risk-focused use of resources, and (3) the responsibility for collecting reliable data about the credit union's compliance practices.

Examiners provide basic compliance oversight in the course of the risk-focused examination program or insurance review. A credit union's compliance risk profile can change rapidly due to innovation of products and services, changes in regulation, competitive pressures, field of membership expansion, and the revolution in information technology.

SMEs serve as resource persons for field examiners. They provide advice and support to examiners. SMEs assist the examiners by providing specific guidance in their area of expertise.

Regional compliance analysts serve as the regional point of contact. They monitor training needs, provide applicable training, and perform in-depth compliance reviews.

The compliance program officer serves as the agency contact in the area of consumer compliance regulation and enforcement.

**Examination
Procedures**

Examiners identify the level of risk inherent in a credit union's consumer compliance activities based on the complexity of operations, management's level of due diligence regarding compliance issues for existing, new, and proposed products and services, and the extent to which management devotes resources to ensure compliance.

For example, in large, complex credit unions with resident compliance personnel, examiners may limit their reviews. A discussion of the credit union's compliance policies and practices with staff responsible for ensuring compliance and monitoring requirements may suffice. In contrast, the focus at smaller credit unions or credit unions with limited internal controls may include verifying information through more extensive transaction testing.

Factors that may lead an examiner to consider an increased risk exists in the compliance area resulting in the need to expand the examination scope include:

- New products or services offered by the credit union that fall under a consumer compliance regulation;
- A new consumer compliance regulation affecting the credit union industry;
- A change in credit union staff responsible for compliance with consumer laws;
- The length of time since an NCUA examiner performed a review of the area;
- The volume and severity of consumer complaints; or
- Current or pending litigation regarding consumer compliance issues.

Examiners may refer concerns or questions raised through the field review to a SME for guidance and assistance. They may refer exceptions or trends that indicate noncompliance beyond the scope of the examiner or SME to the regional compliance analyst for consideration.

AIRES contains a compliance questionnaire for each consumer compliance regulation for which NCUA has enforcement authority. Each questionnaire includes the following key components:

- A summary of the basic purpose of the law/regulation;
- NCUA's enforcement responsibility;
- Penalties resulting from failure to comply; and
- Key questions to consider during a review.

The checklist addresses only those areas that require an onsite review and are within the knowledge and training level of the field examiner.

**State
Chartered
Credit Unions**

NCUA uses the examination work product of state examiners in cases where the state supervisory authority agrees to perform compliance reviews. For those states that have not agreed to perform compliance reviews, NCUA assumes responsibility for only those regulations for which it has enforcement authority.

The regions ensure performance of a compliance review of applicable consumer compliance regulations on each state-chartered credit union as risks warrant.

**Additional
Information**

Table 19-A contains a list of laws and enforcement authorities for credit unions. The Appendices to this Chapter contain information about the individual consumer compliance regulations.

Laws and Enforcement Authorities for Credit Unions

Law or Regulation	FCUs	FISCUs	Non-federally insured CUs
B - Equal Credit Opportunity	NCUA	FTC	FTC
BSA – Bank Secrecy Act	NCUA	NCUA	TREAS
C - Home Mortgage Disclosure Act	NCUA	NCUA	NCUA
CC - Expedited Funds Availability Act	NCUA	NCUA	FED
COPPA - Children's Online Privacy Protection Act	NCUA	FTC	FTC
D - Reserves on Transaction Accounts	NCUA	NCUA	FED
E - Electronic Funds Transfer Act	NCUA	FTC	FTC
FCPR - Fair Credit Practice Rule	NCUA	FTC	FTC
FCRA - Fair Credit Reporting Act	NCUA	FTC	FTC
FDCPA - Fair Debt Collection Practices Act	NCUA	FTC	FTC
FDPA – Flood Disaster Protection Act	NCUA	NCUA	¹
FHA - Fair Housing Act	HUD	HUD	HUD
HIDC - Holder in Due Course	FTC	FTC	FTC
HOPA - Homeowners Protection Act	NCUA	NCUA	NCUA
M – Consumer Leasing	NCUA	FTC	FTC
Management Official Interlocks Act	NCUA	NCUA	DOJ
Privacy of Consumer Financial Information	NCUA	NCUA	FTC
RESPA - Real Estate Settlement Procedures Act	HUD	HUD	HUD
RFPA - Right to Financial Privacy Act	PCA	PCA	PCA
SSRA - Soldiers and Sailors Relief Act	PCA	PCA	PCA
TIS - Truth in Savings Act	NCUA	NCUA	NCUA
Z - Truth in Lending	NCUA	FTC	FTC

Legend:

DOJ	Department of Justice
FED	Federal Reserve Board
FHA	Federal Housing Administration
FTC	Federal Trade Commission
HUD	Dept. of Housing and Urban Development
PCA	Private Cause of Action
TREAS	Treasury Department
VA	Veterans Administration

NOTE: Although NCUA is not the primary enforcer under some of these regulations, Title II of the FCU Act authorizes NCUA to take cease and desist actions for violations of any law.

Illustration 19-A

¹ Non-federally insured credit unions are not covered per se. They are only covered if they sell loans on the secondary market to government sponsored enterprises (GSEs), such as Fannie Mae or Freddie Mac, which cannot buy unless the loan conforms with flood guidelines.

CREDIT PRACTICES RULE – APPENDIX 19A

Examination Objectives

- Determine whether the credit union's loan contracts are free from prohibited credit practices
- Determine whether the credit union accurately represents a cosigner's obligation and provides a notice to cosigner
- Determine whether the credit union's method of collecting late charges complies with the regulation
- Determine whether the credit union initiates corrective action if it becomes aware of a violation

Risk Categories

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the Credit Practices Rule; and
- Reputation risk can occur when the credit union incurs fines and penalties as a result of failure to comply with the Credit Practices Rule.

Overview

Part 706 of the *NCUA Rules and Regulations* implements the requirements of Subpart B of Regulation AA, also known as the Credit Practices Rule, for federal credit unions. The regulation defines unfair or deceptive acts or practices of credit unions in connection with extensions of credit to consumers. The Federal Trade Commission (FTC) has enforcement authority for the Credit Practices Rule for state-chartered credit unions.

The Credit Practices Rule is broken down into three parts:

- Unfair Credit-Contract Provisions;
- Unfair or Deceptive Practices Involving Cosigners; and
- Unfair Late Charges.

Contract Provisions

It is an unfair act or practice for a credit union, directly or indirectly, to take or receive from a member an obligation in connection with the extension of credit that:

- Constitutes or contains a cognovit or confession of judgment, warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon;
- Constitutes or contains an executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation; or
- Constitutes or contains an assignment of wages or other earnings unless:
 - The assignment by its terms is revocable at the will of the debtor, or
 - The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the member authorizes a series of wage deductions as a method of making each payment, or
 - The assignment applies only to wages or other earnings already earned at the time of the assignment
- Constitutes or contains a nonpossessory security interest in household goods other than a purchase money security interest.

Cosigners

In connection with the extension of credit to members, it is:

- A deceptive act or practice for a credit union, directly or indirectly, to misrepresent the nature or extent of cosigner liability to any person; or
- An unfair act or practice for a credit union, directly or indirectly, to obligate a cosigner unless the cosigner is informed prior to becoming obligated.

To comply with the cosigner notification requirement, credit unions must provide a clear and conspicuous disclosure statement in writing to the cosigner prior to becoming obligated. The notice may be a separate document or included in the documents evidencing the consumer credit obligation.

Late Charges

In connection with collecting a debt arising out of an extension of credit to a member, it is an unfair act or practice for a credit union, directly or indirectly, to levy or collect any delinquency charge on a payment, if the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fees or delinquency charges assessed on earlier installments. To do so would constitute “pyramiding” late fees.

Example: A member’s payments are \$40 a month. The member makes the February payment in full, but makes it late. The credit union assesses a \$5 late charge. The member makes a March payment of \$40 on time, but fails to pay the \$5 late charge. The credit union uses part of the March payment to pay off the outstanding late charge, and then considers the March payment deficient. The credit union may not assess another late charge since the March payment was made in full and on time.

Examination Procedures

An examiner may perform one or more of the following examination procedures, depending on the scope of the review.

- Evaluate loan contracts to determine whether they are free from prohibited credit practices;
- Review the late payment accounting process to verify whether it complies with the prohibition of pyramiding late fees;
- Review cosigned loans and verify that the credit union provided a written notice to cosigner;
- Complete the Credit Practices Rule checklist in AIREs, which provides informative guidance on the requirements of the regulation for each question; and
- Report a violation of the Credit Practices Rule on the Violations form in AIREs.

Additional Information

Additional information is available in Part 706 of *NCUA Rules and Regulations*. In addition, the Staff Commentary on Regulation AA provides question and answer examples. Examiners can access it at <http://www.federalreserve.gov>.

EQUAL CREDIT OPPORTUNITY ACT – APPENDIX 19B

Examination Objectives

- Determine whether the credit union discriminates in the granting of credit on any of the bases prohibited by the Equal Credit Opportunity Act (ECOA)
- Determine if the credit union has procedures in place for complying with the requirements of the ECOA

Risk Categories

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the ECOA; and
- Reputation risk can occur when the credit union incurs fines and penalties as a result of failure to comply with ECOA.

Overview

The purpose of the Equal Credit Opportunity Act (ECOA) is to promote availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance, or good faith exercise of any rights under the Consumer Credit Protection Act.

The basic rule of the ECOA, also known as Regulation B, as found in §202.4, is:

"A creditor shall not discriminate against any applicant on a prohibited basis with respect to any aspect of a credit transaction."

Prohibited basis refers not only to the characteristics of the applicant but also to the characteristics of individuals with whom the applicant is affiliated or with whom the applicant associates. Therefore, a credit union may not discriminate against a member-applicant based on a prohibited basis characteristic of an associated individual. For example, a credit union cannot discriminate against an applicant because of the race of the residents in the neighborhood where the collateral property is located.

Credit transaction means every aspect of an applicant's dealings with a credit union 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.

Regulation B also requires credit unions to do the following:

- Notify applicants of the credit decision within 30 days of receiving a completed application;
- Retain records of credit applications for 25 months after notifying the member of its credit decision;
- Collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans; and,
- Provide applicants with copies of appraisal reports used in connection with credit transactions.

Credit Applications

Regulation B prevents credit unions from discouraging prospective applicants from making or pursuing an application.

Credit unions should use industry standard form applications. A credit union choosing to use a non-standard credit application form should obtain a legal opinion stating the forms comply with the applicable legal requirements.

The application may request any information, except for the following:

- Information about the member's spouse, unless the spouse will use or is contractually liable on the account or the applicant relies on the spouse's income;
- Information about the member's marital status when applying for unsecured credit; when applying for secured credit, the application may use only the terms married, unmarried, or separated;
- Information about the member's sex, race, color, religion, and national origin; and,
- Information about childrearing or childbearing such as birth control practices, intentions, or capability to bear children.

A credit union may consider any information obtained in the credit application provided it does not use the information to discriminate against an applicant on a prohibited basis. An exception to this rule relates to the consideration of age in determining an applicant's creditworthiness.

Effects Test

While not specifically mentioned in the ECOA, the legislative history of the ECOA indicates Congress intended an "effects test" concept to apply to a credit union's determination of creditworthiness. The effects test refers to a credit practice that appears facially neutral, but has a disproportionately negative effect on a prohibited basis, even though the credit union has no intent to discriminate. This type of practice is discriminatory, in effect, unless the credit union can demonstrate the practice meets a legitimate business need that cannot be reasonably achieved by means less disparate in impact.

Answering the following questions should assist the examiner in determining if the credit union's credit practices result in a potential violation of the effects test:

1. Does a particular credit practice have a statistically disproportionate impact on a protected group (those covered under the prohibited basis definition)?
2. If so, can the credit union show that the practice serves a genuine business need?
3. If so, is there a less discriminating way to meet that business need?

Appraisals

Credit unions subject to NCUA's regulations are not subject to the appraisal requirements of the ECOA. However, *NCUA Rules and Regulations* §703.1(c)(5) requires a credit union to make available to any requesting member a copy of the appraisal used in conjunction with that member's real estate loan application. The credit union must make that appraisal available for 25 months after the member was notified of the action taken on the credit application.

Enforcement

The National Credit Union Administration Board has responsibility for enforcement among federal credit unions, while the Federal Trade

Commission enforces Regulation B for state-chartered credit unions (12 C.F.R. Part 202 Appendix A). Regulation B contains a civil liability provision. Examiners should determine the adequacy of each credit union's compliance with Regulation B during routine examinations by evaluating patterns and practices. Examiners should note violations, and obtain agreements with management for prompt correction of violations.

Examination Procedures

An examiner may perform one or more of the following examination procedures, depending on the scope of the review:

- Determine whether the credit union has established policies and procedures with regard to Equal Credit Opportunity;
- Determine that all applicable forms (i.e., applications and adverse action notifications) are neutral in terms such as sex; titles are optional; married, unmarried, and separated are the only marital status terms used, etc. When the credit union uses nonstandard forms, the examiner should ask the credit union to provide a legal opinion supporting the use of the forms;
- Determine that the credit union complies with the adverse action notification requirements;
- Determine that the credit union maintains appropriate records as required by the regulation;
- Determine that the credit union requests and documents the monitoring information on real estate related applications;
- Complete the applicable Regulation B checklist in AIRES, which provides informative guidance on the requirements of the regulation for each question; and
- Notify the supervisory examiner if a pattern or practice of ECOA violations becomes evident in the examination process and report the violation on the Violations form in AIRES.

Additional Information

The Federal Reserve Board's website contains additional information at <http://www.federalreserve.gov> . The Publications Services Unit at (202) 452-3245 has copies of the regulation and staff commentaries issued by the Federal Reserve System available.

HOME MORTGAGE DISCLOSURE ACT – APPENDIX 19C

Examination Objectives

- Determine whether the credit union meets the criteria that triggers HMDA reporting
- Determine whether the credit union complies with the reporting requirements of the Act and Regulation
- Determine whether the credit union has implemented adequate policies, practices, and internal controls to ensure compliance with the Act and Regulation

Risk Categories

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with HMDA; and
- Reputation risk can occur when the credit union incurs fines and penalties as a result of failure to comply with HMDA.

HMDA - Regulation C

Regulation C implements the requirements of the Home Mortgage Disclosure Act (HMDA). It requires certain credit unions and credit union service organizations to report data about home purchase and home improvement loans they originate, purchase, or for which they receive applications. In general, they must report:

- Data about each application or loan (such as loan type and amount) and the location of the dwelling to which it relates; and
- The race or national origin, sex, and gross annual income of the applicant or borrower.

The purpose of Regulation C is to provide the public with data that can be used to:

- Help determine whether credit unions serve the housing needs of their communities;
- Assist public officials in distributing public-sector investments in order to attract private investment to areas needing it; and,
- Assist in identifying possible discriminatory lending patterns and enforcing compliance with anti-discrimination statutes.

Regulation C is not intended to encourage unsound lending practices or the extension of credit.

Exempt Institutions

A credit union is exempt from the requirements of the regulation for a given calendar year if on the preceding December 31:

- It had neither a home office nor a branch office in a metropolitan statistical area (MSA); or
- Total assets were at or below the threshold established by the Federal Reserve Board (Board). The Board adjusts the threshold 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. NCUA notifies credit unions about the asset threshold change each year in a Regulatory Alert; or
- It made no first-lien home purchase loans (including refinancings of home purchase loans) on one-to-four family dwellings in the preceding calendar year.

Disclosure and Reporting

Non-exempt credit unions must maintain a loan/application register (LAR) on which it will enter data about each application received and each loan originated and purchased. The credit union must send the LAR to its supervisory agency by March 1 following the calendar year to which the loan data relate.

The credit union must make its mortgage loan disclosure statement (provided by the Federal Financial Institutions Examination Council (FFIEC)) available to the public at its home office no later than three business days after receiving it. In addition, if a credit union has branch offices in other MSAs, it must make disclosures available using one of two options:

- It can make the statement available in at least one office in each of those MSAs, within ten business days of receipt from the FFIEC; or
- It can send a copy of the statement if someone makes a written request, within fifteen calendar days of receiving the request. If the

credit union chooses this option, it must post the address for requesting copies in each branch office in an MSA.

Enforcement

NCUA enforces compliance with HMDA for all credit unions required to report and may impose administrative sanctions, including the imposition of civil money penalties. NCUA does not consider it an error in compiling or recording required data a violation of the regulation if it was unintentional and occurred despite the credit union's maintenance of procedures reasonably adopted to avoid such errors.

Examination Procedures

An examiner may perform one or more of the following examination procedures, depending on the scope of the review.

- Determine whether the credit union has adequate procedures in place for collecting and maintaining accurate data regarding each loan application, loan origination, and purchase of loans;
- Assess whether the individuals responsible for preparing and maintaining the data understand the regulatory requirements and have the resources and tools needed to produce complete and accurate data;
- Determine whether the credit union accurately submitted its HMDA-LAR in an automated, machine-readable form or via Internet email (credit unions that report 25 or fewer entries may report the data in paper form);
- Verify that the credit union properly retains a copy of the register; and
- Determine whether the credit union makes the mortgage loan disclosure statements available in its home office and branch offices located in MSAs by the applicable deadline.

Additional Information

Credit unions engaged in mortgage lending should obtain the publication *A Guide to HMDA Reporting: Getting it Right!* Credit unions may obtain a copy from the NCUA publications office or they can download it from the NCUA web site at <http://www.ncua.gov>.

EXPEDITED FUNDS AVAILABILITY ACT – APPENDIX 19D

Examination Objective • Determine whether the credit union’s funds availability policy and procedures meet the requirements of the regulation

Risk Categories

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the Expedited Funds Availability Act; and
- Reputation risk can occur when the credit union incurs fines and penalties as a result of failure to comply with the Expedited Funds Availability Act.

Overview Regulation CC implements the requirements of the Expedited Funds Availability Act. The purpose of the regulation is to ensure prompt availability of funds and to expedite the return of checks.

The major provisions of Regulation CC include:

- Establishing maximum holds that credit unions can place on deposits; and.
- Requiring credit unions to disclose their funds availability policies to members.

In general, deposited funds fall into one of three categories of availability.

Next-Day Availability Credit unions should make certain types of funds available for withdrawal not later than the business day after the banking day the funds were deposited. The following types of funds generally meet the standards for next-day availability:

- Cash deposits made in person to an employee of the credit union;
- Electronic payments;
- Checks drawn on the Treasury of the United States or a state or local government;

- U.S. Postal Service money order;
- Cashier's, certified, or teller's check.
- Check drawn on a Federal Reserve Bank or Federal Home Loan Bank; and
- Checks deposited in a branch of the credit union and drawn on the same or another branch of the same credit union if both branches are located in the same state or the same check-processing region.

In most cases, the types of funds listed above must be deposited in person to an employee of the credit union and in an account of the payee.

**Second Day
Availability**

A credit union must make funds deposited in an account by check available for withdrawal not later than the second business day following the banking day the funds are deposited, in the case of

- A local check;
- A check drawn on the Treasury of the United States that is not governed by the next-day availability requirements;
- A U.S. Postal Service money order that is not governed by the next-day availability requirements; or
- A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; or a cashier's, certified, or teller's check; if any check referred to is a local check that is not governed by the next-day availability requirements.

**Fifth Day
Availability**

A credit union must make funds deposited in an account by a check available for withdrawal not later than the fifth business day following the banking day funds are deposited, in the case of

- A nonlocal check; and
- A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; or a cashier's, certified, or teller's check; or a check deposited in a branch of the depository credit union and drawn on the same or another branch of the same credit union; if any check referred to is

a nonlocal check that is not governed by the next-day availability requirements.

Credit unions must make available for withdrawal by cash or check funds deposited in an account at a nonproprietary ATM not later than the fifth business day following the banking day the funds are deposited.

Exceptions

Exceptions to the availability schedule apply in the case of:

- New accounts;
- Large deposits (\$5,000 or greater);
- Redeposited checks;
- Repeated overdrafts;
- Reasonable cause to doubt collectibility; and,
- Emergency conditions.

Disclosure Requirements

A credit union shall make disclosures clearly and conspicuously in writing. Disclosures, other than those posted at locations where employees accept consumer deposits and ATMs and the notice on preprinted deposit slips, must be a form that the member may keep. The disclosures must be grouped together and must not contain any information not related to the disclosures. If contained in a document that sets forth other account terms, the disclosures must be highlighted within the document.

Examination Procedures

An examiner may perform the following examination procedures, depending on the scope of the review.

- Review the credit union's funds availability policy and procedures;
- Review the credit union's funds availability policy disclosures and exception notices;
- Determine the extent and adequacy of the instruction and training provided to the individuals responsible for the implementation of the credit union's funds availability policy and procedures and whether it adequately enables them to carry out their assigned responsibilities in conformance with Regulation CC; and

- Verify that the credit union provides employees with a written statement regarding the procedures that pertain to that employee's function.

**Additional
Information**

Additional information is available on the Federal Reserve Board's website at <http://www.federalreserve.gov>.

CHILDREN'S ONLINE PRIVACY PROTECTION ACT – APPENDIX 19E

Examination Objectives

- Determine whether the credit union's website collects personal information from children under 13
- Determine whether the credit union discloses its privacy notice and obtains verifiable parental consent

Risk Categories

The following risk categories apply to the compliance area:

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with COPPA; and
- Reputation risk can occur when the credit union incurs fines or damaging publicity as a result of failure to comply with COPPA.

Overview

The Children's Online Privacy Protection Act (COPPA) applies to the online collection of personal information from children under age 13. The rule spells out what a website operator must include in a privacy policy, when and how to seek verifiable consent from a parent, and what responsibilities an operator has to protect children's privacy and safety online.

Credit unions who operate a commercial website or an online service directed to children under 13 that collects personal information from children must comply with COPPA. A credit union must also comply if it operates a general audience website and has *actual knowledge* that it is collecting personal information from children.

Personal Information

COPPA applies to individually identifiable information about a child that is collected online, such as full name, home address, email address, telephone number or any other information that would allow someone to identify or contact a child. COPPA also covers other types of information (e.g., hobbies, interests and information collected through cookies or other types of tracking mechanisms) when it is tied to individually identifiable information.

Basic COPPA Provisions

If the credit union is subject to the requirements of COPPA, a link to its privacy notice must appear on the home page of its website or online service and at each area where it collects personal information from children. If the credit union operates a general audience site with a separate children's area, it must post a clear and prominent link to its privacy notice on the home page of the children's area. Credit unions may wish to emphasize the link by using a larger font size or a different color type on a contrasting background.

Privacy Notice

COPPA requires a clearly written and understandable privacy notice that includes the following information:

- Name and contact information of the credit union;
- Types of personal information collected from children and the procedures used for collecting the information;
- How the credit union uses the personal information;
- Whether the credit union discloses the information to third parties;
- Notification that the parent has the option to agree to the collection and use of the child's information without consenting to its disclosure to third parties;
- Notification that the credit union may not require a child to disclose more information than is reasonably necessary to participate in an activity as a condition of participation; and
- Notification that the parent can review the child's personal information, ask to have it deleted, and refuse to allow any further collection or use of the child's information. The notice also must state the procedures for the parent to follow.

Notice to Parents

The notice to parents must contain the same information included on the notice on the website. The credit union must notify a parent that it wishes to collect personal information from the child. The notice must also state that the parent's consent is required for the collection, use, and disclosure of the information and how the parent can provide consent. The credit union must obtain verifiable consent, meaning that the credit union must make reasonable efforts to ensure that the parent receives the notice and consents. The required method of consent depends on the use of the child's information.

**Examination
Procedures**

An examiner may perform the following examination procedures, depending on the scope of the review:

- Review the credit union’s privacy notice to determine whether it contains the information required by COPPA;
- Review the notice to parents and determine how the credit union obtains verifiable consent; and
- Review the credit union’s procedures and internal controls for maintaining and disclosing personal information collected from children under 13.

**Additional
Information**

Additional information is available on the Federal Trade Commission’s (FTC) website at <http://www.ftc.gov/kidzprivacy> or through the FTC’s Consumer Response Center at 1-877-FTC-HELP.

ELECTRONIC FUNDS TRANSFER ACT – APPENDIX 19F

Examination Objectives

- Determine that the credit union has procedures in place to ensure compliance with the Electronic Funds Transfers Act (EFTA)
- Determine that the credit union complies with the provisions of the EFTA

Risk Category

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the EFTA.

Overview

Regulation E implements the provisions of the EFTA. The regulation establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer services and of credit unions that offer these services. The primary objective of the regulation is the protection of individual consumers engaging in electronic fund transfers.

The term electronic fund transfer means any transfer of funds initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a credit union to debit or credit an account. The term includes, but is not limited to:

- Point-of-sale transfers;
- Automated teller machine transfers;
- Direct deposits or withdrawals of funds;
- Transfers initiated by telephone; and
- Transfers resulting from debit card transactions, whether or not they were initiated through an electronic terminal.

The term electronic fund transfer does not include:

- 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;

- Wire or other similar transfers. Any transfer of funds through Fedwire or through a similar wire transfer system used primarily for transfers between financial institutions or between businesses;
- 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; or
- Telephone-initiated transfers. Any transfer of funds initiated by a telephone communication between a consumer and a financial institution making the transfer; and does not take place under a telephone bill-payment or other written plan in which periodic or recurring transfers are contemplated.

**Access
Devices**

An access device is a card, code, or other means of access to a member's account, or any combination thereof, which the member may use to initiate electronic fund transfers.

A credit union may issue a solicited access device:

- In response to an oral or written request for the device; or
- As a renewal of, or in substitution for, an accepted access device whether issued by the institution or a successor.

A credit union may only issue an unsolicited access device if it is:

- Not validated, meaning that the credit union has not yet performed all the procedures that would enable a member to initiate an electronic fund transfer using the access device;
- Accompanied by a clear explanation that the access device is not validated and provides information as to how members may dispose of it if they do not desire to validate the device;
- Accompanied by the disclosures of the member's rights and liabilities that will apply if the access device is validated; and
- Validated only in response to the member's oral or written request for validation, after the institution has verified the member's identity by a reasonable means.

Disclosures

Regulation E requires credit unions to provide members with an initial disclosure at the time the member contracts for an electronic fund transfer service or before making the first electronic fund transfer involving the member's account. The disclosure must contain the following information:

- Liability of the member;
- Telephone number and address of the office to be notified in the case of an unauthorized electronic fund transfer;
- Business days;
- Types of transfers and limitations;
- Fees;
- Summary of the member's right to receipts and periodic statements;
- Stop payment rights;
- Liability of the credit union;
- Circumstances in which the credit union may provide information about the member's account to third parties;
- Error resolution; and
- ATM fees.

If adverse changes in fees, the member's liability, types of transfers available, or limits on transfers occur, the credit union must provide a change-in-terms notice at least 21 days before the changes take effect. The credit union must periodically send a reminder of the error-resolution procedures. It may send a detailed notice annually or provide an abbreviated notice with each account statement.

Members must receive a receipt when they initiate an electronic transfer, and documentation monthly in the form of periodic statements. Both documents must include the type of electronic transfer, the amount and date of the transaction, and the location of the terminal.

Liability for Unauthorized Transfers

A member's liability for unauthorized electronic fund transfers, such as those arising from loss or theft of an access device, is limited to \$50 if notice is given within two business days after learning of the theft or loss. If the member fails to notify the credit union within the

established time frames, the amount of liability shall not exceed the lesser of \$500 or the sum of:

- \$50 or the amount of unauthorized transfers that occur within the two business days, whichever is less; and
- The amount of unauthorized transfers that occur after the close of two business days and before notice to the credit union, provided the credit union establishes that these transfers would not have occurred had the member notified the credit union within that two-day period.

Examination Procedures

An examiner may perform the following examination procedures, depending on the scope of the review.

- Review the credit union's policy and procedures for complying with Regulation E;
- Review the credit union's Electronic Funds Transfer disclosures;
- Review policies regarding liability for unauthorized transfers;
- Review policies regarding issuance of access devices; and
- Perform tests on transactions to determine whether the credit union has implemented the above policy and procedures.

Additional Information

Additional information is available on the Federal Reserve Board's website at <http://www.federalreserve.gov>.

E-SIGN ACT – APPENDIX 19G

Examination Objective

- Determine whether the credit union complies with the E-Sign Act when accepting electronic signatures and using electronic disclosures

Risk Categories

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the E-Sign Act.

E-Sign Act

The E-Sign Act provides for facilitating the use of electronic records and signatures in commerce. The general rule of the E-Sign Act allows a signature, contract, or other record to be considered valid in an electronic format. To comply with the E-Sign Act, an electronic signature must be executed or adopted by a member with the intent to sign the record. Accordingly, regardless of the technology used to meet this requirement, the process must evidence the member's identity.

The following terms apply to the E-Sign Act:

Electronic: relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

Electronic Record: a contract or other record created, generated sent, communicated, received, or stored by electronic means.

Electronic Signature: an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.

Electronic Disclosures

The E-Sign Act permits credit unions to provide disclosures to members in an electronic format. The E-Sign Act does not affect the content or timing of any required disclosure.

Under the E-Sign Act, members must consent electronically or confirm their consent electronically, in order to demonstrate that they can access the information in the electronic format being used. Prior to consenting the credit union must provide the member with a clear and conspicuous statement informing the member of:

- The option to receive the document in paper form;
- The scope of the consent (single transaction or ongoing relationship);
- The right to withdraw consent to electronic disclosures and any consequences (fees or termination of account, for example);
- Hardware and software requirements (if these change and there is a material risk that consumers may not be able to access information, credit unions must provide notice of the changes and a right to withdraw consent); and
- The method to request and obtain a paper copy of an electronic record and any associated fee.

Delivery of Disclosures

A credit union that uses electronic communication to provide disclosures may send the disclosures to the member's designated electronic address (e-mail) or make them available at another location, such as the credit union's website. If the credit union makes the disclosure available at such a location, it effectively delivers the disclosure by sending a notice alerting the member when the member can access the disclosure and making the disclosure available for at least 90 days.

If an electronic disclosure is returned undelivered, the credit union must take reasonable steps to attempt redelivery (either electronically or to a postal address) based on information in the credit union's own files.

A credit union's inability to deliver a disclosure does not affect the timeliness of the disclosure, as long as the disclosure is initially sent in a time appropriate manner.

Record Retention

The E-Sign Act provides for meeting statutory record retention requirements by retaining an electronic record. The electronic record must accurately reflect the information set forth in the record and remain accessible to all persons who are entitled to it in a form that is capable of being accurately reproduced for later reference. An electronic record of the information on the front and back of the check satisfies the requirements for retention of checks.

**Examination
Procedures**

- Determine if the credit union has an informational or transactional web site;
- Determine if the credit union distributes required disclosures in an electronic format;
- Determine whether appropriate disclosures were provided to members for each product or service before completing the transaction; and
- Determine that disclosures are clear and conspicuous, provided in a form the consumer may retain and refer to, and consistent with model disclosure forms.

FAIR CREDIT REPORTING ACT – APPENDIX 19H

Examination Objectives

- Determine whether the credit union meets the requirements of the Fair Credit Reporting Act (FCRA) when it takes adverse action based, in whole or in part, on information obtained from outside sources; and
- Determine whether the credit union acts as a Consumer Reporting Agency (CRA), and if so, whether it complies with the CRA requirements of the FCRA.

Risk Categories

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with FCRA; and
- Reputation risk can occur when the credit union incurs fines and penalties as a result of failure to comply with FCRA.

Overview

The FCRA defines the responsibilities and liabilities of those who provide information to and access data from a Consumer Reporting Agency (CRA). The FCRA was designed to promote accuracy, fairness, and privacy of information in the files of every CRA by:

- Regulating the consumer reporting industry;
- Placing disclosure obligations on users of consumer reports;
- Ensuring fair, timely, and accurate reporting of credit information;
- Restricting the use of reports on consumers; and
- In certain situations, requiring the deletion of obsolete information.

Consumer Report

A consumer report means any written, oral or other communication of any information by a CRA bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

- Credit or insurance primarily used for personal, family, or household purposes;

- Employment purposes; or
- Any other purpose specifically stated in §604 of the FCRA.

The term credit report does not mean a report containing information solely about transactions or experiences between the consumer and the credit union.

Consumer Reporting Agency

A CRA is any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

The FCRA contains additional requirements for organizations which function as a CRA, in addition to the requirements imposed on users and organizations reporting information to a CRA.

Compliance with the FCRA

The FCRA applies to creditors, employers, landlords, and other businesses that exchange consumer information with CRAs, including institutions that offer checking or share draft accounts.

The FCRA also affects lenders extending credit to an individual for business purposes or to a closely held business. When an individual is or will be personally liable for repayment of a loan for business purposes, such as an individual proprietor, co-signer, or guarantor, the loan is a consumer transaction.

Credit Union Consumer Reporting Agency

When one credit union provides another credit union or a CRA information about a member reported to it by another person or organization, the credit union is considered a CRA. It must comply with all the sections of the FCRA relating to CRAs concerning that member.

When a credit union provides information based solely on its own transactions with the member to another credit union or to a CRA, it is

not acting as a CRA. Similarly, if the credit union furnishes information from outside sources to another party involved in the same transaction, the credit union is not a CRA. Such parties could include an insurer or a guarantor (as in the case of FHA, VA, private insurers or insured student loan programs), other financial institutions participating in the transaction, or a collection agency engaged in the collection of the transaction.

Using Consumer Reports

Users of consumer reports must identify themselves to the CRA and certify that they will use the information they request as specified in the FCRA and will not use the information for any other purpose.

If the credit union takes any adverse action with respect to any member that is based in whole or in part on any information contained in a consumer report, the credit union must

- Provide oral, written, or electronic notice of the adverse action to the member;
- Provide to the member orally, in writing, or electronically:
 - The name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person; and
 - A statement that the consumer reporting agency did not make the decision to take the adverse action and cannot provide the member the specific reasons why the adverse action was taken; and
- Provide to the consumer an oral, written, or electronic notice of the consumer's right:
 - To obtain a free copy of a consumer report on the member from the consumer reporting agency;
 - To dispute with the consumer reporting agency the accuracy or completeness of any information in the consumer report furnished by the agency.

To do this, the credit union must supply a standard disclosure form that provides the member with information to gain access to the consumer report and make corrections, if necessary.

Information from Other Sources

If adverse action occurs on the basis of information obtained from a source other than a CRA, the credit union must disclose the applicant's right to file a written request for the nature of the information within 60 days of learning of the adverse action.

If a member requests it, the credit union must then disclose the nature of the information to the consumer, orally or in writing, in sufficient detail to enable the consumer to evaluate its accuracy. The credit union may disclose the source of the information, but is not required to do so.

Information in Credit Union Files

If a credit union takes adverse action because of information it has in its own files (which it has not obtained from outside sources) or on information given to it by the member, the credit union is not required to disclose the nature of the information on which the credit union based the denial of credit. However, most credit unions do give members this information as a matter of courtesy and to counsel them in resolving their financial problems.

(The disclosure forms developed for notifying applicants of adverse actions under Regulation B indicate that the credit union meets FCRA disclosure requirements.)

Documenting Compliance

Credit unions may disclose orally the information required under the FCRA. However, if the action resulting in a denial of credit under the FCRA also meets the definition of adverse action under Regulation B, the credit union must make additional disclosures to the consumer.

Although the credit union may provide the required disclosures for both the FCRA and Regulation B on the same disclosure form, they are independent and one cannot substitute for the other. To meet the requirements of both the FCRA and Regulation B, credit unions may wish to use form letters, copies of which may be kept in files with the

completed application forms. This practice allows internal monitoring of compliance and provides evidence in the event of litigation.

**Providing
Consumer
Information**

Anyone who furnishes information to a CRA:

- May not furnish information that it knows (or consciously avoids knowing) is inaccurate;
- Must notify CRAs when members voluntarily close credit accounts. This is important because some users may interpret a closed account as an indicator of bad credit unless it is clearly disclosed that the consumer, not the creditor, closed the account;
- Must notify the CRA within 90 days after reporting information about a delinquent account placed for collection, charged to profit or loss, or subject to any similar action, of the month and year the delinquency commenced that triggered reporting. It is important to note the correct date the delinquency commenced to compute how long derogatory information can be kept in a member's file; and
- Must correct incomplete or inaccurate information, resubmit it to each CRA, and report only the correct information in the future.

Once a credit union is notified that a member disputes information it provided on the consumer report, the credit union:

- May not give that information to any CRA without also telling the CRA that the information is in dispute;
- Must investigate the dispute and review all relevant information provided by the CRA about the dispute; and
- Must report its findings to the CRA involved and all national CRAs that received the information if the investigation shows the information to be incomplete or inaccurate.

The credit union should resolve the dispute within 30 days after receipt of a dispute notice from the member. If the member provides additional relevant information during the 30-day period, the CRA has an additional 15 days to complete the investigation. The CRA must give the credit union all relevant information that it gets within five business days of receipt and must promptly give additional relevant information provided by the member. If a credit union does not

investigate and respond within the specified time periods, the CRA must delete the disputed information from its files.

Penalties and Liabilities

Credit unions may be liable for willful noncompliance or negligent noncompliance as either users of information or as CRAs. Liability may include actual damages, punitive damages, court costs, and attorney's fees, depending on the type of noncompliance. If a credit union obtains a credit report under false pretenses it may receive a penalty of \$1,000 or actual damages, whichever is greater.

Examination Procedures

An examiner may perform the following examination procedures, depending on the scope of the review.

- Determine whether the credit union uses consumer reports or other outside information in evaluating credit applications.
- Review an adequate sample of rejected loan files to determine if the adverse action notice appropriately discloses the CRA information, if the credit denial was based on information it obtained from the CRA.
- Determine whether the credit union has procedures in place to provide consumers (upon request) the nature of the "other" outside information; and
- If the credit union is a CRA, determine whether it:
 - Provides required disclosures to consumers;
 - Does not report obsolete information;
 - Resolves accuracy disputes with the consumer;
 - Provides reports for only legitimate purposes;
 - Maintains proper records on each recipient of the information about the consumer;
 - Adequately trains personnel in the furnishing of information; and,
 - Maintains procedures to ensure maximum possible accuracy of information received, recorded, and reproduced.

Additional Information

For more information, call the FTC toll-free at 1-877-FTC-HELP (1-877-382-4357), or go to <http://www.FTC.gov>.

FAIR DEBT COLLECTION PRACTICES ACT

APPENDIX 19 I

Examination Objectives

- Determine whether the credit union is subject to the Fair Debt Collection Practices Act (FDCPA) by collecting consumer debts on behalf of another party
- Determine whether the credit union has procedures in place to comply with the FDCPA

Risk Categories

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with FDCRA; and
- Reputation risk can occur when the credit union incurs fines and penalties as a result of failure to comply with FDCRA.

Overview

The purpose of the FDCPA is (1) to eliminate abusive debt collection practices by debt collectors, (2) to ensure that those debt collectors who refrain from using abusive practices are not competitively disadvantaged, and (3) to promote consistent state action to protect consumers against debt collection abuses.

A credit union is considered a “debt collector” and is subject to the FDCPA only if it regularly collects consumer debts on behalf of another party, with some exceptions. If the credit union merely collects its own debts, in its own name, compliance with the FDCPA is not required. However, the credit union should avoid those practices prohibited under the FDCPA.

Prohibited Practices

Harassment or Abuse. A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. The following conduct is a violation of this section:

- Use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person;
- Use of obscene or profane language;

- Publication of a list of consumers who allegedly refuse to pay debts;
- Advertisement for sale of any debt to coerce payment of the debt; or,
- Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with the intent to annoy, abuse, or harass any person at the called number.

False or Misleading Representations. A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Violations of this section include:

- The false representation of the character, amount, or legal status of any debt;
- The false representation or implication that any individual is an attorney or that any communication is from an attorney;
- The threat to take any action that cannot legally be taken or that is not intended to be taken; or,
- Communicating or threatening to communicate to any person credit information that is known to be false, including failure to communicate that a disputed debt is disputed.

Unfair Practices. A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt such as:

- Collecting interest, fees, charges, or expenses incidental to the principal obligation unless it is expressly authorized by the agreement;
- Depositing or threatening to deposit any postdated check prior to the date on the check; or,
- Causing charges to be made to any person for communications by the concealment of the true purpose of the communication, such as a collect telephone call.

Validation of Debts

A debt collector must send the consumer a written notice within five days after the initial communication unless the following information is contained in the initial communication or the consumer has paid the debt:

- Amount of the debt;
- Name of the creditor to whom the debt is owed;
- A statement that the consumer must dispute the validity of the debt, or any portion thereof, within thirty days of receiving the notice, or the debt will be assumed to be valid by the debt collector;
- A statement that if the consumer disputes the debt in writing, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and mail it to the consumer; and,
- A statement that, upon the consumer's written request within thirty days, the debt collector will provide the name and address of the original creditor, if different from the current creditor.

Enforcement

The National Credit Union Administration is responsible for enforcement for federal credit unions, while the Federal Trade Commission (FTC) enforces the FDCPA for state-chartered credit unions. Any debt collector who fails to comply with any provision of the FDCPA is liable in an amount equal to the sum of any actual damage sustained by such person. Additional damages may be recovered, not to exceed \$1,000 for an individual plaintiff or named plaintiff in a class action suit, or \$500,000 or 1 percent of net worth for all other class members.

Examination Procedures

An examiner may perform one or more of the following examination procedures, depending on the scope of the review.

- Determine if the credit union meets the definition of a debt collector under the FDCPA;
- Determine if appropriate policies and procedures are in place to comply with the FDCPA; and,
- Review collection practices and procedures to determine if the credit union uses any of the prohibited practices while acting as a debt collector.

Additional Information

Additional information about the FDCPA is available on the FTC's website at www.ftc.gov.

FAIR HOUSING ACT – APPENDIX 19J

Examination Objectives

- Determine that the credit union evaluates each loan applicant's creditworthiness on an individual basis, without presuming the applicant has characteristics of a certain group
- Determine if the credit union's loan policies or procedures limit the inflow of applications from protected classes (pre-screening)
- Determine if the credit union rejects applications from any of the groups with a disproportionate frequency, or if its acceptance levels are disproportionately lower for one or more groups due to such factors as withdrawals or delays
- Determine whether the credit union has adequate economic justification for any policies or practices that have a disproportionately negative effect based on applicants' ages
- Determine if the credit union's lending patterns reflect more stringent loan terms (interest rate, loan maturity, loan-to-value ratio, etc.) for affected groups
- Determine whether the credit union provides reasons for the rejections (or other less than favorable actions) consistent with the credit union's underwriting criteria and whether the credit union uniformly applies them to all applicants and all areas

Risk Categories

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the Fair Housing Act (FHA); and
- Reputation risk can occur when the credit union incurs fines and penalties as a result of failure to comply with the FHA.

Overview

The Fair Housing Act (FHA) provides fair housing throughout the United States by regulating many practices relating to housing. In particular, FHA makes it unlawful for any lender to discriminate in its housing-related lending activities against any person because of race, color, religion, national origin, sex, handicap, or familial status.

The FHA works in conjunction with the Equal Credit Opportunity Act (ECOA) to prohibit discrimination on any of the prohibited bases by anyone who is in the business of providing loans for housing. *NCUA*

Rules and Regulations §701.31 summarizes the prohibitions on discrimination in real estate lending activities contained in the FHA and ECOA.

Non-Discrimination in Lending

A credit union may not deny a loan or other financial assistance for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, nor may it discourage an application for such a loan, on the basis of the race, color, religion, handicap, familial status (having children under the age of 18), national origin, or sex of:

- The loan applicant or joint applicant;
- Any person associated with the loan applicant or joint applicant;
- The present or prospective owners, lessees, tenants, or occupants of other dwellings in the vicinity of the dwelling.

It is unlawful to discriminate because of race, color, religion, handicap, familial status, national origin, or sex in determining the:

- Amount;
- Interest rate;
- Duration; or
- Other credit terms.

The FHA prohibits the lender from considering the following factors because they are not necessary to a federal credit union's business and they generally have a discriminatory effect:

- Age or location of the dwelling;
- Zip code of the applicant's current residence;
- Previous home ownership;
- Age or location of dwellings in the neighborhood of the subject dwelling; or
- Income level of residents in the neighborhood of the dwelling.

A credit union may not rely on an appraisal that it knows or should know is based upon any prohibited bases or factors listed above.

Legal Interpretations

Because the FHA was broadly written by Congress, the courts have ruled a wide variety of lending practices illegal under the Act, including some that the Act itself does not specifically mention but which the courts determined are illegal because they violate implicit requirements and prohibitions. Examples of some prohibited practices include:

- Redlining on a racial basis. "Redlining" is the practice of denying loans for housing in certain neighborhoods even though the individual applicant may otherwise qualify for credit;
- Making excessively low appraisals in relation to purchase prices, based on prohibited considerations (closely akin to redlining);
- Discouraging applications for credit on prohibited bases, as well as outright denials. Taken together, the FHA and ECOA produce a strong statutory prohibition against prescreening or discouraging applicants by housing sellers or lenders, even to the point of ensuring that their advertising policies do not have that effect;
- The use of excessively burdensome qualification standards for the purpose, or with the effect, of denying housing to protected applicants;
- Applying differing standards or procedures in administering foreclosures, late charges, penalties, or reinstatements, or other collection procedures;
- Racial notation or code on appraisal forms or loan forms (other than the information which §202.13 of Regulation B requires the credit union to retain for monitoring purposes);
- Use by initial interview personnel of scripts designed to discourage protected applications; and
- Patterns of significantly greater or exclusive use of insured or guaranteed loan programs by protected groups or in certain areas. This may indicate illegal "steering" to this type of lending by the credit union.

Advertising

Credit unions may not directly or indirectly engage in any form of advertising of real estate related loans that implies or suggests the credit union discriminates.

Any credit union that advertises real estate related loans must prominently indicate in the advertisement, in a manner appropriate to

the advertising medium and format used, that it makes such loans without regard to the prohibited bases. In addition, every credit union engaged in real estate lending must provide a notice of nondiscrimination in its lobby. The notice must be clearly visible to the general public and must contain the logotype and language appearing in the FHA or *NCUA Rules and Regulations* §701.31(d)(3).

Enforcement

Persons who claim they were victims of discrimination may file a complaint with the United States Department of Housing and Urban Development (HUD) for processing under the FHA. HUD will investigate the complaint and may attempt to resolve the grievance through conference, conciliation, and persuasion. It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of, or because they have exercised, rights granted by certain sections of FHA.

Persons who believe they were discriminated against may also file a complaint with NCUA for processing under NCUA Regulations.

Examination Procedures

An examiner may perform one or more of the following examination procedures, depending on the scope of the review.

- Determine that the board has adopted policies, procedures, and general underwriting standards concerning nondiscrimination in lending;
- Determine that the officials review loan underwriting standards and related business practices regularly;
- Determine by reviewing rejected mortgage loan applications if the credit union engages in prohibited practices;
- Determine from the credit union's practices, records, and reports that it refrains from setting more stringent terms (down payments, interest rates, terms, fees, loan amounts, etc.) for housing-related loans in certain geographic areas located reasonably within its operational area. If the credit union imposes more stringent terms, determine from a review of loans in these areas whether the credit union used more stringent standards solely for documented economic reasons;

- Determine that the credit union does not discriminate on the basis of the racial composition or the income level of an area;
- Determine that the credit union does not discriminate on the basis of the language of applicants;
- Determine that the credit union has not set an arbitrary limit on loan size and the income required before granting a loan;
- Determine that the credit union refrains from using appraisals that discriminate;
- Determine that the credit union refrains from discounting appraised values (i.e., lowering the appraised value of property because of location or some negative comment in the appraisal form);
- Determine from reviewing approved and rejected loan applications that the credit union documents uniformly applied economic factors, such as (1) income and debt ratios, (2) credit history, (3) security property, (4) neighborhood amenities, and (5) personal assets;
- Determine from the loan review whether the credit union makes a disproportionate number of loans under one type of financing (FHA, VA, other alternative mortgage instruments);
- Based on a review of appropriate loan records, determine that the credit union administers the following without bias: (1) loan modifications, (2) loan assumptions, (3) additional collateral requirements, (4) late charges, (5) reinstatement fees, and (6) collections;
- Determine that the credit union has policies that prohibit the employees from making statements that would discourage the receipt or consideration of any application for a loan or other credit service;
- Visually determine whether the credit union has an Equal Housing Lender Poster located in a conspicuous place in all of the credit union's offices;
- Visually inspect the size and content of each nondiscrimination notice, such as the Equal Housing Lender Poster, to ensure it is clear and conspicuous and in compliance with the requirements of §701.31(d)(3) of the *NCUA Rules and Regulations*;
- Determine that a sampling of the credit union's advertising complies with the requirements of §701.31(d) of the *NCUA Rules and Regulations*;

- Determine that marketing practices ensure the availability of the credit union's services without discrimination to its field of membership;
- Complete the applicable FHA checklist in AIREs; and
- Document a violation of the FHA on the Violations form in AIREs.

**Additional
Information**

Please refer to §701.31(e) of the *NCUA Rules and Regulations* for additional guidelines concerning nondiscrimination in lending. In addition, information is available on HUD's website at <http://www.hud.gov>.

FLOOD DISASTER PROTECTION ACT – APPENDIX 19 K

Examination Objectives

- Determine whether a credit union performs required flood determinations for loans secured by improved real estate or a mobile home affixed to a permanent foundation in accordance with the final rule
- Determine if the credit union requires flood insurance in the correct amount when it makes, increases, extends, or renews a loan secured by improved real estate or a mobile home located, or to be located, in a Special Flood Hazard Area (SFHA) of a community participating in the National Flood Insurance Program (NFIP)
- Determine if the credit union provides the required notices to the borrower, servicer, and to the Director of the Federal Emergency Management Agency (FEMA) whenever it requires flood insurance as a condition of the loan
- Determine if the credit union requires escrow accounts for flood insurance premiums when requiring flood insurance on a residential building and when other items required escrowing
- Determine if the credit union complies with the forced placement provisions if at any time during the term of a loan it determines that flood insurance on the loan does not sufficiently meet the requirements of the regulation

Risk Categories

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with Flood Disaster Protection Act (FDPA); and
- Reputation risk can occur when the credit union incurs fines, penalties, or poor publicity as a result of failure to comply with FDPA.

Overview

The National Flood Insurance Program (NFIP) is a federal program enabling property owners to purchase insurance protection against losses from flooding. It provides an insurance alternative to disaster assistance to meet the escalating costs of repairing damage to buildings and their contents caused by floods. Flooding ranks as the most

common natural disaster, costing more in damages and loss of life than any other disaster.

An agreement between local communities and the federal government governs participation in the NFIP. The agreement states if a community will adopt and enforce a floodplain management ordinance to reduce future flood risks to new construction in SFHAs, the Federal Government will make flood insurance available within the community as a financial protection against flood losses.

If the property securing a member's loan is located in a SFHA, but the SFHA is in a community that does not participate in the NFIP, the member will not have federal flood insurance available.

To obtain information on a community's participation status, telephone FEMA at 1-800-358-9616 or check FEMA's web site at <http://www.fema.gov/fema/csb.htm> .

**Flood
Disaster
Protection
Act**

Part 760 of the *NCUA Rules and Regulations* implements the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act (FDPA) of 1973, as amended (42 U.S.C. 4001-4129.) This part applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the FEMA to have special flood hazards.

Part 760 requires the following:

- A credit union cannot make, increase, extend, or renew any loan secured by a building or mobile home located or to be located in a SFHA in which flood insurance is not available unless the collateral securing the loan is covered by flood insurance for the term of the loan;
- The amount of the flood insurance must at least equal the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act; and

- Flood insurance coverage is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

Exemptions

The flood insurance requirement does not apply with respect to:

- Loans on state-owned property covered under an adequate policy of self-insurance satisfactory to the Director of FEMA; or
- Loans with an original principal balance of \$5,000 or less and a repayment term of one year or less.

Eligible Structures

The following types of structures are eligible for flood insurance coverage:

- Residential, industrial, commercial, and agricultural buildings that are walled and roofed structures that are principally above ground;
- Buildings under construction where a development loan is made to construct improvements on the land. Insurance can be purchased to keep pace with the new construction;
- Mobile homes that are affixed to a permanent site, including mobile homes that are part of a dealer's inventory and affixed to permanent foundations;
- Condominiums; or
- Co-operative buildings.

Members may also obtain flood insurance coverage for personal property and other insurable contents contained in real property or mobile homes located in SFHAs. The real property must be insured in order for the contents to be eligible.

Second Mortgages and HELOCs

Both second mortgages and home equity loans are transactions that come within the purchase provisions of the FDPA. Since only one flood insurance policy can be issued for a building, a credit union should not request a new flood insurance policy if one already exists. Instead, the credit union should have the borrower contact the insurance agent to:

- Inform the agent of the intention to obtain a loan involving a subordinate lien;
- Obtain verification of the existence of a flood insurance policy; and
- Check that the insurance sufficiently covers all loan amounts.

After obtaining this information, the insurance agent should increase the amount of coverage if necessary and issue an endorsement that will reflect the credit union as a lien holder.

For loans with approved lines of credit that members may access in the future, credit unions may have difficulty calculating the amount of insurance for the loan since the borrower will be drawing down differing amounts on the line at different times. In those instances the borrower must, at a minimum, obtain a policy as a requirement for drawing on the line.

As a matter of administrative convenience to ensure compliance with the requirements, a credit union may take the following alternative approaches:

- Review its records periodically so that as the member draws against the line, the appropriate amount of insurance coverage can be maintained; or
- Require the purchase of flood insurance for the total amount of the loan, or the maximum amount of flood insurance coverage available, whichever is less.

Lending in Non-Participating Communities

Flood insurance coverage is an important component of prudent underwriting for credit unions that extend loans in at-risk areas, to maintain safety and soundness and protect the lender's interest in its collateral. Credit unions with significant lending in nonparticipating communities should take care to ensure that the risks associated with loans secured by properties in flood hazard areas where flood insurance is not available are monitored and controlled.

**Standard
Flood Hazard
Determin-
ation Form**

A credit union must use the standard flood hazard determination form developed by FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a SFHA which has flood insurance. Credit unions may use the standard flood hazard determination form in a printed, computerized or electronic manner. The credit union must retain a copy of the completed form, in either hard copy or electronic format, for the period of time the credit union owns the loan.

**Reliance on
Prior
Determination**

A credit union can rely on a prior SFHA determination if:

- The previous determination is not more than seven years old;
- The basis for it was recorded on the standard flood hazard determination form; or
- The loan is a subsequent transaction by the same institution with respect to the same property, i.e., assumption, refinancing, renewal, or second lien loan. A new determination is not required, assuming the other requirements are met.

A credit union may not rely on a previous determination if:

- FEMA's map revisions or updates show that the security property is now located in an SFHA;
- The lender discovers that map revisions or updates affecting the security property were made after the date of the previous determination; or
- The loan is not a subsequent transaction by the same institution with respect to the same property (e.g., a lender purchases a loan from another lender.)

**Determination
Fees**

Any credit union or a servicer acting on its behalf may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a SFHA if the determination:

- Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

- Reflects a revision or updating of floodplain areas or flood-risk zones by FEMA;
- Is due to FEMA's publication of a notice that affects the area in which the loan is located; or
- Results in the purchase of flood insurance coverage by the credit union or its servicer on behalf of the borrower under the forced placement provision.

A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

Required Notices

When a credit union makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a SFHA, the credit union must mail or deliver a written notice to the borrower and to the servicer, regardless of whether or not flood insurance is available for the collateral securing the loan. The written notice must include the following information:

- A warning that the building or mobile home is or will be located in a SFHA;
- A description of the flood purchase requirements set forth in Section 102(b) of the FDPA of 1973, as amended (42 U.S.C. 4012a(b));
- A statement that flood insurance coverage is available under the NFIP, and possibly from private insurers; and
- A statement as to whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home, caused by flooding in a Federally-declared disaster.

Delivery of Notice

Delivery of notice must take place within a "reasonable time" before the completion of the transaction. Ten days is generally regarded as a "reasonable" time interval. A borrower should receive notice timely enough to ensure that:

- The borrower has the opportunity to become aware of the borrower's responsibilities under the NFIP; and
- Where applicable, the borrower can purchase flood insurance before completion of the loan transaction.

Notice to Servicers

The servicer should receive notice as promptly as practicable after the credit union provides notice to the borrower and no later than the time the credit union provides similar notices to the servicer concerning hazard insurance and taxes. Credit unions may provide notice to the servicer electronically or it may take the form of a copy of the notice to the borrower.

Record Retention

The credit union must retain a record of the receipt of the notices by the borrower and the servicer for the period of time the credit union owns the loan.

Forced Placement Provisions

If a credit union, or a servicer acting on its behalf determines at any time during the term of the loan that the building or mobile home, and any personal property securing the loan, is not covered by flood insurance or is covered in an amount less than the amount required, then the credit union or its servicer must provide notice and an opportunity for the borrower to obtain the necessary amount of flood insurance, at the borrower's expense. If the borrower fails to obtain flood insurance within 45 days after notification, then the credit union or its servicer must purchase or "force place" flood insurance in the appropriate amount on the borrower's behalf. The credit union or its servicer may charge the borrower for the cost of the premiums and fees incurred in purchasing the insurance.

Escrow Accounts

If a credit union requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home that is made, increased, extended or renewed on or after November 1, 1996, it must also require the escrow of all premiums and fees for flood insurance.

Penalties for Non-compliance

Penalties exist for violations of:

- Escrow requirements;
- Notice requirements; and
- Forced placement requirements.

If a credit union is found to have a pattern or practice of committing violations, NCUA shall assess civil penalties in an amount not to exceed \$350 per violation with a total amount against any one credit union not to exceed \$100,000 in any calendar year. Any penalty assessed will be paid into the National Flood Mitigation Fund. Liability for violations cannot be transferred to a subsequent purchaser of a loan. Liability for penalties expires four years from the time of the occurrence of the violation.

Notice to FEMA

When a credit union makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a SFHA, the credit union must notify the Director of FEMA, or the Director's designee (the insurance carrier), in writing of the identity of the servicer of the loan.

The credit union must notify the Director of FEMA, or the Director's designee, of any change in the servicer of the loan within 60 days after the effective date of the change. Credit unions may provide this notice electronically, if electronic submission is satisfactory to the Director of FEMA, or the Directors' designee.

Examination Procedures

An examiner may perform one or more of the following examination procedures, depending on the scope of the review.

- Coverage and Internal Control:
 - Review the methods used by the credit union to ascertain whether improved real estate or mobile homes are or will be located in a SFHA;
 - Verify that the process used accurately identifies SFHAs; and
 - Determine if the communities in which identified SFHAs are located participate in the NFIP.

- Property Determination Requirements:
 - Verify that the credit union accurately prepares flood zone determinations on the standard flood hazard determination form;
 - Verify that the credit union only relies on a previous determination if it is not more than seven years old, is recorded

- on the standard flood hazard determination form, and is not in a community that has been remapped;
 - Review the contractual obligations to ascertain that flood insurance requirements are identified and compliance responsibilities are adequately addressed if the credit union uses a third party to prepare flood zone determinations; and
 - Verify that the credit union’s escrow procedures comply with Section 760.5 of the *NCUA Rules and Regulations*.
- Forced Placement Requirements:
 - Ascertain that the credit union has appropriate policies and procedures in place to exercise its forced placement authority if the credit union determines that flood insurance coverage is less than the amount required by the FDPA;
 - Verify the following if the credit union is required to force place insurance:
 - i. That it provides written notice to the borrower that flood insurance is required; and
 - ii. That if the required insurance is not purchased by the borrower within 45 days from the date of notification, the credit union purchases the required insurance on the borrower’s behalf.
- Checklists
 - Complete the FDPA checklist in AIRES, which provides informative guidance on the requirements of the regulation for each question.
 - Report a violation on the Violations form in AIRES.

Additional Information

Additional information is available on the Federal Reserve Board's web site at <http://www.federalreserve.gov> . The Publications Services Unit at (202) 452-3245 furnishes copies of the regulation and staff commentaries issued by the Federal Reserve System.

HOMEOWNERS PROTECTION ACT – APPENDIX 19L

Examination Objective

- Determine whether the credit union has implemented procedures for complying with the requirements of the Homeowners Protection Act (HOPA)

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with HOPA
- Reputation risk can occur when the credit union incurs fines and penalties as a result of failure to comply with HOPA
- Strategic risk can occur when the board of directors fails to perform necessary due diligence in reviewing existing and prospective products and services for compliance with HOPA

Overview

HOPA applies to residential mortgage transactions consummated on or after July 29, 1999, with the purpose of financing the acquisition, initial construction, or refinancing a single family dwelling that serves as a principal residence.

HOPA addresses the difficulties homeowners have experienced in canceling private mortgage insurance (PMI). The Act establishes provisions for the cancellation and termination of PMI, establishes disclosure and notification requirements, and requires the return of unearned premiums. HOPA protects homeowners by prohibiting life of loan PMI for borrower-paid products, and it establishes uniform procedures for cancellation of PMI policies.

Termination of PMI

HOPA provides three methods to terminate PMI. The credit union should monitor PMI to ensure cancellation occurs in one of the following three ways:

- Borrower cancellation. The borrower must:
 - Submit a written request for cancellation;
 - Maintain a good payment history with respect to the loan;

- Maintain a current balance as required by terms of loan (at time of request); and
 - Satisfy any requirement of the credit union (as of the date of the written request for cancellation) such as evidence (1) of the residence's value, or (2) that the mortgage is unencumbered by other liens.
-
- Automatic termination. The credit union automatically terminates PMI based on the date the principal balance of the mortgage reaches 78 percent of the original value of the property securing the loan according to the initial amortization schedule (or amortization schedule in effect for adjustable rate mortgages);
 - Final termination. If the borrower has not cancelled PMI or the credit union has not automatically terminated PMI, the credit union must cancel or terminate it by the first day of the month immediately following the midpoint of the amortization period of the loan if the member is current on payments. The midpoint of the amortization period is defined as the point in time halfway between the consummation of the loan and the end of the amortization schedule.

If the borrower or credit union alters the terms of the loan before a residential mortgage transaction, the credit union must recalculate the cancellation date, termination date, or final termination to reflect the modified terms and conditions of the loan.

The credit union may not require any further PMI payments from the member after 30 days of termination or cancellation. Generally within 45 days of termination or cancellation of PMI, the servicer must return all unearned premiums to the member.

HOPA provides exceptions for high risk loans. Borrower cancellation and automatic termination do not apply to loans designated as high risk at the time of consummation.

High risk mortgages include:

- Conforming loans defined as high risk by the Federal National Mortgage Association (FNMA) and/or the Federal Home Loan Mortgage Corporation (Freddie Mac); and
- Non-conforming loans defined as high risk by the lender.

The final termination provisions do apply to high risk mortgage loans.

Disclosure Requirements

In the case of mortgages requiring PMI, the credit union must disclose the following in writing:

- Initial amortization schedule (fixed rate only);
- Notice of the ways to cancel or terminate PMI; and
- Notice of the exemptions to the right to cancel and automatic termination.

When the credit union uses a third-party to service its loans, the servicer must provide annual written statements stating:

- The right to cancel or terminate PMI; and
- The address and telephone number the member may use to contact the servicer.

Notification of Cancellation or Termination

Generally within 30 days after the cancellation or termination of the PMI, the servicer shall notify the member in writing of the following:

- PMI has terminated and member no longer has PMI; and
- The member owes no further premiums, payments, or fees in connection with PMI.

Disclosure Requirements for Lender Paid PMI

In the case of lender-paid PMI, the credit union must provide written disclosure to the member not later than the date of the loan commitment that lender-paid PMI:

- Differs from borrower-paid PMI (include differences);
- Results in a higher interest rate (generally); and
- Terminates only upon refinancing of the loan.

Within 30 days after the termination date that would apply in the case of borrower paid PMI, the servicer shall provide a written notice to the member indicating they may wish to review financing options that could eliminate the requirement for PMI.

Fees and Penalties

The credit union may not impose any fee on the member with respect to the provision of any notice or information required by HOPA.

Penalties for violating this Act include liability to the member to whom the violation relates. Liability may include actual damages, statutory damages, costs of actions, and reasonable attorney fees. Statutory damages are limited to \$2,000 in individual cases and the lesser of \$500,000 or 1 percent of net worth in class action cases.

Examination Procedures

In reviewing HOPA, examiners should:

- Review the credit union's HOPA policies and procedures;
- Determine the credit union provides the required written disclosures in residential mortgage transactions;
- Review recent annual disclosure provided to member;
- Review the credit union's process for canceling PMI upon borrower's request;
- Determine the credit union has controls in place to ensure proper processing of the automatic and final termination provisions of HOPA;
- Determine the credit union complies with the notification requirements upon termination or cancellation of PMI;
- Determine the credit union provides appropriate disclosures in the cases of lender paid mortgage insurance.

Examiners should cite material emerging or unresolved deficiencies in the examination report. The examiner should discuss immaterial exceptions with management.

CONSUMER LEASING ACT – APPENDIX 19M

Examination Objectives

- Assess the credit union’s compliance management system for the Consumer Leasing Act
- Determine whether the credit union provides required disclosures to lessees
- Determine if the credit union accurately discloses lease terms in advertising

Risk Category

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the Consumer Leasing Act.
- Reputation risk can occur when non-compliance with Regulation M or inadequate disclosures result in increased liability and risk of loss that may harm the credit union’s reputation.

Overview

The Federal Reserve Board issued Regulation M (12 C.F.R. Part 213), the Consumer Leasing Act (15 USC 1667 et.seq.), to implement the consumer leasing portions of the Truth in Lending Act. The regulation requires meaningful disclosures to lessees for comparing consumer lease terms with other leases and credit transactions. It also limits balloon payments in consumer lease transactions, and provides for the accurate disclosures of lease terms in advertisements. NCUA Rules and Regulations §714 and Appendix 10A of this Guide contain more guidance on leasing programs.

Regulation M applies to **lessors** of personal property under **consumer leases**, as these terms are defined below.

Definitions

For purposes of the Consumer Leasing Act, the following definitions apply:

Adjusted capitalized cost: the gross capitalized cost less the capitalized cost reduction is the amount used by the lessor in calculating the base periodic payment.

Capitalized cost reduction: the total amount of any rebate, cash payment, net trade-in allowance, and non-cash credit that reduces the gross capitalized cost.

Closed-end lease: a consumer lease other than an open-end lease. This type of lease allows the member to “walk away” at the end of the contract period, with no further payment obligation, unless the property has been damaged or has sustained abnormal wear and tear.

Consumer lease: a contract between a lessor and a lessee:

- For the use of personal property by an individual (natural person);
- To be used primarily for personal, family, or household purposes;
- For a period of more than four months (week-to-week and month-to-month leases do not meet this criteria, even though they may be extended beyond four months); and
- Has a total contractual cost of no more than \$25,000.

The Consumer Leasing Act and Regulation M cover a lease that meets all of the above criteria. The Consumer Leasing Act and Regulation M do not apply if the lease fails to meet any one of the above criteria.

The following are not consumer leases:

- A lease that meets the definition of a credit sale in Regulation Z §226.2(a)(16);
- A business or agricultural lease, or one made to an organization or government;
- A lease made for real property; and
- A lease for personal property, which is incidental to the lease of real property, subject to certain conditions.

Gross capitalized cost: the amount agreed upon by the lessor and lessee as the value of the leased property, plus any items that are capitalized or amortized during the lease term (e.g., taxes, insurance, service agreements, and any outstanding prior credit or lease balance).

Lessee: a natural person who enters into or is offered a consumer lease.

Lessor: a natural person or organization who regularly leases, offers to lease, or arranges for the leasing of personal property under a consumer lease. A person who leases or offers to lease more than five times in the preceding or current calendar year is subject to Regulation M.

Open-end lease: a lease in which the amount owed at the end of the lease term is based on the difference between the residual value of the leased property and its realized value. The consumer may pay all or part of the difference if the realized value is less than the residual value, or the consumer may get a refund if the realized value is greater than the residual value at scheduled termination.

Personal property: 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.

Realized value: 1) the price received by the lessor of 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.

Residual value: the value of the leased property at the end of the lease, as estimated or assigned at consummation of the lease by the lessor.

Disclosures

All disclosures required under Regulation M must be accurate, clear and conspicuous, in writing, and in a form the consumer can keep. Certain pieces of information must be kept together and segregated from other lease information. The lessee may agree to electronic disclosures. Credit unions must provide disclosures as follows:

- Prior to or due at lease signing. The lessor must provide a dated disclosure containing all required information to the lessee before signing the lease.
- Renegotiations and extensions. The lessor must also provide new disclosures when a lessee renegotiates or extends a lease, subject to certain exceptions.
- Multiple lessors/lessees. In the event of multiple lessors, one lessor on behalf of all the lessors may make the required disclosures. If the lease involves more than one lessee, the lessor should give the required disclosures to any lessee who is primarily liable.

Advertising

All advertisements for consumer leases must be accurate and must comply with certain disclosure requirements. If a printed advertisement includes any reference to certain “trigger terms” (i.e., the amount of payment, statement of a capitalized cost reduction [i.e., down payment], other payment required, or that no such payment is required), then the advertisement must also state the following:

- The transaction is for a lease;
- The total amount due prior to or at lease signing, or delivery;
- The number, amounts, and due dates or periods of scheduled payments; and
- A statement of whether or not a security deposit is required.

An advertisement for an open-end lease must also include a statement that the lessor may impose extra charges at the end of the lease based

on the difference between the residual value and the realized value at the end of the lease term.

If lessors give a percentage rate in an advertisement, the rate cannot be more prominent than any of the other required disclosures. They must also include a statement that “this percentage may not measure the overall cost of financing this lease.” The lessor cannot use the term, “annual percentage rate,” “annual lease rate,” or any equivalent term.

Some fees (license, registration, taxes, and inspection fees) may vary by state or locality. An advertisement may exclude these third-party fees from the disclosure of a periodic payment or total amount due at lease signing or delivery, provided the advertisement states that these have been excluded. Otherwise, an advertisement may include these fees in the periodic payment or total amount due, provided it states that the fees are based on a particular state or locality, and indicates that the fees may vary.

**Limits on
Balloon
Payments**

In order to limit balloon payments that a lessor may require of the lessee, certain sections of the regulation call for reasonable calculations and estimates. These provisions protect the lessee at early termination of a lease, at the end of the lease term, or in a delinquency, default, or late payment status. The provisions limit the lessee’s liability at the end of the lease term and set reasonableness standards for wear and use charges, early termination charges, and penalties or fees for delinquency.

**Penalties and
Liabilities**

Criminal and civil liability provisions of the Truth in Lending Act also apply to the Consumer Leasing Act. Actions alleging failure to disclose the required information, or otherwise comply with the Consumer Leasing Act, must be brought within one year of the termination of the lease agreement.

**Record
Retention**

Lessors must maintain evidence of compliance with the requirements imposed by Regulation M, other than the advertising requirements imposed under Section 7 of the regulation, for a period of not less than

two years after the date required for the disclosures or the date of a required action.

State Law

Regulation M preempts state law, except where state law provides greater protection and benefit to the consumer.

Examination Procedures

An examiner may perform one or more of the following examination procedures, depending on the scope of the review.

- Determine if the credit union has made or arranged consumer leases since the last examination;
- Review the forms used in granting consumer leases;
- Determine that disclosures were furnished to members before consummation of the lease;
- Determine that lease disclosures are accurate, conspicuous, written in a form the consumer may keep, and consistent with the model disclosure forms; alternatively, that they are provided electronically where agreed to by the consumer;
- Complete the Regulation M Questionnaire in AIRES (the checklist provides informative guidance on the requirements of the regulation for each question); and
- Report a violation of Regulation M on the Violations form in AIRES.

Additional Information

Additional information is available on the Federal Reserve Board's web site at <http://www.federalreserve.gov>. The Publications Services Unit at (202) 452-3245 also furnishes copies of the regulation and staff commentaries issued by the Federal Reserve System.

PRIVACY OF CONSUMER FINANCIAL INFORMATION – APPENDIX 19N

Examination Objectives

- Assess the quality of a credit union’s compliance management policies and procedures for implementing the Privacy of Consumer Financial Information (Privacy Regulation) to determine whether the information about its policies and practices to members and consumers in the credit union’s notices conforms to the credit union’s actual procedures and practices
- Determine the reliability of the credit union’s internal controls and procedures for monitoring compliance with the Privacy Regulation
- Determine the credit union’s compliance with the Privacy Regulation
- Initiate effective corrective actions for violations of law or deficient policies or internal controls

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the Privacy Act; and
- Reputation risk can occur when members of the credit union learn of its failure to comply with the Privacy Act.

Overview

Title V, Subtitle A of the Gramm-Leach-Bliley Act (the “Act”) governs the treatment of nonpublic personal information about consumers by financial institutions. Section 502 of Subtitle A, subject to certain exceptions, prohibits a financial institution from disclosing nonpublic personal information about a consumer to nonaffiliated third parties, unless the institution satisfies various notice and opt-out requirements, and provided that the consumer has not elected to opt out of the disclosure. Section 503 requires the institution to provide notice of its privacy policies and practices to its customers. Section 504 authorizes the issuance of regulations to implement these provisions.

Part 716 of the *NCUA Rules and Regulations* implement provisions of the Act governing the privacy of consumer financial information. The

regulation establishes rules governing duties of a credit union to provide particular notices and limitations on its disclosure of nonpublic personal information, as summarized below:

- A credit union must provide a notice of its privacy policies, and allow the consumer to opt out of the disclosure of the consumer's nonpublic personal information, to a nonaffiliated third party if the disclosure is outside of the exceptions in *NCUA Rules and Regulations* §716.13, §716.14 or §716.15;
- Regardless of whether a credit union shares nonpublic personal information, the credit union must provide notices of its privacy policies to its members;
- A credit union generally may not disclose member account numbers to any nonaffiliated third party for marketing purposes; and
- A credit union must follow reuse and redisclosure limitations on any nonpublic personal information it receives from a nonaffiliated financial institution.

Definitions and Key Concepts

Discussion of the duties and limitations imposed by the Privacy Regulation involves using a number of key concepts. These concepts include “financial institution,” “nonpublic personal information,” “nonaffiliated third party,” the “opt out” right and the exceptions to that right, and “consumer” and “member.” Each concept is briefly discussed below. A more complete explanation of each appears in the regulation.

Financial Institution

A financial institution is any institution the business of which engages in activities that are financial in nature or incidental to such financial activities, as determined by section 4(k) of the Bank Holding Company Act of 1956. Financial institutions can include banks, credit unions, securities brokers and dealers, insurance underwriters and agents, finance companies, mortgage bankers, and travel agents.

Nonpublic Personal Information

Nonpublic personal information generally is any information that is not publicly available and that:

- A consumer provides to a credit union to obtain a financial product or service from the credit union;
- Results from a transaction between the consumer and the credit union involving a financial product or service; or
- A credit union otherwise obtains about a consumer in connection with providing a financial product or service.

Information is publicly available if a credit union has a reasonable basis to believe that the information is lawfully made available to the general public from government records, widely distributed media, or legally required disclosures to the general public. Examples include information in a telephone book or a publicly recorded document, such as a mortgage or securities filing.

Nonpublic personal information may include individual items of information as well as lists of information. For example, nonpublic personal information may include names, addresses, phone numbers, social security numbers, income, credit score, and information obtained through Internet collection devices (i.e., cookies.)

Special rules govern lists. Publicly available information would be treated as nonpublic if it were included on a list of consumers derived from nonpublic personal information. For example, a list of the names and addresses of a credit union's members would be nonpublic personal information even though the names and addresses might be published in local telephone directories because the list is derived from the fact that a person is a member of the credit union, which is not publicly available information.

However, if the credit union has a reasonable basis to believe that certain member relationships are a matter of public record, then any list of these relationships would be considered publicly available information. For instance, a list of members with mortgages where the mortgages are recorded in public records would be considered publicly available information. The credit union could provide a list of such members, and include on that list any other publicly available information it has about the members without having to provide notice or opt out.

**Nonaffiliated
Third Party**

A nonaffiliated third party is any person except a credit union's affiliate or a person employed jointly by a credit union and a company that is not the credit union's affiliate. An "affiliate" of a credit union is any company that controls, is controlled by, or is under common control with the credit union. For federal credit unions, a credit union service organization (CUSO) that is controlled by the credit union would constitute the only affiliate. NCUA will presume a credit union has a controlling influence if the CUSO is 67 percent owned by that credit union or by that credit union and other credit unions.

**Opt Out Right
and Exceptions**

Consumers must be given the right to "opt out" of, or prevent, a credit union from disclosing nonpublic personal information about them to a nonaffiliated third party, unless an exception to that right applies. The exceptions are detailed in §716.13, §716.14 or §716.15.

As part of the opt out right, credit unions must give consumers a reasonable opportunity and a reasonable means to opt out. What constitutes a reasonable opportunity to opt out depends on the circumstances surrounding the consumer's transaction, but the credit union must provide the consumer a reasonable amount of time to exercise the opt out right. For example, it would be reasonable if the credit union allows 30 days from the date of mailing a notice or 30 days after member acknowledgement of an electronic notice for the consumer to return an opt out direction. What constitutes a reasonable means to opt out may include check-off boxes, a reply form, or a toll-free telephone number, again depending on the circumstances surrounding the consumer's transaction. It is not reasonable to require a consumer to write his or her own letter as the only means to opt out.

NCUA Rules and Regulations §716.13, §716.14 and §716.15 detail exceptions to the opt out right. Credit unions need not comply with opt-out requirements if they limit disclosure of nonpublic personal information:

- To a nonaffiliated third party to perform services for the credit union or to function on its behalf, including marketing the credit union's own products or services or those offered jointly by the credit union and another financial institution. The exception is permitted only if the credit union provides notice of these

arrangements and by contract prohibits the third party from disclosing or using the information for other than the specified purposes. The contract must provide that the parties to the agreement jointly offer, sponsor, or endorse a financial product or service. However, if the service or function is covered by the exceptions in §716.14 or §716.15 (discussed below), the credit union need not comply with the additional disclosure and confidentiality requirements of §716.13. Disclosure under this exception could include the outsourcing of marketing to an advertising company (§716.14):

- As necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or under certain other circumstances that relate to existing relationships with members. Disclosures under this exception could be in connection with the audit of credit information, administration of a rewards program, or to provide an account statement (§716.14); or
- For specified other disclosures that a credit union normally makes, such as to protect against or prevent actual or potential fraud; to the credit union’s attorneys, accountants, and auditors; or to comply with applicable legal requirements, such as the disclosure of information to regulators (§716.15.)

Consumer and Member

The distinction between consumers and members is significant because credit unions have additional disclosure duties with respect to members. All members covered under the regulation are consumers, but not all consumers are members.

A “consumer” is an individual, or that individual’s legal representative, who obtains or has obtained a financial product or service from a credit union used primarily for personal, family, or household purposes.

A “financial service” includes, among other things, a credit union’s evaluation or brokerage of information that the credit union collects in connection with a request or an application from a consumer for a financial product or service. For example, a financial service includes

an evaluation of an application for membership, even if the application is ultimately rejected or withdrawn.

Consumers who are not members are entitled to an initial privacy and opt out notice only if the credit union wants to share their nonpublic personal information with nonaffiliated third parties outside of the exceptions.

A “member” is a consumer who has a “member relationship” with a credit union. A “member relationship” is a continuing relationship between a consumer and a credit union under which the credit union provides one or more financial products or services to the consumer used primarily for personal, family, or household purposes.

For the purposes of the privacy regulation, the term member will include certain nonmembers. For example, the following are considered members:

- An individual who meets the credit union’s bylaws definition of member;
- A nonmember who has a share, share draft, or credit card account held jointly with a member;
- A nonmember who has a loan that the credit union services;
- A nonmember who has an account in a low-income credit union; and
- A nonmember who has an account in a federally insured state-chartered credit union pursuant to state law.

Credit unions must provide members initial and annual privacy notices regardless of the information disclosure practices of their credit union.

A special rule exists for loans. When a member obtains a loan from a credit union, and that is the only basis for the member relationship, if the credit union subsequently transfers the servicing rights to that loan to another financial institution, the member relationship transfers with the servicing rights. However, any information on the borrower retained by the credit union selling the servicing rights must be accorded the protections due any consumer.

Note that isolated transactions alone will not cause a consumer to be treated as a member. For example, if an individual purchases a traveler's check from a credit union where the person has no account, the credit union will treat the individual as a consumer but not a member of that credit union because the individual has not established a member relationship. Likewise, if an individual uses the ATM of a credit union where the individual has no account, even repeatedly, the credit union may regard the individual as a consumer, but not a member of that credit union.

Credit Union Duties

The Privacy Regulation establishes specific duties and limitations for a credit union based on its activities. Credit unions that intend to disclose nonpublic personal information outside the exceptions will have to provide opt out rights to their members and to nonmember consumers. All credit unions have an obligation to provide an initial and annual notice of their privacy policies to their members. All credit unions must abide by the regulatory limits on the disclosure of account numbers to nonaffiliated third parties and on the re-disclosure and reuse of nonpublic personal information received from nonaffiliated financial institutions.

A brief summary of credit union duties and limitations appears below. A more complete explanation of each appears in the regulations.

Notice and Opt Out Duties to Consumers

If a credit union intends to disclose nonpublic personal information about any of its consumers (whether or not they are members) to a nonaffiliated third party, and an exception does not apply, then the credit union must provide to the consumer:

- An initial notice of its privacy policies;
- An opt out notice (including, among other things, a reasonable means to opt out); and
- A reasonable opportunity, before the credit union discloses the information to the nonaffiliated third party, to opt out.

The credit union may not disclose any nonpublic personal information to nonaffiliated third parties except under the enumerated exceptions unless these notices have been provided and the consumer has not

opted out. Additionally, the credit union must provide a revised notice before the credit union begins to share a new category of nonpublic personal information or shares information with a new category of nonaffiliated third party in a manner that was not described in the previous notice.

Note that a credit union need not comply with the initial and opt-out notice requirements for consumers who are not members if the credit union limits disclosure of nonpublic personal information to the exceptions.

Special Rule for Loans. A credit union must provide an initial notice to a co-borrower or guarantor on a loan, who has no other member relationship with the credit union, if it shares the nonpublic personal information with nonaffiliated third parties other than as allowed under the exceptions. Credit unions may provide annual notices to the co-borrowers and guarantors jointly.

Notice Duties to Members

In addition to the duties described above, there are several duties unique to members. In particular, regardless of whether the credit union discloses or intends to disclose nonpublic personal information, a credit union must provide notice to its members of its privacy policies and practices at various times.

- A credit union must provide an initial notice of its privacy policies and practices to each member, not later than the time a member relationship is established. §716.4(e) of the regulation describes the exceptional cases in which delivery of the notice is allowed subsequent to the establishment of the member relationship;
- A credit union must provide an annual notice at least once in any period of 12 consecutive months during the continuation of the member relationship;
- Generally, new privacy notices are not required for each new product or service. However, a credit union must provide a new notice to an existing member when the member obtains a new financial product or service from the credit union, if the initial or annual notice most recently provided to the member was not accurate with respect to the new financial product or service; and

- When a credit union does not disclose nonpublic personal information (other than as permitted under §716.14 or §716.15) and does not reserve the right to do so, the credit union has the option of providing a simplified notice.

Requirements for Notices The following requirements apply to privacy notices:

- **Clear and Conspicuous.** Privacy notices must be clear and conspicuous, meaning they must be reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice. The regulations do not prescribe specific methods for making a notice clear and conspicuous, but do provide examples of ways in which to achieve the standard, such as the use of short explanatory sentences or bullet lists, and the use of plain-language headings and easily readable typeface and type size. Privacy notices also must accurately reflect the credit union's privacy practices.
- **Delivery Rules.** Credit unions must provide privacy notices so that each recipient can reasonably be expected to receive actual notice in writing, or if the consumer agrees, electronically. To meet this standard, a credit union could, for example, (1) hand-deliver a printed copy of the notice to its consumers, (2) mail a printed copy of the notice to a consumer's last known address, or (3) for the consumer who conducts transactions electronically, post the notice on the credit union's web site and require the consumer to acknowledge receipt of the notice as a necessary step to completing the transaction.

For members only, a credit union must provide the initial notice (as well as the annual notice and any revised notice) so that a member can retain or subsequently access the notice. A written notice satisfies this requirement. For members who obtain financial products or services electronically, and agree to receive their notices on the credit union's web site, the credit union may provide the current version of its privacy notice on its web site.

- **Notice Content.** A privacy notice must contain specific disclosures. However, a credit union may provide to consumers who are not

members a “short form” initial notice together with an opt out notice stating that the credit union’s privacy notice is available upon request and explaining a reasonable means for the consumer to obtain it. The following is a list of disclosures regarding nonpublic personal information that credit unions must provide in their privacy notices, as applicable:

- Categories of information collected;
- Categories of information disclosed;
- Categories of affiliates and nonaffiliated third parties to whom the credit union may disclose information;
- Policies with respect to the treatment of former members’ information;
- Information disclosed to service providers and joint marketers (§716.13);
- An explanation of the opt out right and methods for opting out;
- Any opt out notices the credit union must provide under the Fair Credit Reporting Act with respect to affiliate information sharing;
- Policies for protecting the security and confidentiality of information; and
- A statement that the credit union makes disclosures to other nonaffiliated third parties as permitted by law under §716.14 and §716.15.

Limitations on Disclosure of Account Numbers

A credit union must not disclose an account number or similar form of access number or access code for a credit card, share, or transaction account to any nonaffiliated third party (other than a consumer reporting agency) for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

The disclosure of encrypted account numbers without an accompanying means of decryption, however, is not subject to this prohibition. The regulation also expressly allows disclosures by a credit union to its agent to market the credit union’s own products or services (although the credit union must not authorize the agent to directly initiate charges to the member’s account.) Also not barred are disclosures to participants in private-label or affinity card programs,

where the participants are identified to the member when the member enters the program.

**Re-disclosure
and Reuse
Limitations on
Nonpublic
Personal
Information
Received**

If a credit union receives nonpublic personal information from a nonaffiliated financial institution, the credit union's disclosure and use of the information is limited.

- For nonpublic personal information received under a §716.14 or §716.15 exception, the credit union is limited to:
 - Disclosing the information to the affiliates of the financial institution from which it received the information;
 - Disclosing the information to its own affiliates, who may, in turn, disclose and use the information only to the extent that the credit union can do so; and
 - Disclosing and using the information pursuant to a §716.14 or §716.15 exception (for example, a credit union receiving information for account processing could disclose the information to its auditors).

- For nonpublic personal information received other than under a §716.14 or §716.15 exception, the credit union's use of the information is unlimited, but its disclosure of the information is limited to:
 - Disclosing the information to the affiliates of the financial institution from which it received the information;
 - Disclosing the information to its own affiliates, who may, in turn disclose the information only to the extent that the credit union can do so; and
 - Disclosing the information to any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which it received the information. For example, a credit union that received a member list from another credit union could disclose the list (1) in accordance with the privacy policy of the credit union that provided the list, (2) subject to any opt out election or revocation by the members on the list, and (3) in accordance with appropriate exceptions under §716.14 and §716.15.

Other Considerations

Examiners should keep in mind the following when reviewing a credit union's privacy policies and procedures:

Fair Credit Reporting Act. The regulations do not modify, limit, or supersede the operation of the Fair Credit Reporting Act.

State Law. The regulations do not supersede, alter, or affect any state statute, regulation, order, or interpretation, except to the extent that it is inconsistent with the regulations. A state statute, regulation, order, etc. is consistent with the regulations if the protection it affords any consumer is greater than the protection provided under the regulations, as determined by the FTC.

Grandfathered Service Contracts. Contracts that a credit union has entered into, on or before July 1, 2000, with a nonaffiliated third party to perform services for the credit union or functions on its behalf, as described in §716.13, will satisfy the confidentiality requirements of §716.13(a)(1)(ii) until July 1, 2002, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information.

Guidelines for Protecting Member Information. The regulations require a credit union to disclose its policies and practices for protecting the confidentiality, security, and integrity of nonpublic personal information about consumers (whether or not they are members). The disclosure need not describe these policies and practices in detail, but instead may describe in general terms who is authorized to have access to the information and whether the credit union has security practices and procedures in place to ensure the confidentiality of the information in accordance with the credit union's policies.

NCUA has published guidelines (Appendix A to 12 C.F.R. Part 748 of the Rules and Regulations), pursuant to section 501(b) of the Gramm Leach Bliley Act, that address steps a credit union may take in order to protect member information. The guidelines relate only to information about members, rather than all consumers.

**Examination
Procedures**

In reviewing a credit union's compliance with the Privacy Act, examiners should:

- Identify the credit union's information sharing practices (and changes to those practices) with affiliates and nonaffiliated third parties; how it treats nonpublic personal information; and how it administers opt-outs;
- Determine the adequacy of the credit union's internal controls and procedures to ensure compliance with the privacy regulation as applicable;
- Ascertain areas of risk associated with the credit union's sharing practices (especially those within §716.13 and those that fall outside of the exceptions) and any weaknesses found within the compliance management program; and
- Determine which procedures if any the examiners should complete in the applicable module, focusing on areas of particular risk. The selection of procedures depends upon the adequacy of the credit union's compliance management system and level of risk identified. Each module contains a series of general instruction to verify compliance, cross-referenced to cites within the regulation. Additionally, there are cross-references to a more comprehensive checklist, which the examiner may use if needed to evaluate compliance in more detail.

Examiners should discuss emerging or unresolved deficiencies with management and, if material, in the examination report.

**Additional
Information**

Refer to *NCUA Rules and Regulations* Part 716 and NCUA Letter to Credit Unions number 01-CU-02 for additional guidance.

REAL ESTATE SETTLEMENT PROCEDURES ACT – APPENDIX 19 O

Examination Objective

- Determine whether the credit union has implemented policies and procedures complying with the requirements of the *Real Estate Settlement Procedures Act (RESPA)*

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with RESPA;
- Reputation risk can occur when the credit union incurs fines and penalties as a result of failure to comply with RESPA; and
- Strategic risk can occur when the board of directors fails to perform necessary due diligence in reviewing existing and prospective products and services for compliance with RESPA.

Overview

RESPA provides borrowers with pertinent and timely disclosures associated with the nature and costs of the real estate settlement process. It addresses disclosure requirements for the transfer, sale, or assignment of servicing a loan. Also, RESPA protects borrowers against certain abusive practices, such as kickbacks, and places limitations upon the use of escrow accounts. The Department of Housing and Urban Development's (HUD) Regulation X implements RESPA.

Coverage

RESPA applies to “federally related mortgage loans.” It defines these loans as any loan secured by a first lien on residential real property designed principally for the occupancy of one to four families and made by a lender regulated by any federal government agency, or whose deposits any federal government agency insures.

Exempt transactions include (24 C.F.R. §3500.5(b)):

- Loans on property of 25 acres or more;
- Loans on vacant or unimproved property;

- Business purpose loans (except if an individual places a lien on a 1-4 family dwelling);
- Temporary financing (i.e., construction or bridge loans);
- Loan conversions not requiring a new note;
- Assumptions that do not require lender approval; and
- Secondary market transactions.

**Special
Booklet
Information**

Credit unions will supply the special information booklet to each purchase transaction applicant for a federally related mortgage loan by delivering it or by placing it in the mail to the applicant no later than 3 business days after the credit union receives the application. When there is more than one applicant for the loan, the credit union need only provide a copy of the booklet to one of the applicants.

Part one of the booklet describes the settlement process, the nature of charges, and suggests questions that the member may ask of lenders, attorneys, and others to clarify what services these professionals will provide for the charges quoted. It also contains information on the rights and remedies available under RESPA and alerts the borrower to unfair or illegal practices.

Part two of the booklet contains an itemized explanation of settlement services and costs and sample forms and worksheets for cost comparisons.

**Good Faith
Estimate
(GFE)**

The credit union must provide, no later than 3 business days after receiving the written application, a clear and concise GFE of the amount or range for each settlement charge the borrower will likely incur. The estimate of the amount or range for each charge must meet the following requirements:

- Present a reasonable relationship to the borrower's ultimate cost for each settlement charge; and
- Evidence experience in the locality or area of the property involved.

GFEs need not exactly match the actual charges, but they should approximate them. Credit unions may make the disclosures using

commercial forms, or may develop a separate one. Credit unions must use clear and concise forms that include the lender's name. The forms must also contain in boldface type the following or a substantially similar statement (the statement need not refer to real estate taxes if a the credit union provides a GFE for them):

This form does not cover all items you will be required to pay in cash at settlement, for example, deposit in escrow for real estate taxes and insurance. You may wish to inquire as to the amounts of such other items. You may be required to pay other additional amounts at settlement.

HELOCs do not require GFEs, because Regulation Z requires fee disclosures.

**Uniform
Settlement
Statement
(HUD-1 or
HUD-1A)**

The person conducting the settlement must complete the appropriate form and must conspicuously and clearly itemize all charges imposed on the borrower and the seller in connection with the settlement. It must indicate whether any title insurance premium included in such charges covers or insures the lender's interest in the property, the borrower's interest, or both. (HELOCs do not require the statement. Regulation Z requires the disclosures for HELOCs.)

The credit union must retain the Uniform Settlement Statements for five years or until it disposes of its interest in the property.

Prohibitions

RESPA provides fines up to \$10,000 and imprisonment up to one year for anyone who violates the section concerning kickbacks and unearned fees.

**Title
Companies**

RESPA states a seller cannot require property purchased with a federally related mortgage loan to buy title insurance from any particular title company. Any seller who violates this is liable to the buyer for three times all charges made for the title insurance.

**Escrow
Accounts**

RESPA limits the amount that the credit union can require a borrower to place in an escrow account. RESPA limits escrow funds at settlement to the amount that would bring the accrual of taxes, insurance premiums, and other charges current to the date of the first full payment, plus one-sixth of the amount of such charges the member will pay during the following 12 months. The Act further limits any monthly escrow payment to no more than one-twelfth of the anticipated amount due for such charges during the following 12 months plus the amount necessary to maintain a balance not to exceed one-sixth of the amount of charges due during that period. RESPA provides guidance on how to handle escrow shortages and surpluses.

Within 45 days after establishing an escrow account in connection with a federally related mortgage loan, the servicer must send an itemized list to the borrower of expected payments from the account and the expected dates of the payments. The credit union may give the list to the borrower at closing. HUD regulations incorporate the escrow requirements into the uniform settlement statement. The servicer must also give annual notice to the borrower of any shortage in an escrow account.

The servicer must send an annual statement by January 30 of the next year to the borrower itemizing payments made into and from the account. The servicer may not charge a fee for the annual statement. RESPA provides penalties for violating this requirement.

**Servicing of
Mortgage
Loans**

The credit union shall disclose to each applicant at the time of application or within 3 days of the application a Servicing Disclosure Statement. The statement shall include:

- Whether the credit union may transfer to another person the servicing of the loan;
- The percentage of loans, within the nearest 25%, made by the credit union during the past 3 calendar years for which the credit union transferred servicing (credit unions need not disclose information before 1989);
- The best estimate of the percentage of all loans made during a 12 month period beginning on the date of origination for which the credit union may assign, sell, or transfer servicing; and

- A written and signed acknowledgement that the applicant and any co-applicant has/have read and understood the disclosure.

When a servicer transfers a loan, both the transferor and the transferee servicers must make the following disclosures to the borrower:

- The effective date of the first payment to the transferee;
- The name, address, and toll-free or collect call telephone number of the transferee;
- The transferor's and transferee's toll-free or collect call telephone numbers, which the borrower may use to make inquiries relating to the transfer;
- The date on which the transferor will cease to accept payments, and the date when the transferee will begin to accept payments;
- Any information concerning the effect of the transfer on the availability or terms of any optional insurance, and any action that the borrower must take to maintain coverage;
- A statement that the transfer does not affect any term of the mortgage, other than the terms directly related to servicing the mortgage; and
- A statement of the borrower's rights in connection with complaint resolution.

The transferor must make the disclosures at least 15 days before the transfer; the transferee must make the disclosures within 15 days after the transfer. Both the transferor and transferee may make the disclosures within 30 days after the transfer, if one of the following specifies the reason for the transfer:

- Termination of the servicing contract for cause;
- The servicer enters bankruptcy proceedings; or
- Proceedings for conservatorship or receivership of the servicer, or an entity that owns or controls the servicer.

These time limits do not apply if the credit union provided written notice to the borrower at settlement.

During the 60-day period after the borrower's first payment due date, the transferee may not consider a payment late if the transferor receives the payment in a timely manner.

RESPA provides specific guidelines on how a servicer must respond to borrower inquiries. Whoever fails to comply with any provision concerning the servicing is liable to the borrower for damages and costs.

**Examination
Procedures**

Examiners should:

- Review the credit union's RESPA policies and procedures;
- Determine the credit union provides the required written disclosures (Special Information Booklet, GFE, HUD 1 or HUD 1-A, transfer of servicing, and escrow disclosures) in residential mortgage transactions; and
- Determine the credit union only receives reasonable and appropriate fees for services provided (no kickbacks or unearned fees.)

Examiners should discuss emerging or unresolved deficiencies with management and, if material, cite them in the examination report.

RIGHT TO FINANCIAL PRIVACY – APPENDIX 19P

Examination Objective

- Determine whether the credit union has implemented policies and procedures for complying with the requirements of the Right to Financial Privacy Act (RFPA)

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with RFPA; and
- Reputation risk can occur when members of the credit union learn of its failure to comply with RFPA.

Overview

RFPA protects the personal financial privacy of federal credit union members by restricting access to the member's financial records.

RFPA sets forth the conditions required before a credit union may grant access to or provide copies of financial records of a member to a government authority. In most cases, the credit union must obtain authorization from the member or secure from the government authority a subpoena or summons, a search warrant, a judicial subpoena, or a formal written request. Some exceptions to this rule include, but are not limited to:

- Credit union employee has information on a possible violation of a statute or regulation. RFPA provides that the credit union or any official, employee, or agent is not liable to the member for making such disclosure;
- Records needed to perfect a security interest, prove a claim in bankruptcy, collect a debt, or process an application with regard to a government loan; and
- Records needed by supervisory agency (NCUA) to perform examination.

Examination Procedures

Examiners should determine the credit union understands RFPA and has procedures in place to comply with RFPA.

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT – APPENDIX 19Q

Examination Objective

- Determine whether the credit union has implemented policies and procedures for complying with the requirements of the Soldiers' and Sailors' Civil Relief Act (SSCRA)

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with SSCRA; and
- Reputation risk can occur when members of the credit union learn of its failure to comply with SSCRA.

Overview

SSCRA provides financial relief and legal protections for persons on active duty. Some of the key provisions include:

- Credit unions may generally not charge over a 6 percent interest rate on debt obligations if the borrower incurred the obligation before entering active duty;
- Credit unions generally may not foreclose on property securing a mortgage during the period of active duty or for 3 months thereafter, if the mortgage predated the borrower's active duty; and
- Credit unions must abide by special procedures in obtaining default judgments or proceeding with other court actions.

Examination Procedures

Examiners should:

- Review the credit union's SSCRA policies and procedures; and
- Determine the credit union has implemented policies and procedures to comply with SSCRA requirements.

Additional Information

Examiners may obtain additional information at the following website:
<http://www.jagcnet.army.mil/legal>.

HOME OWNERSHIP AND EQUITY PROTECTION ACT – APPENDIX 19R

Examination Objectives

- Determine whether the credit union has procedures in place to recognize mortgages meeting the requirements of the Home Ownership and Equity Protection Act (HOEPA)
- Determine whether the credit union has policies and procedures in place for complying with the requirements of HOEPA

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with HOEPA
- Reputation risk can occur when the credit union incurs fines and penalties as a result of failure to comply with HOEPA
- Strategic risk occurs when the board of directors fails to perform necessary due diligence in reviewing existing and prospective products and services for compliance with HOEPA

Overview

HOEPA regulates high cost loans and applies to home equity loans, second mortgages, or refinances secured by primary residences with high costs. HOEPA defines high costs as those that contain the following:

- APR exceeds by more than 10% the rate on a Treasury note of comparable maturity, or
- Fees and points at or before closing exceed the larger of \$480 (as of 2001, adjusted annually) or 8% of the total loan amount.

HOEPA does not limit the interest rate or the finance charge a credit union can charge a member (although §107(5)(vi) of the *Federal Credit Union Act* provides such a limitation.)

Requirements for Certain Mortgages

HOEPA requires specific disclosures for mortgages that fall within the regulation. The regulation provides necessary language to include in the disclosures. In general, the credit union must give the member the

required disclosures not less than 3 business days before consummation of the transaction.

A mortgage falling under the requirements of HOEPA may not provide for an interest rate applicable after default that is higher than the interest rate that applies before default. HOEPA also has the following provisions:

- No balloon payments (if term is less than 5 years);
- No negative amortization;
- No prepaid payments;
- Prohibition on extending credit without regard to payment ability of member; and
- Requirements for payments under home improvement contracts (directly to contractor).

**Reverse
Mortgage
Disclosure**

HOEPA includes additional disclosures for reverse mortgages that fall within its requirements.

Penalties

The credit union is open to civil liability for failing to comply with any portion of HOEPA.

**Examination
Procedures**

If examiners review for HOEPA, their review should include the following:

- Reviewing the credit union's HOEPA policies and procedures;
- Determining whether the credit union has any loans meeting the criteria of HOEPA; and
- Reviewing a sample of loans meeting the HOEPA criteria for compliance and required disclosures.

**Additional
Information**

The Federal Reserve Board added HOEPA as a subsection of the Truth in Lending Act (Reg Z). HOEPA is located in §226.32 of the Truth in Lending Act.

TRUTH IN LENDING ACT – APPENDIX 19S

Examination Objective

- Determine whether the credit union has implemented policies and procedures for complying with the requirements of the Truth in Lending Act (TILA)

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with TILA;
- Reputation risk can occur when the credit union incurs fines and penalties as a result of failure to comply with TILA; and
- Strategic risk occurs when the board of directors fails to perform necessary due diligence in reviewing existing and prospective products and services for compliance with TILA.

Overview

TILA (Regulation Z) is a disclosure regulation developed to promote the informed use of consumer credit by consumers. The required disclosures assist consumers in shopping for credit based on terms and cost. The regulation also gives consumers the right to cancel certain transactions involving a lien on their primary residence, and it regulates credit card practices and billing disputes. TILA imposes some limitations on home equity and mortgage loans, and requires that lenders state maximum interest rates on variable-rate mortgage plans.

TILA primarily applies to loans for personal, family, or household purposes. Exempt transactions include credit in excess of \$25,000 unless secured by real property or a dwelling, or student loans insured or guaranteed by the U.S. government.

General Disclosures

A creditor that offers or extends consumer credit to any consumer must furnish disclosures. Every person (whether a creditor or not), who advertises consumer credit, must comply with the advertising provisions of the regulation.

The creditor is a person who regularly extends consumer credit, and to whom the borrower makes the initial payment of consumer credit. The creditor must furnish the disclosures to the consumer.

In addition to disclosure requirements, Regulation Z imposes certain restrictions on credit unions by regulating the:

- Form and content of advertisements for consumer credit;
- Issuance of credit cards; and
- Consumer's liability for the unauthorized use of credit cards.

The regulation also provides certain rights to consumers by permitting the consumer to:

- Revoke a credit transaction, with some exceptions, if the credit involves a security interest in the consumer's principal dwelling; and
- Assert against a credit card issuer claims and defenses arising out of a credit card purchase if the consumer fails to resolve a dispute satisfactorily with the person who honored the credit card.

**Summary of
Transactions
Covered**

Lenders must consider several factors when deciding whether a loan requires Truth in Lending disclosures or must meet other Regulation Z requirements.

Generally, Regulation Z does not apply to a credit transaction unless:

- The transaction applies to consumer credit (i.e., for personal, family, or household use);
- The creditor extends credit to a consumer (i.e., a cardholder, a natural person, or, in a rescindable transaction, any non borrower whose primary residence secures the loan);
- The creditor regularly extends consumer credit (i.e., the person to whom the borrower initially pays the debt); and
- A written agreement makes the obligation payable in more than four installments or subject to a finance charge.

Even if those conditions exist, the regulation still exempts the transaction if real property or the consumer's principal dwelling does

not secure the obligation and the amount financed exceeds \$25,000. §226.3 contains other exempt credit transactions.

Summary of Exempt Transactions

§226.3 normally exempts from all requirements of the regulation transactions that do not have a consumer purpose. For example, a loan made for working capital secured by the company president's personal residence need not comply with the regulation because it has a business purpose and therefore is not a rescindable transaction.

Credit Categories

Regulation Z divides covered consumer credit transactions into two categories, "open-end" (which includes 'home equity lines of credit') and "closed-end" credit. The regulation provides requirements for each separately.

Open-End Credit

§226.2(a)(20) defines open-end credit as consumer credit extended under a plan in which the credit union:

- Reasonably contemplates repeated transactions;
- May impose a finance charge from time to time on the outstanding unpaid balance; and
- Generally makes credit extensions available to the consumer during the term of the plan (up to any limit set by the credit union) to the extent that the consumer repays any outstanding balance.

Under open-end credit plans, the creditor furnishes the consumer with appropriate disclosures before the consumer actually uses the account. Later, when the consumer uses the account, the creditor provides certain disclosures on each billing statement sent to the consumer. Within the open-end credit category, special rules apply to home equity loans and credit card transactions only, such as certain prohibitions on the issuance of credit cards and restrictions on the right to offset a cardholder's indebtedness.

§226.13, Billing-Error Resolution, mandates specific time frames and resolution requirements upon the credit union's receipt of a billing error notice. It states the requirements for correcting and crediting disputed amounts to a member's account. It also covers the credit

union's rights after the resolution of a billing error on a credit card or open-end credit plan.

**Closed-End
Credit**

Closed-end credit encompasses all consumer credit not extended under an open-end plan including residential mortgage transactions and installment credit contracts (e.g., direct loans by credit unions and purchased dealer paper.) Under the closed-end credit concept, the consumer receives a complete disclosure of the costs associated with the credit transaction at any time before actual consummation of the transaction.

Regulation Z provides separate rules applicable to closed-end credit for residential mortgage transactions and loans secured by real property. Those rules relate mostly to when creditors must make disclosures, consumer rescission rights, and what constitutes finance charges.

**General
Disclosure
Provisions**

A credit union must make required disclosures (1) clearly and conspicuously, (2) in writing, (3) in a form that the consumer may keep, (4) not buried in fine print, (5) visible without undue searching, (6) phrased to communicate information effectively, (7) grouped together and segregated from all other written material, and (8) not containing any information unrelated to the required disclosures.

When creditors must disclose the terms “finance charge” and “annual percentage rate,” with a corresponding amount or percentage rate, the creditors must make these terms more conspicuous than any other required disclosure. Although a few exceptions to this rule exist (e.g., a credit union need not make these terms more conspicuous in advertisements), the purpose of giving those terms prominence is to highlight their importance above all other disclosures. Credit unions may accomplish this by using larger or bolder type, underlining, marking with an asterisk, or printing in colored ink. The disclosures should attract the consumer's attention more readily than other required terminology.

**Multiple
Consumers**

If a transaction includes more than one consumer, the credit union may make the disclosures to any consumer that assumes primary

liability on the obligation. §226.5(d) and §226.17(d) address such instances. A credit union must make the disclosure to an endorser, guarantor, or similar party who assumes primary liability. If the borrower may rescind the transaction, the credit union must give one copy of material disclosures and two copies of the rescission notice to each person who has the right to rescind the transaction, whether or not such person has primary liability or has signed the evidence of debt.

Record Retention

Credit unions must maintain evidence of compliance with all requirements of Regulation Z for at least 2 years after the date mandated for action or disclosures by §226.25. The 2-year requirement applies even though an obligation may have a maturity of less than 2 years, or, be prepaid, refinanced, or sold within the first 2 years.

Credit unions may retain evidence of compliance on microfilm, microfiche, or by any other method that reproduces records accurately (including computer programs.) The credit union need retain only enough information to reconstruct the required disclosures or other records.

Consequences of Noncompliance

The TILA authorizes NCUA as the federal regulatory agency to require credit unions to make monetary and other adjustments to the accounts of consumers when the true finance charge or APR exceeded the disclosed finance charge or APR by more than a specified accuracy tolerance as addressed by §108(e) of the TILA. That authorization extends to unintentional errors, including isolated violations (for example, errors which occurred, often without a common cause, only once or infrequently on a random basis).

Under certain circumstances, the TILA requires NCUA to order credit unions to reimburse consumers when understatement of the APR or finance charge involves:

- Patterns or practices of violations (e.g., errors which occurred, often with a common cause, consistently or frequently, reflecting a pattern with a specific type or types of consumer credit);
- Gross negligence; and

- Willful noncompliance intended to mislead the person to whom the credit union extended credit.

Any proceeding that a regulatory agency can bring against a creditor, it can also bring against any assignee of the creditor if the violation appears on the face of the disclosure statement, except where the assignment was involuntary, as described by §131(a) of the TILA.

Examination Procedures

As it applies to these procedures, the term "consumer credit" means credit subject to the provisions of Regulation Z. Examination procedures fall within the categories of General and Adjustable Rate Mortgages.

General

In reviewing the credit union's compliance with TILA, examiners should:

- Determine the types of consumer credit (open-end and closed-end, direct and indirect) offered by the credit union and the terms applicable to each;
- Obtain and review blank copies of forms used by the credit union in extending all types of consumer credit. Determine that the credit union has on file a legal opinion for any nonstandard forms they may use including:
 - Note and credit contract forms (including those furnished to dealers);
 - Disclosure statement forms;
 - Rescission notices;
 - Initial disclosure statement forms for open-end credit plans;
 - Periodic billing statement forms;
 - Notices regarding billing error resolution procedures; and
 - Merchant agreements;
- Determine which individuals actually perform the various activities necessary to comply with the different provisions of Regulation Z. Then, review the adequacy of the training received by those individuals to enable them to carry out their assigned

responsibilities in conformity with TILA. For example, this would include personnel engaged in:

- Completing disclosure statements;
 - Completing and furnishing rescission notices;
 - Preparing advertising copy for consumer credit; and
 - Responding to public inquiries (by telephone or otherwise) about the cost and terms of consumer credit;
- Obtain and review any written directives and training materials pertaining to employee responsibilities for ensuring institutional compliance with Regulation Z; and
 - Determine the extent to which (if any) the internal or external auditors or other credit union staff monitors or periodically reviews the credit union's policies, procedures, practices, and staff to assess results and ensure continued compliance with Regulation Z.

**Adjustable Rate
Mortgages**

Review the credit union's policies, procedures and practices when completing the following steps:

- Determine if the credit union offers open-end or closed-end variable rate credit;
- Review the ability of the computer system or servicer to handle the credit union's variable rate products. Determine if the credit union has adequate operating procedures and internal controls;
- Verify whether internal or external auditors or other staff periodically test the accuracy of the credit union's variable interest rate adjustment system;
- Determine the extent and adequacy of the instruction and training received by those individuals who implement rate changes;
- Determine whether the credit union has retained records of index values (e.g., copies of the Federal Reserve Statistical Release). (226.25(a));

- Verify that the credit union correctly recorded account and loan data into the credit union's calculation systems (e.g., its computer). Determine the input accuracy of the following:
 - Index value (226.6(a)(2)) and (226.19(b)(2)(ii));
 - Method for calculating rate changes (226.6(a)(2)) and (226.19(b)(2)(iii));
 - Rounding method (226.6(a)(2)) and (226.19(b)(2)(iii));
 - Adjustment caps (periodic and lifetime) (226.6(a)(2)) and (226.19(b)(2)(vii)); and

- Sample periodic disclosures for open-end variable rate accounts (e.g., home equity loans) and closed-end rate change notices for adjustable rate mortgage loans (ARMS):
 - Compare the rate change date on the credit obligation to the actual rate change date and to any rate change notice (226.7(g)) and (226.20(c)(2));
 - Determine that the credit union bases the index on the terms of the contract (e.g., the weekly average of 1-year Treasury constant maturities, taken 45 days prior to the change date.) (226.7(g)) and (226.20(c)(2));
 - Determine that the credit union correctly computes the new interest rate by adding the correct index value with the margin stated in the note, plus or minus any contractual fractional adjustment (226.7(g)) and (226.20(c)(1)); and
 - Determine that the credit union bases the new payment on an interest rate and loan balance in effect at least 25 days before the payment change date (consistent with the contract) (226.20(c)(4)).

Examiners should discuss emerging or unresolved deficiencies with management and, if material in the examination report.

Additional Information

Refer to the appendix on the Home Ownership and Equity Protection Act (HOEPA) for additional requirements on certain real estate transactions.

TRUTH IN SAVINGS ACT – APPENDIX 19T

Examination Objectives

- Determine whether the credit union complies with all required provisions of the Truth in Savings (TIS) regulation
- Determine whether the credit union provides all required account disclosures to members and potential members within the required time frames and ensures that account disclosures reflect the terms of the legal obligation between the parties
- Determine whether the credit union accurately discloses all required information on periodic statements for covered accounts
- Determine whether the credit union uses a permissible method for paying dividends, and accurately applies other calculations (e.g., daily balance, average daily balance, minimum balance, etc.)
- Determine whether advertisements include all required information and are not misleading or inaccurate (credit unions should maintain an advertising file containing copies of the credit union's advertisements)
- Determine whether the credit union maintains evidence of compliance (for a period of two years) with all provisions of TIS

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with TIS;
- Reputation risk can occur when the credit union incurs fines and penalties as a result of failure to comply with TIS; and
- Strategic risk can occur when the board of directors fails to perform necessary due diligence in reviewing existing and prospective products and services for compliance with TIS.

Overview

Part 707 of the *NCUA Rules and Regulations*, Truth-in-Savings (TIS), implements the Truth in Savings Act (TISA) of the Federal Deposit Insurance Corporation Improvement Act of 1991. TISA exempts credit unions with assets of \$2 million or less, after subtracting any nonmember deposits, that are not sufficiently automated.

TIS covers member accounts at all credit unions insured by (or eligible to be insured by) the National Credit Union Share Insurance Fund (NCUSIF) including federal credit unions (FCUs), federally insured state-chartered credit

unions (FISCUs), and non-federally insured credit unions (NFICUs.) Accounts include share and deposit accounts such as shares, share drafts, and term share (certificate) accounts held by, or offered to, a natural person member or potential member primarily for a personal, family or household purpose.

Disclosures

TIS enables members to compare accounts using uniform disclosures about terms, fees, and rates. Credit unions must provide members or potential members with account disclosure information:

- Before an account is opened or a service is provided, whichever is earlier;
- Upon request;
- When the terms change (with a few exceptions), if the change adversely affects the member;
- On most term share accounts that renew or mature (depending on maturity date);
- On periodic statements; and
- On advertisements.

Payment of Dividends

TIS applies equally to interest-bearing deposit accounts at state-chartered credit unions and to dividend-bearing share accounts at federal and state-chartered credit unions. Confusion between the terms “share” and “deposit” accounts and between “dividends” and “interest” could result in a violation of Part 707.

On dividend and interest-bearing accounts, TIS requires credit unions to pay dividends or interest based on the full amount of principal in an account once the member meets the minimum balance to earn dividends. Unless specified otherwise, the word "interest" and "dividend" or "dividends" are interchangeable.

The dividend rate is the annual rate the credit union pays on an account (not reflecting compounding.) When a credit union pays dividends, it applies a periodic dividend rate to an account balance. Dividends do not include the absorption of expenses, forbearance in charging fees, non-dividend membership benefits, extraordinary dividends, or the payment of bonuses. If a credit union chooses to pay dividends for the use of funds, TIS mandates:

- Each day the credit union must pay dividends equal to at least 1/365 (or 1/366 in a leap year) of the dividend rate on the full amount of principal in the account. A credit union may apply a daily periodic rate greater than 1/365 of the dividend rate (e.g., a daily periodic rate of 1/360) as long as the credit union applies that rate 365 days a year;
- The credit union must calculate the account balance on which it pays dividends using either:
 - The daily balance method, which applies a daily periodic rate to the full amount of principal in the account every day; or
 - The average daily balance method, which applies a periodic rate to the average daily balance (the sum of the full amount of principal in the account for each day of the period, divided by the number of days in the period);
- Credit unions with a minimum balance requirement to earn dividends may choose not to pay a dividend for those days when balances fall below the required minimum. Credit unions using the average daily balance method may choose not to pay a dividend if the average balance for the period falls below the minimum. If a credit union imposes a minimum balance to earn a dividend, it must use the same calculation method to determine whether the member meets the minimum balance as it uses to calculate dividends. If members would benefit, the credit union can use an additional method to determine if the members meet the minimum balance requirement;
- Credit unions must choose how often they will compound and credit dividends. If previously disclosed in writing, credit unions may require members that close accounts between crediting dates to forfeit accrued but uncredited dividends; and
- Dividends begin to accrue not later than the business day the funds are deposited in an account, unless the credit union provides notice of a later time in its policy disclosures under §606 of the Expedited Funds Availability Act and Regulation CC. Once started, dividends must continue to accrue until the member withdraws the funds. However, a credit union need not pay dividends (1) during a grace period for automatically renewable term share accounts if the member decides during the grace period not to renew the account, or (2) after a nonautomatically renewable term share account matures.

A term share account is a share certificate, interest-bearing certificate of deposit account, or other account (e.g., club account) with a maturity of at least seven days, and members may not make withdrawals for six days after opening the account unless an early withdrawal penalty of at least seven days' dividends on the amounts withdrawn exists.

**Annual
Percentage
Yields**

The following two terms describes the yield earned by members:

- **Annual percentage yield (APY)**, used for account disclosures and advertising, measures the total amount of dividends paid on an account based on the dividend rate and the frequency of compounding for a 365-day period.
- **Annual percentage yield earned (APYE)** reflects the relationship between the amount of dividend actually earned and the average daily balance in the account for the statement period or, in some cases, for a period other than the statement period such as the dividend period.

**General
Disclosure
Requirements**

The written account disclosures must (1) reflect the legal obligation between the parties, (2) contain clear and conspicuous information so that members may readily understand the terms of their accounts, and (3) present the information in a form that the member or potential member can permanently retain. Credit unions may deliver periodic statement disclosures in electronic form if the member agrees to this form of delivery. A credit union may have a separate disclosure for each account or it may combine TIS disclosures for several accounts in a single document, such as a brochure for all savings accounts.

Credit unions must use the following specific terminology for TIS:

- “Annual percentage yield” in account disclosures and advertisements;
- “Dividend rate” in account disclosures and advertisements (credit unions may also use “annual percentage rate” in account disclosures in addition to the term “dividend rate”); and
- “Annual percentage yield earned” on periodic statements.

The credit union must show APY and APYE to two decimal places and rounded to the nearest one-hundredth of one percent (.01%). The same rule

applies to dividend rates, except that account disclosures may show the dividend rate at more than two decimals.

TISA considers the APY or APYE accurate if it is within 1/20 of one percentage point (.05%) above or below the actual percentage yield as determined in Appendix A of Part 707. Credit unions may not intentionally incorporate the tolerance as part of their calculations. There is no corresponding tolerance for the accuracy of the dividend rate; it must be precise.

**Providing
Account
Disclosures**

Credit unions must provide accurate account disclosures, before they open an account or provide a service (when assessing a fee), whichever is earlier. If members do not open accounts in person, the credit union must mail or deliver the account disclosures within 10 business days after opening the accounts. Credit unions must also provide disclosures within a reasonable period of the request (10 business days) for each account for which the member requests information.

For member-requested dividend-bearing term share account (share certificate) and interest-bearing account disclosures, the credit union must specify the APY and interest rate offered within the most recent seven calendar days, that the rate and yield are accurate as of the identified date, and must provide a telephone number to obtain current rate information. For term share accounts, the credit union may state maturity as either a term or a date.

For share (dividend-bearing) accounts other than term share accounts, the credit union must disclose the dividend rate and APY that applied as of the last dividend declaration date. If these rates can change, the credit union may disclose the prospective dividend rate and APY in lieu of, or in addition to, the rate and APY as of the last dividend declaration date.

**Oral
Responses to
Inquiries**

When credit unions respond orally to inquiries about rates, they must state the APY as discussed above in the Providing Account Disclosures section and may state the dividend rate. If they state the dividend rate, they must do so as discussed in the above section.

**Content of
Account
Disclosures**

Credit unions must disclose the following information in account disclosures (as applicable):

- Rate information:
 - APYs and dividend rates using the terms "annual percentage yield" and "dividend rate" (credit unions may disclose a periodic rate corresponding to the dividend rate);
 - Time period the dividend rate will remain in effect after a member opens a fixed-rate account;
 - Each dividend rate, along with corresponding APYs for each specified balance level for tiered-rate accounts;
 - A single composite APY, all dividend rates, and period of time the rate will be in effect for each step for stepped-rate accounts (has two or more dividend rates that take effect in succeeding periods and are known at account opening); and
 - Information on variable-rate accounts (those where the dividend rate may change after the member opens the account, unless the credit union contracts to give at least 30 calendar days advance written notice of rate decreases.) The credit union must disclose the following information:
 - i. A statement that the dividend rate and APY may change;
 - ii. The method by which the credit union determines the dividend rate. If the credit union reserves the right to change rates and does not tie changes to an index, it must disclose that rate changes are within the credit union's discretion;
 - iii. Limitations on the amount the dividend rate may change; and
 - iv. The frequency with which the dividend rate may change. Credit unions that reserve the right to change rates at any time must state that fact.
- Compounding and crediting information:
 - The frequency with which the credit union compounds and credits dividends (e.g., daily, monthly, quarterly, etc.);
 - The dividend period (for dividend-bearing accounts); and
 - The effect of closing an account when the account contract provides that the credit union will not pay accrued but uncredited dividends if

the member closes the account before the credit union credits the dividends.

- Balance information:
 - Any minimum balance requirements to:
 - i. Open an account;
 - ii. Avoid the imposition of fees; or
 - iii. Obtain the APY.
(A credit union must also describe how it determines the balances (ii) and (iii)).
 - The balance computation method (i.e., the daily or average daily balance method) used to calculate dividends on the account;
 - The par value of a share necessary to become a member and maintain accounts at the credit union; and
 - When dividends begin to accrue.
- Fee information (amounts and types of all fees that may be assessed), including:
 - Maintenance fees;
 - Fees related to deposits or withdrawals, whether by check or electronic transfer;
 - Fees for special account services (credit unions need not disclose fees for services unrelated to accounts, e.g., money order fees, traveler check fees, etc.); and
 - Fees to open or close accounts.
- Transaction information including:
 - Limitations on the number or dollar amount of deposits to, withdrawals from, or checks written on an account for any time period; and
 - When the member may not make withdrawals from or deposits to term share accounts.
- Term share information:

- Time requirements including the term (for generic disclosure requests), otherwise, the credit union must state the maturity date;
- Early withdrawal penalties including how the credit union calculates them and the conditions under which it assesses them;
- Withdrawal of dividends prior to maturity requirements (i.e., on a term share account that compounds dividends, if a member may withdraw accrued dividends prior to maturity, the credit union must disclose the resulting reduction in account earnings.) The APY assumes that dividends remain in the account until maturity. Credit unions that do not compound dividends on an annual or more frequent basis, and that require the dividend payouts at least annually, and that disclose the APY in accordance with Section E of Appendix A, must state that dividends cannot remain on account and that payout of dividends is mandatory; and
- Renewal policies including:
 - i. Whether a term share account automatically renews at maturity; and
 - ii. Whether the credit union provides a grace period and, if so, its length. For nonautomatically renewable term share accounts, a credit union must disclose whether it will pay dividends after maturity if the member does not renew the account.
- Bonus information:
 - The amount and type of bonuses the credit union offers;
 - The timeframe in which the credit union will pay the bonus; and
 - The minimum balance or time requirements necessary to obtain the bonus.
- Nature of Dividends (i.e., credit union pays dividends at the end of a dividend period from current income and available earnings after required reserve transfers.) Credit unions need not make this dividend statement for dividend-bearing term share accounts or interest-bearing accounts. However, if the credit union requires a member to open a share account in order to open a dividend-bearing term share or interest-bearing account, the credit union must disclose the "nature of dividends" for the share account. The credit union need not make the disclosure in advertising and oral responses to rate inquiries.

**Change In
Term Notices**

Credit unions must send a written notice 30 calendar days before the effective date of a change of the term for an account that requires disclosure, if that change may reduce the APY or adversely affect members. No requirement for notices exists under the following circumstances: (1) if the rate changes on a variable-rate account, (2) if the terms change for term share accounts with a maturity of 31 days or less, or (3) if the fees (or the credit union's mark-up) for share draft printing increase.

**Notices for
Maturing Term
Share
Accounts**

TIS requires the following disclosures for term share accounts that automatically renew and those that do not renew automatically:

- Automatically renewable:
 - Credit unions with automatically renewable term share accounts having maturities of more than one year must provide the same account disclosures that they would provide to a member opening a new account, along with the date the existing account matures. If credit unions do not know the APY and dividend rate when they send the account disclosures, they may explain that they do not have this information available along with the date when they will have the yield and rate available and a telephone number where members can obtain the new yield and rate. Credit unions must send disclosures either 30 calendar days before the scheduled maturity date, or 20 calendar days before the end of a grace period if the grace period is at least five calendar days. Therefore, if the credit union has at least a 5-day grace period, it may send the disclosures 15 calendar days before the maturity date;
 - Credit unions with automatically renewable term share accounts having maturities of more than one month but less than or equal to one year must either (1) provide account disclosures identical to the automatically renewable term share accounts with maturities of more than one year; or (2) provide abbreviated disclosures that include the date the existing account matures, the new maturity date (if the account is renewed), the dividend rate and the APY for the new account (if known), along with any differences in the terms of the new account as compared to the terms of the existing account. Credit unions must provide these disclosures (or the disclosure required if the dividend rate and the APY are unknown) within the same timeframes as those

for automatically renewable term share accounts with a maturity of longer than one year; and

- Nonautomatically renewable:
 - Credit unions with nonautomatically renewable term share accounts having terms longer than one year must send a notice 10 calendar days before maturity stating the maturity date of the existing account and whether the credit union will pay dividends after maturity. If renewed, credit unions must provide new account disclosures; and
 - Credit unions with nonautomatically renewable term share accounts of one year or less need not provide notice prior or subsequent to maturity. Credit unions must provide new account disclosures on renewed accounts.

Notices for Maturing Term Share Accounts

	Automatically Renewable (Rollover) Term Share Accounts	Nonautomatically Renewable (Nonrollover) Term Share Accounts
1 month or less (31 days)	No <u>advance</u> notice required.	No notice required. New disclosures if renewed.
Greater than 1 month but 1 year or less	<p><u>Timing:</u> (A) 30 (calendar) days before maturity; or (b) 20 (calendar) days before end of grace period, if a grace period of at least 5 (calendar) days is provided.</p> <p><u>Content:</u> Dividend rate and APY for new account (or fact that rates have not been determined, when they will be, and telephone number to call for rates), and <u>either:</u> (A) maturity date of existing and new accounts, and any change in terms; or (B) full disclosures for account (§707.4(b)) and maturity date for existing account.</p>	<p>No notice required.</p> <p>New account disclosure if renewed.</p>
Greater than 1 year	<p><u>Timing:</u> Same as for accounts greater than 1 month but 1 year or less.</p> <p><u>Content:</u> Full disclosures for account (§707.4(b)) and maturity date for existing account.</p>	<p><u>Timing:</u> 10 (calendar) days before maturity.</p> <p><u>Content:</u> Maturity date, and whether or not dividends will be paid after maturity. New disclosures if renewed.</p>

Illustration 19T-1

**Periodic
Statement
Disclosures**

TIS does not require credit unions to send periodic statements (those with account information provided on a regular basis four or more times a year), but if the credit union does provide a statement, it must include certain information.

Credit unions may deliver periodic statement disclosures in electronic form if the member agrees to that form of delivery. State law determines whether the parties have an agreement. The credit unions must provide the periodic statements in a clear and conspicuous form that the member can display as visual text and can retain. Credit unions that provide periodic statements must disclose the following information for the statement period, as applicable:

- APYE:
 - Credit unions must disclose the "annual percentage yield earned" (computed according to Part 707, Appendix A, Part II), using that term. The APYE is an annualized rate that shows the actual dollar amount of dividends earned (either accrued or paid and credited) on an account as a percentage of the average daily balance in the account for the actual number of days in the period. Credit unions should clarify their definition of "earned". Credit unions that calculate and credit dividends for a period other than the statement period (e.g., the dividend period) may calculate and disclose the APYE and amount of dividends earned based on that period rather than the statement period.
 - If credit unions provide periodic statements more frequently than the dividend period, only the statements covering the period in which dividends (not interest) are credited must include the amount of dividends earned and the APYE. For interest-bearing accounts, credit unions must base accrued but uncredited interest on the statement period, unless they calculate interest using the average daily balance method and the average daily balance period is less frequent than the statement period. (For purposes of determining the APYE, credit unions compute the average daily balance since usually they already determined the dividends earned and the number of days in the period.) Conversely, if the dividend period is more frequent than the statement period, the credit union may either disclose a single dividend rate and APYE or disclose three dividends earned and three APYEs, one for each dividend period, as long as the credit union states the number of days (or beginning and ending dates) in each dividend period that varies from the statement period.

- Amount of dividends:
 - Credit unions must disclose the dollar amount of dividends credited and interest earned (accrued or paid and credited.) They may base dividend disclosure on the statement period or another period (e.g., dividend period); however, they must base interest on the statement period unless they use the average daily balance method to calculate interest and the average daily balance period is not as frequent as the statement period. The dollar amount of the dividend disclosed and the APYE must reflect the same period. Credit unions must disclose dollar amounts of extraordinary or bonus dividends earned during the period separately.

- Fees:
 - Credit unions must disclose fees (see *NCUA Rules and Regulations* §707.4(b)(4)) that they have actually debited from the account during the period. They must itemize the fees by dollar amount and type and may either group the fees by type or individually itemize the fees.

- Length of period:
 - Credit unions must disclose the total number of days in the statement period. Alternatively, they may state beginning and ending dates of the statement period as long as they make clear whether they included both of these days in the period. If credit unions disclose the dollar amount of dividends earned based on a period other than the statement period, they must disclose the length of that period as well.

- Special Formula:
 - Credit unions that provide statements more frequently than the period for which they compound dividends must use the special APYE formula in Part 707, Appendix A, Part II B.

Advertising

Credit unions must exercise care in advertisements for share and deposit accounts. An advertisement is any commercial message appearing in any medium (e.g., newspaper, television, lobby boards, and telephone response machines) if it directly or indirectly promotes the availability of, or deposit in, an account.

TIS prohibits misleading or inaccurate statements in advertisements (e.g., TIS does not allow the term "profit" in ads for interest-bearing accounts, but does

allow it in ads for dividend-bearing accounts, since dividends are a return on a member's share investment.) TIS does not allow the term "free" or "no-cost" if the credit union imposes any maintenance or activity fee on the account. However, since credit unions usually consider automated teller machines (ATMs) a service that does not require a user to open or maintain an account, ATM fees associated with such accounts would not restrict a credit union from advertising the accounts as "free". Credit unions may advertise free transactions at ATMs as "free"; however, the credit unions must disclose time limits placed on a free service.

If credit unions advertise a rate, they must express it using the term "annual percentage yield" (abbreviated as "APY") if the term is spelled in full at least once in the advertisement. Credit unions may state no other rate, except the "dividend rate" that corresponds to the advertised APY.

Credit unions trigger the following additional disclosure requirements, as applicable, if advertisements (not exempt under §707.8(e)) display an APY:

- Variable rates;
- Time period - how long the credit union will offer advertised APYs (e.g., "from March 7 through March 13" or "annual percentage yield effective as of March 7");
- Accuracy of APY – for dividend-bearing accounts other than term share accounts, a statement that APY is accurate as of the last declaration date or, if inaccurate, the prospective APY;
- Minimum balances required to obtain the advertised APY;
- Minimum opening deposit;
- Fees that could reduce earnings on the account;
- Term share accounts - specifying the term (e.g., three months) and early withdrawal penalties;
- Advertisement – if advertisement states that APY equals dividend rate for noncompounding multi-year account, it must state that dividend payouts are mandatory;
- Tiered-rate accounts - including all APYs (including APY ranges), all dividend rates, and any minimum balance required to obtain the APYs for each tier; and
- Stepped-rate accounts – these accounts stating a dividend rate must state all dividend rates and the time period for each;
- Bonus – if a bonus is displayed in an advertisement, it must disclose (1) the APY, (2) time restrictions to obtain the bonus, (3) when the credit

union will provide the bonus, and (4) required minimum balances necessary to obtain the bonus.

**Exemptions
from Some
Advertising
Requirements**

§707.8(e) of NCUA's Rules and Regulations permits abbreviated disclosure requirements for advertisements made through:

- Broadcast or electronic media (radio and television);
- Outdoor media (billboards);
- Telephone response machines;
- Indoor signs (any sign that can reasonably be viewed only by a member from outside the premises, such as lobby boards, is not subject to the portions of §707.8 regarding permissible rates, minimum balance, bonuses, and certain media); and
- Newsletters distributed only to existing members.

If the credit union discloses a rate of return or bonus on one of the first three media listed above, the advertising requirements specify that, if applicable, the credit union must:

- State the rate of return as an "annual percentage yield", using that term at least once;
- State no rate other than the APY, except that the dividend rate may also be stated;
- State the minimum balance to earn the APY and the bonus;
- State the time requirement to obtain the bonus;
- State the term of the account (if a term share account);
- State dividend payouts required, if applicable;
- State all APYs and balance requirements for each tier for solicitations of tier-rate accounts through telephone response machines; and
- State the same disclosures required of a nonexempt media (if a tiered-rate account.)

Credit union newsletters are exempt from many of the advertising requirements if the credit union distributes the newsletter to existing members only and does not intend it as a promotional piece for potential members. Exercising care to reach only existing members demonstrates compliance with the requirement for the exemption (e.g., credit unions should not leave newsletters in the lunch room of the sponsor.)

If the credit union discloses a rate of return on an indoor sign or sends a newsletter to existing members only, the advertising requirements specify that the credit union state:

- The rate as an "annual percentage yield", using that term at least once;
- No other rate than the APY, except that the dividend rate may also be stated; and
- A statement that members should contact an employee for further information about applicable fees and terms.

Effect on State Laws

TIS may preempt state law requirements that are inconsistent with the requirements of the TISA or NCUA's TIS regulation, but only to the extent of the inconsistency. A state law is inconsistent if it requires a credit union to make a disclosure or take action that federal law prohibits. Credit unions desiring a preemption determination should request one from NCUA.

Record Retention

Credit unions must retain records of compliance with TIS for a minimum of two years after the date disclosures are required to be made or action is required to be taken. Although they need not retain a copy of each disclosure, credit unions desiring to establish compliance should (1) document established procedures for providing the various disclosures, (2) follow the procedures, and (3) retain sample disclosures for the types of accounts offered. Credit unions must keep sufficient rate and balance information to enable examiners to verify dividends paid on the account.

Acceptable records storage methods include microfiche, microfilm, magnetic tape, or other methods capable of accurately retaining and reproducing information (e.g., a computer file.) Credit unions need not retain disclosures or advertisements in hard copy, as long as they can reconstruct required disclosures or other records.

Failure to Comply

NCUA may enforce compliance of the Truth in Savings Act and Part 707 under both the Truth in Savings Act and the *Federal Credit Union Act*.

Defenses

If the evidence demonstrates that a violation was unintentional and resulted from a bona fide error, a credit union may not be subject to civil liability for

violations. To avoid liability, a credit union must document that it had instituted reasonable procedures to avoid inadvertent errors including clerical, computer programming, and printing errors. An additional defense may include the credit union's reliance on the Official Staff Commentary or interpretations. Credit unions cannot use errors of legal judgment as defenses; however, they may avoid liability by notifying the account holders and making adjustments within 60 days after discovering the violation.

**Examination
Procedures**

If necessary, examiners should:

- Review the credit union's TISA policies and procedures;
- Determine the credit union has a detailed disclosure as required;
- Determine the credit union accurately calculates the APY, dividends, and APYE;
- Determine whether the credit union provides initial disclosures as required;
- Determine whether the credit union appropriately discloses the annual percentage yield and the dividend rate;
- Determine procedures are in place for staff to accurately respond to oral account inquiries;
- Determine whether the credit union notifies members of any adverse changes at least 30 days before the change;
- Determine whether periodic statements include clear and conspicuous disclosure of:
 - APYE;
 - Amount of dividends earned;
 - Amount and type of fees imposed;
 - Time frame of the reporting period; and
- Determine whether the share account advertisements, announcements, internet web pages, or other solicitations avoid misleading or inaccurate representations of share account terms;

Examiners should discuss emerging or unresolved deficiencies with management and, if material, in the examination report.