



## COMPLIANCE REQUIREMENTS BY FUNCTIONAL AREA

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### **Compliance Requirements by Functional Area**

This section provides practical guidance about various compliance requirements organized by nine categories. Each category groups regulatory requirements that share common attributes. For example, all of the major notices and disclosures required by the consumer protection laws and regulations are grouped together under a single heading (in this case “Disclosures/Notices”) and then subdivided by specific law or regulation. Information in this section is general and does not substitute for the specific requirements of the consumer protection laws and regulations.



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## COMPLIANCE REQUIREMENTS BY FUNCTIONAL AREA

### Disclosures/Notices

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#### Truth in Lending Act

#### Regulation Z

12 CFR 226

#### *A. Open-End Credit, Subpart B*

##### Early Disclosures: Credit Card Applications and Solicitations

[Section 226.5a]

The creditor must disclose the items listed under Section 226.5a(b) on or with a solicitation or an application to open a credit or charge card account. Most of the disclosed items must be provided in a prominent location in the form of a table with headings, content, and format substantially similar to any of the applicable tables found at Appendix G of the regulation. The other disclosures must be provided either in the table or clearly and conspicuously elsewhere on or with the application or solicitation.

Note special rules for disclosures in connection with:

1. Direct-mail applications and solicitations Section 226.5a(c)
2. Telephone applications and solicitations Section 226.5a(d)
3. Applications and solicitations made available to the general public Section 226.5a(e)

##### Early Disclosures: Home-Equity Plan Applications

[Section 226.5b]

The creditor must provide (1) the disclosures set forth in Section 226.5b(d) (grouped together and segregated from all unrelated information) and (2) the home equity brochure referenced in Section 226.5b(e) in connection with applications for open-end credit plans secured by the consumer's dwelling. The disclosures and brochure must be provided at the time the application is furnished to the consumer, or no later than three business days after receiving a telephone application, an application from a magazine or other publication, or an application through an intermediary agent or broker.

##### Initial Disclosure Statement

[Sections 226.5(b)(1) and 226.6]

The creditor must provide the initial disclosure statement containing the items described in Section 226.6 before the first transaction is made under the open-end credit plan.

##### Periodic Statement

[Sections 226.5(b)(2) and 226.7]

In connection with open-end credit transactions, the creditor must mail or deliver a periodic statement for each billing cycle ending with a debit or credit balance of more than \$1 or on which a finance charge has been imposed. The periodic statement must be delivered at least 14 days prior to the date by which or the time period within which the new balance



## Disclosures/Notices

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(or any portion thereof) must be paid to avoid additional finance charges. The periodic statement must include the items specified in Section 226.7, to the extent applicable.

### Disclosures: Supplemental Credit Devices and Additional Features [Section 226.9(b)]

If a creditor adds a credit feature or furnishes a credit device on the same finance charge terms after 30 days following delivery of the initial disclosure statement, the creditor must disclose that it is for use in obtaining credit under the terms previously disclosed before the consumer uses the feature or device for the first time.

If a credit feature is added or a credit device furnished and the finance charge terms for the feature or device differ from the those previously disclosed, the creditor must provide the applicable disclosures from Section 226.6(a) before the consumer uses the new feature or device.

### Change in Terms Notice [Section 226.9(c)(1) and (2)]

The creditor must provide a 15-day advance written notice to each consumer affected by a change in any term disclosed in the initial disclosure statement or an increase in the required minimum periodic payment. No notice is required in the case of late-payment charges, over-the-limit charges, consumer default or delinquency, or any other related occurrences detailed in Section 226.9(c)(2).

### Notice for Home-Equity Plans [Section 226.9(c)(3)]

If a creditor prohibits additional extensions of credit or reduces the credit limit applicable to a home-equity plan (based on Section 226.5b(f)(3)(i) or (vi)), written notice of the action must be mailed or delivered to each affected consumer not later than three business days after the action is taken. The notice must specify specific reasons for the action, and if reinstatement of credit privileges must be requested by the consumer, the notice must state that fact.

### Disclosures upon Renewal of Credit Card [Section 226.9(e)]

A card issuer that imposes any annual or other periodic fee for the renewal of a credit card account (including fees based on account activity or inactivity) must mail or deliver written notice of the renewal to the cardholder, containing the information and provided within time frame set forth in Section 226.9(e).

### Change in Credit Card Account Insurance Provider [Section 226.9(f)]

A card issuer must mail or deliver written notice of any intended change in the provider of insurance for repayment of all or part of the outstanding balance of an open-end credit card account not less than 30 days before the change occurs. The notice must include



the items specified in Section 226.9(f)(1), as applicable. The card issuer must also provide written notice after the change, including certain additional information specified in Section 226.9(f)(2), as applicable. A combined notice may be provided if mailed or delivered not less than 30 days before the change.

### Liability of Cardholder for Unauthorized Use

[Section 226.12(b)]

A cardholder may not be held liability for unauthorized use of a credit card unless the card issuer has provided “adequate notice” of (1) the cardholder’s maximum potential liability and (2) the means by which the card issuer may be notified of loss or theft of the card. The notice must state that the cardholder’s liability will not exceed \$50 (or a lesser amount) and that the cardholder may give oral or written notification. It must also describe a means of notification, such as a telephone number, an address, or both.

“Adequate notice” means a printed notice that clearly lays out the pertinent facts so that the cardholder may reasonably be expected to have noticed it and understood its meaning. It may be given by any means reasonably assuring receipt by the cardholder.

### Notification to Card Issuer Regarding Unauthorized Use

[Section 226.12(b)(3)]

A cardholder is considered to have furnished notification to a card issuer when reasonable steps have been taken to provide the card issuer with the pertinent information about the loss, theft, or possible unauthorized use of a credit card. Notification may be given in person, by telephone, or in writing.

### Billing Error Notice

[Section 226.13(b)]

A consumer may assert that the occurrence of a “billing error” (see Section 226.13(a) for specific definition) by providing a written notice that (1) is received by the creditor within 60 days after transmission of the periodic statement reflecting the error; (2) enables the creditor to identify the consumer’s name and account number; and (3) indicates the perceived reasons that an error exists and the type, date and amount of the error.

### Creditor Response to Billing Error Investigation

[Section 226.13(c), (e), (f), and (g)]

The creditor must provide, within the required time periods, the appropriate notification(s) to the consumer in response to a billing error notice following a reasonable investigation. The type of notice(s) to be delivered depends upon whether the creditor determines that a billing error has occurred as asserted or whether a different billing error or no billing error has occurred.



## Disclosures/Notices

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### Notice of Right to Rescind

[Section 226.15]

In any transaction subject to rescission, the creditor must deliver two copies of the notice of the right to rescind to each consumer entitled to rescind which contains the information and is in the format specified in Section 226.15(b).

### Notice of Exercise of Right of Rescission

[Section 226.15(a)]

To exercise the right to rescind, the consumer must notify the creditor of the rescission by mail, telegram, or other means of written communication within the specified time period.

### Consumer's Waiver of Right to Rescind

[Section 226.15(e)]

The consumer may modify or waive the right to rescind if the consumer determines that the credit extension is needed to meet a bona fide personal emergency by taking the following action: provide the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signatures of all the consumers entitled to rescind.

### Use of Annual Percentage Rate in Oral Disclosure

[Section 226.26(a)]

In response to a consumer's inquiry about the cost of open-end credit, the creditor is allowed to state only the annual percentage rate(s), except that the periodic rate(s) also may be stated.

### ***B. Closed-End Credit, Subpart C***

#### Closed-End Credit Disclosures

[Sections 226.17 and 18]

Prior to the consummation of a closed-end credit transaction, the creditor must provide the disclosures required by Section 226.18 in a clear and conspicuous written form that the consumer may keep. The disclosures must be grouped together and may not contain any unrelated information.

#### Early Good Faith Estimates of Disclosures

[Section 226.19(a)]

In a residential mortgage transaction subject to RESPA, the creditor must make good faith estimates of the disclosures required by Section 226.18 prior to consummation or must mail or deliver them not later than three business days after receipt of the consumer's written application, whichever is earlier. Rediscovery is required at the time of consummation under certain circumstances described in paragraph (a)(2).



### Disclosures for Certain Variable Rate Transactions

[Section 226.19(b)]

If the APR may increase after consummation of a transaction secured by the consumer's principal dwelling with a term greater than one year, the creditor must provide, at the time of application or before the consumer pays a nonrefundable fee (whichever is earlier), the following information detailed in Section 226.19(b): (1) the Consumer Handbook on Adjustable Rate Mortgages and (2) a loan program disclosure for each variable-rate program of interest to the consumer containing the information described in Section 226.19(b)(2).

### Disclosures for Refinancings

[Section 226.20(a)]

New disclosures must be provided to a consumer in connection with any "refinancing." A refinancing occurs when an existing obligation previously subject to Subpart C of Regulation Z is satisfied and replaced by a new obligation undertaken by the same consumer.

### Disclosures for Assumptions

[Section 226.20(b)]

Prior to the occurrence of an "assumption," the creditor must make new disclosures to the subsequent consumer, based on the remaining obligation. An "assumption" occurs when a creditor expressly agrees in writing with a subsequent consumer to accept that consumer as a primary obligor on an existing residential mortgage transaction.

### Notice of Right to Rescind

[Section 226.23]

In a transaction subject to rescission, the creditor must deliver two copies of the notice of the right to rescind to each consumer entitled to rescind which contains the information and is in the format specified in Section 226.23(b).

### Notice of Exercise of Right of Rescission

[Section 226.23(a)]

To exercise the right to rescind, the consumer must notify the creditor of the rescission by mail, telegram, or other means of written communication within the specified time period.

### Consumer's Waiver of Right to Rescind

[Section 226.23(e)]

The consumer may modify or waive the right to rescind if the consumer determines that the credit extension is needed to meet a bona fide personal emergency by taking the following action: provide the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind.



## Disclosures/Notices

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### Use of Annual Percentage Rate in Oral Disclosure

[Section 226.26(b)]

In response to a consumer's inquiry about the cost of closed-end credit, the creditor is allowed to state only the annual percentage rate, except that a simple annual rate or periodic rate may also be stated if it is applied to an unpaid balance.

### *C. Special Rules for Certain Home Mortgage Transactions, Subpart E*

### Disclosures for Certain Closed-End and Reverse Mortgages [Section 226.31, 32 and 33]

Special disclosure requirements apply in the case of (i) certain closed-end home mortgages (where the APR or total points and fees payable by the consumer exceed a prescribed amount) as described in Section 226.32 and (ii) reverse mortgages as defined in Section 226.33. The content of the disclosures for these two types of mortgages is defined in Sections 226.32 and 226.33, respectively, and the form, timing and other aspects of these disclosures are described in Section 226.31.

## **Real Estate Settlement Procedures Act**

### **Regulation X**

**24 CFR 3500**

### Special Information Booklet

[Section 3500.6]

The lender must provide a copy of the special information booklet (as described in Sections 3500.2 and 3500.6) to a person from whom the lender receives or for whom the lender prepares a written application for a federally related mortgage loan. When two or more persons apply together, the lender complies by giving the booklet to one of them. The booklet must be mailed or delivered to the applicant not later than three business days after the application is received or prepared. However, if the application is denied before the end of the three day period, the lender need not provide the booklet to the borrower. In addition, the lender does not have to provide the booklet in the case of: (i) refinancing transactions; (ii) closed-end subordinate lien loans; (iii) reverse mortgages; and (iv) any other mortgage loan not involving the purchase of a one- to four-family residential property.

### Good Faith Estimate

[Section 3500.7]

The lender must provide all applicants with a good faith estimate (GFE) of the amount of or range of charges for the specific settlement services the borrower is likely to incur in connection with the settlement. The GFE must contain the information specified in Section 3500.7(c), and estimates must be made in good faith, reasonable, and based on experience in the locality of the mortgaged property. In addition, if the lender requires use of a particular provider of settlement services and requires the borrower to pay any portion of



the costs, the GFE must include additional information as specified in Section 3500.7(e). The form of the GFE is described in Section 3500.7(d).

The GFE must be mailed or delivered to the applicant not later than three business days after the application is received or prepared. However, if the application is denied within the three day period, the GFE need not be provided. In the case of open-end home equity lines covered by Regulation Z, no GFE need be provided if disclosures required by 12 CFR 226.5b are provided at the time of application.

### HUD-1/HUD-1A Settlement Statements [Sections 3500.8, 3500.9 and 3500.10]

The HUD-1 Settlement Statement must be used in every settlement involving a federally related mortgage loan in which there is a borrower and a seller. For transactions in which there is no seller, such as a refinance or subordinate lien loan, the borrower's side of the HUD-1 or the HUD-1A form may be used. The HUD-1 must itemize all charges imposed on the borrower and seller by the lender, all sales commissions, and any other charges which either the borrower or seller will pay at settlement. Charges paid outside of settlement are labeled as "P.O.C." on the HUD-1 and are not included in computing totals. The use of the HUD-1 or HUD-1A is exempted for open-end lines of credit (home equity plans) covered by the Truth in Lending Act and Regulation Z.

The completed HUD-1 or HUD-1A must be available for inspection by the borrower one day prior to closing. It must also be given to the borrower, seller and lender, or their agents, no later than closing unless the right of delivery has been waived by the borrower, in which case the HUD-1 must be mailed or delivered as soon as practicable. If the borrower is not represented at closing, the HUD-1 must be mailed or delivered as soon as practicable.

### Affiliated Business Arrangement Disclosure Statement [Section 3500.15]

An affiliated business arrangement is an arrangement in which a person in a position to refer settlement service business has either an affiliate relationship with or an ownership interest of more than one percent in a provider of settlement services, and such person refers business to that provider or affirmatively influences the selection of that provider.

In order for this arrangement not to violate Section 8 of RESPA, certain conditions must be met including a requirement that the person making the referral provides a written disclosure to the customer in the format set forth in Appendix D to Regulation X at the time of referral or the time of application (if the provider is required by the lender). The disclosure is designed to (i) specify the nature of the relationship (explaining the ownership and financial interest) between the parties giving and receiving the referral and (ii) describe the estimated charge or range of charges generally made by the provider of settlement services.



## Disclosures/Notices

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### Initial Escrow Account Statement

[Section 3500.17]

After conducting an initial escrow analysis to determine the amount of the borrower's escrow payment at closing and for the first year, the lender must submit an initial escrow account statement to the borrower either at settlement or within 45 days after settlement. When the statement is provided at closing, it may be incorporated into or attached to the HUD-1 or HUD-1A Settlement Statement. If the account is established after settlement, the initial escrow statement must be provided within 45 days of establishing the account. The statement must include the information specified in Section 3500.17(g) and should be substantially in the format set forth in Section 3500.17(h).

### Annual Escrow Statement

[Section 3500.17]

For each escrow account, the servicer must submit an annual escrow statement to the borrower within 30 days of the completion of the escrow computation year after conducting an escrow account analysis. The escrow year begins with the borrower's first payment. The statement must contain all of the information set forth in Section 3500.17(i) and should be substantially in the format set forth in Section 3500.17(j). The annual escrow account statement is designed to provide an account history, reflecting the activity in the account during the past year along with a projection of the activity in the account for the next year.

### Notice of Shortage or Deficiency in Escrow Account

[Section 3500.17(f)]

The servicer must notify the borrower at least once during the escrow account computation year if there is a shortage or deficiency in the escrow account. The notice may be part of the annual escrow account statement or it may be a separate document.

### Servicing Disclosure Statement

[Section 3500.21(b)]

Each person who applies for a covered loan must be provided with a servicing disclosure statement which explains the process of transferring servicing rights and the ramifications of the process on the applicant. It primarily discloses information about the likelihood of an assignment, sale or transfer of the loan. The servicing disclosure statement should contain the information specified in Section 3500.21(b). The statement must be provided at the time the application is submitted or within three business days after submission of the application. However, if the application is denied within the three day period, the servicing disclosure statement need not be given to the applicant. Each applicant or co-applicant must sign an acknowledgment of receipt of the servicing disclosure statement before settlement.



### Notices of Transfer of Loan Servicing

[Section 3500.21(d)]

If servicing is assigned, sold, or transferred, both the transferor and transferee servicers must provide the borrower a written notice of transfer containing information specified in Section 3500.21(d). The transferor must deliver this notice at least 15 days before the effective date of the transfer. The transferee's notice must be given no later than 15 days after the effective date of the transfer. Alternatively, the transferor and transferee may use a combined notice if delivered at least 15 days before the effective date of the transfer. In limited situations specified in the Section 3500.21 (such as, for example, bankruptcy proceedings against the servicer) the notice may be delivered by the transferor or transferee no later than 30 days after the effective date of the transfer.

### **Home Mortgage Disclosure Act Regulation C**

**12 CFR 203**

#### Modified Loan/Application Register (LAR)

[Section 203.5(c) and (d)]

The lender must make its LAR available for public inspection upon request after modifying it to protect the privacy interests of applicants and borrowers by deleting: (1) the application or loan number; (2) the date of receipt of the application; and (3) the date of action taken. The modified LAR must be available following the calendar year for which the data relates, no later than March 31 for requests received on or before March 1 and within 30 days for requests received after March 1. The lender must make its modified register available for a three year period.

#### Disclosure Statement

[Section 203.5(b)]

The institution's disclosure statement, prepared by the Federal Financial Institutions Examination Council (FFIEC), must be made available to the public for inspection and copying at its home office within 3 business days after receiving it from the FFIEC.

In addition, the institution must do either one of the following:

- make the statement available in at least one office in each additional MSA where it has offices within 10 business days of receipt from the FFIEC; or
- post the address for sending written requests for the statement in the lobby of each branch office in an MSA where it has offices, and mail or deliver a copy of the statement within 15 calendar days of receipt of a written request.

The lender must make the disclosure statement available to the public for a five year period.



## Disclosures/Notices

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### Lobby Notice

[Section 203.5(e)]

The institution must post a general notice about the availability of its HMDA data in the lobby of its home office and of each branch office located in an MSA.

### **National Flood Insurance Act**

#### **OTS Implementing Regulations**

**12 CFR 572**

#### Standard Flood Hazard Determination Form

[Section 572.6]

When an institution makes, increases, extends, or renews any loan secured by a building or a mobile home and any personal property, it must use the standard flood hazard determination form developed by FEMA to determine whether the building or mobile home offered as security for the loan will be located in a Special Flood Hazard Area (SFHA) in which flood insurance is available under the National Flood Insurance Act.

#### Notice to Borrower and Servicer

[Section 572.9]

When an institution makes, increases, extends or renews a loan secured by a building or a mobile home located or to be located in a SFHA, the institution must provide a written notice to the borrower and servicer. The notice must be provided regardless of whether the property securing the loan is located in a participating or non-participating community. The notice must contain: (1) a warning that the building or mobile home is or will be located in a SFHA; (2) a description of the flood insurance purchase requirements; (3) a statement whether flood insurance coverage is available under the National Flood Insurance Program and may also be available from private insurers; and, (4) a statement 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.

The notice to the borrower must be delivered within a “reasonable” time before completion of the transaction. The notice to the servicer must be delivered as promptly as practicable after the notice to the borrower, but no later than the time the institution transmits other loan data concerning hazard insurance and taxes to the servicer. A copy of the borrower notice can satisfy the servicer notice requirement.

The regulations permit an alternate notice provision by which an institution may rely on assurances from a seller or lessor that the seller or lessor has provided the requisite notice to the purchaser or lessee.



### Notice of Servicer's Identity

[Section 572.10]

An institution must notify the Director of FEMA's designee (e.g., the insurance carrier) of the identity of the loan servicer and of any change in the servicer. This notice must be sent within 60 days after the effective date of the transfer of servicing. The notice must be sufficient for the insurance carrier to identify the property securing the loan and the new servicer and its address.

### **Equal Credit Opportunity Act Regulation B**

**12 CFR 202**

### Providing Appraisal Reports

[Section 202.5a]

A creditor must provide a copy of the appraisal report used in connection with an application for credit to be secured by a lien on a dwelling, either as a matter of routine delivery or upon written request by the applicant who has been notified in writing of their right to obtain a copy. The notice of the right to receive a copy of the appraisal report must be given no later than when the creditor provides the notice of action taken under Section 202.9. The creditor must mail or deliver a copy of the appraisal report generally within 30 days of the request.

### Notification of Action Taken

[Section 202.9(a)]

The creditor must notify an applicant of the action taken on a credit application, in accordance with the requirements of Section 202.9. The notification must be in writing and must include a statement of the action taken, the name, address and telephone number of the creditor, a statement of the provisions of Section 701(a) of the ECOA (see Section 202.9(b)), the name and address of the creditor's federal regulator, and a statement of the specific reasons for the action or the disclosure of the right to obtain such reasons. Generally, the notice must be provided within 30 days after receipt of a completed application. The notification requirements for business credit applicants may vary somewhat as described in Section 202.9(a)(3).

### ECOA Notice

[Section 202.9(b)]

When providing a notification of action taken in connection with the requirements of Section 202.9(a), the creditor must provide a statement of the provisions of Section 701(a) of the ECOA that is substantially similar to the language contained in Section 202.9(b).



## Disclosures/Notices

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### Monitoring Information

[Section 202.13]

A creditor must inform applicant(s) for a home mortgage loan that the federal government requests information on race or national origin, sex, marital status and age for monitoring purposes. The creditor must also inform the applicant(s) that if they choose not to provide the information or any part of it, the creditor is required to note on the application form, to the extent possible, the race or national origin and sex on the basis of visual observation or surname.

### **OTS Nondiscrimination Regulations**

**12 CFR 528.5**

#### Equal Housing Lender Poster

[Section 528.5]

The institution must maintain an Equal Housing Lender Poster (in the prescribed format and containing the designated language) in the lobby of each of its offices in a prominent place or places readily apparent to all persons seeking loans.

### **Electronic Fund Transfer Act**

#### **Regulation E**

**12 CFR 205**

#### Initial Disclosures

[Section 205.7]

At the time a consumer contracts for an electronic fund transfer (EFT) service or before the first EFT is made involving a consumer's account, an institution must provide certain initial disclosures to the consumer concerning the terms, conditions, charges, liability, and other matters outlined in Section 205.7(b) relating to the use of EFT service. The disclosures must be clear and readily understandable, in writing, and in a form the consumer may keep. See Appendix A of Regulation E for model disclosure forms.

#### Change in Terms Notice

[Section 205.8(a)]

An institution must provide consumers with written notice at least 21 days before the effective date of any change in a term or condition required to be disclosed under Section 205.7(b) if the change would result in (1) increased fees, (2) increased liability, (3) fewer types of available EFTs, or (4) stricter limits on the frequency or dollar amount of transfers. Prior notice need not be given if an immediate change is needed for security reasons.

#### Error Resolution Notice

[Section 205.8(b)]

For each account to or from which EFTs can be made, an institution must provide the consumer annually (or in each periodic statement) with a description of the manner for re-



solving errors in connection with EFT services. See Appendix A of Regulation E for model forms.

### Electronic Terminal Receipts

[Section 205.9(a)]

At the time an electronic transfer is initiated at an electronic terminal by a consumer, the institution shall provide the consumer a written receipt showing the amount of the transfer, date of transfer, type of transfer and account(s) accessed, location of terminal, and other information outlined in Section 205.9(a). Note: the amount of the transfer may include a transaction fee if the amount of the fee is disclosed on the receipt and displayed on or at the terminal.

### Periodic Statements

[Section 205.9(b) & (c)]

For any account to or from which electronic fund transfers can be made, the institution shall provide a monthly statement (quarterly, if no transfers have occurred or access is limited to receipt of preauthorized transfers) including a record of each transfer made in the period with date, accounts accessed, location and other information.

### Passbook Entries

[Section 205.9(c)]

For passbook accounts that only receive preauthorized transfers, the institution may substitute entry of information on presentation of the passbook by the consumer in place of providing a periodic statement.

### Notice for Preauthorized Transfers

[Section 205.10]

Except where the payor provides positive notice to the consumer that a transfer has been made to his account, the institution shall provide oral or written notice within two days or a readily available telephone line that the consumer may call to confirm the status of a preauthorized transfer, as described in Section 205.10(a).

Preauthorized electronic fund transfers (EFTs) from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumer. Consumers may stop payment of a preauthorized EFT from their account by notifying the institution orally or in writing at least three business days before the scheduled date of the transfer (and an institution may require written confirmation of a stop payment order within 14 days of oral notification). Section 205.10(b) and (c).

### Error Investigation Results and Correction

[Section 205.11]

Within 10 days (or 45 days if provisional credit has been given), an institution must notify the consumer of the results of the investigation of an alleged error and any required correction that was made. If the institution determines that no error occurred or that an error



occurred in a manner or amount that is different from that described by the consumer, the institution must include a written explanation of its findings and note the consumer's right to request the documents relied upon in making its decision. Upon debiting a provisionally credited amount, the institution must (i) notify the consumer of the date and amount of the debiting and (ii) notify the consumer that the institution will honor checks and preauthorized transfers for five business days after the notification.

### **Expedited Funds Availability Act**

#### **Regulation CC**

**12 CFR 229**

##### New Account Availability Disclosure

[Sections 229.16(b) and 229.17]

Potential customers must be provided with a specific funds availability policy disclosure prior to opening an account. The content of this disclosure must follow the requirements of Section 229.16 and reflect the policy and practices of the institution regarding the availability of deposited funds.

##### Requesting an Account Availability Disclosure

[Section 229.18(d)]

An institution must provide a copy of its specific availability policy disclosure described in Section 229.16 to any person, upon oral or written request.

##### Notice of Case-by-Case Holds

[Section 229.16 (c)(1) and (2)]

An institution that has a policy of making deposited funds available for withdrawal sooner than required by the regulation may extend the time when funds are available up to the time periods allowed if:

- (1) the institution provides notice of the possible extension of time for the withdrawal of deposited funds on a case-by-case basis within its specific availability policy disclosure as described in Section 226.16(c)(1);
- (2) the institution provides a written notice to the customer when it actually extends the time when funds will be available on a case-by-case basis for withdrawal in the manner prescribed by Section 229.16(c)(2); and
- (3) a statement that customers should ask if they need to know when a particular deposit will be available for withdrawal.



### Notice of Exception Hold

[Section 229.13(g)]

An institution extending the time when funds will be available for withdrawal based on the application of an exception contained in Section 229.13(b)-(f), must provide the depositor with a written notice as described therein. These exceptions include large deposits, redeposited checks, repeated overdrafts, reasonable cause to doubt collectibility, and emergency conditions.

### Deposit Slip Notice

[Section 229.18(a)]

A notice must be included on the front of all preprinted deposit slips stating that deposits may not be available for immediate withdrawal.

### Lobby Notice

[Section 229.18(b)]

An institution must post a notice in a conspicuous place in each location where its employees accept deposits to consumer accounts which sets forth the time periods applicable to the availability of funds deposited in a consumer account.

### Automated Teller Machine Notice

[Section 229.18(c)]

The institution must post or provide a notice at each ATM location that funds deposited in the ATM may not be available for immediate withdrawal. The notice may be posted on a sign, ATM screen or included on deposit envelopes provided at the ATM.

Institutions operating an off-premises ATM from which deposits are not removed more than two times each week must disclose at or on the ATM the days on which deposits made at the ATM will be considered received. [Section 229.19 (a)(4)]

### Notice of Changes in Policy

[Section 229.18(e)]

An institution must deliver a notice to holders of consumer accounts at least 30 days prior to implementing a change to its availability policy regarding such accounts, except that a change resulting in expedited availability of funds may be disclosed not later than 30 days after implementation.

### Notice of Nonpayment

[Section 229.33(d)]

An institution receiving a returned check or notice of nonpayment must send notice to its customer of the facts by midnight of the banking day following the banking day that it received the returned check or notice, or within a longer reasonable time.



### Truth in Savings Act

#### Regulation DD

12 CFR 230

##### Account Disclosures

[Section 230.4(a) and (b)]

Account disclosures, containing the information required by Section 230.4(b), must be provided to consumers before an account is opened or a service provided, whichever occurs first. The disclosures are required to be mailed or delivered no later than 10 business days after an account is opened (or a service provided) if the consumer is not present at such time. Account disclosures must also be provided to consumers upon request; if the consumer is not present, the disclosures must be mailed or delivered within a reasonable time after the request is made.

##### Subsequent Disclosures for Changes in Terms

[Section 230.5(a)]

Advance notice must be provided to affected consumers concerning any change in account terms or the annual percentage yield (APY) if that change may reduce the APY or adversely affect the consumer. The notice is required to be mailed or delivered at least 30 calendar days before the effective date of the change and should include the effective date of the change.

##### Notices of Maturity of Time Account

[Section 230.5(b), (c), and (d)]

Institutions must provide notice of maturity of the following types of time accounts:

1. For time accounts with a maturity longer than one month that renew automatically, the notice must be mailed or delivered at least 30 calendar days before the scheduled maturity date (or at least 20 calendar days before the end of a grace period lasting at least 5 calendar days). The content of the notice must meet the requirements of Section 230.5(b).
2. For time accounts with a maturity of one month or less that renew automatically, the notice must be mailed or delivered within a reasonable time after maturity. The content of the notice must meet the requirements of Section 230.5(c).
3. For time accounts with a maturity of longer than one year that do not renew automatically, the notice must be mailed or delivered at least 10 calendar days before maturity. The content of the notice must meet the requirements of Section 230.5(d).



### Periodic Statements

[Section 230.6]

If an institution provides a periodic statement in connection with an account, the statement must include certain disclosures specified in Section 230.6. Special rules apply for institutions that use the average-daily-balance method.

## **Community Reinvestment Act**

### **Regulation BB**

**12 CFR 563e**

#### CRA Lobby Notice

[Section 563e.44]

The institution must provide a public notice in the lobby of its main office and each of its branches. The notice informs the public of the OTS's obligation to evaluate the institution's CRA performance and encourages public involvement. The contents of this notice must follow the requirements of section 563e.44 and Appendix B of the regulation.

#### CRA Disclosure Statement

[Section 563e.43(b)(1)(ii)]

The institution must place the CRA Disclosure Statement prepared for it by the OTS in its public CRA file within three business days of its receipt.

#### Public Section of CRA Performance Evaluation

[Section 563e.43(a)(2)]

The institution must place a copy of the public section of its most recent CRA Performance Evaluation in its public CRA file within 30 business days after receipt from the OTS.

#### HMDA Disclosure Statement

[Section 563e.43(b)(2)]

Institutions that are required to report home mortgage loan data pursuant to HMDA and Regulation C must include in its public file a copy of its HMDA Disclosure Statement provided by the FFIEC for each of the prior two calendar years. In addition, institutions that elect to have the OTS consider the mortgage lending of an affiliate for any of these years must include the affiliate's HMDA Disclosure Statement for those years in its file. The statement(s) must be placed in the public file within three business days after its (their) receipt.



### **Disclosure and Reporting of CRA-Related Agreements**

**12 CFR 533**

CRA Sunshine Regulation

#### Disclosure of Covered Agreements

[Section 533.6]

#### A. To Public:

Each NGEF and each IDI or affiliate that enters into a covered agreement after November 12, 1999, must make a copy of the covered agreement available to any individual or entity upon request.

#### B. To Relevant Supervisory Agency:

- Each NGEF that is a party to a covered agreement must provide a complete copy of the agreement, and if applicable a public version of the agreement.
- Each insured depository institution and affiliate must provide each relevant supervisory agency with:
  - 1) A complete copy of each covered agreement, and if applicable, a public version of the agreement, entered into by the insured depository institution or affiliate during the calendar quarter. The agreement must include the information specified in 533.6(b)(3); or
  - 2) A list of all covered agreements entered into by the insured depository institution or affiliate during the calendar quarter. The list must include the information specified in 533.6(d)(ii).

### **Consumer Protection for Depository Institution Sales of Insurance**

**12 CFR 536**

#### Insurance Disclosures

[Section 536.40(a) and 536.40(c)(1)]

A savings association or any covered person must provide the disclosures specified under Section 536.40(a) in connection with the initial purchase of an insurance product or annuity. These disclosures must be made (except to the extent they may not be accurate) orally and in writing before the completion of the initial sale of any insurance product or annuity.



### Credit Disclosures

[Section 536.40(b) and 536.40(c)(1)]

The credit disclosures set forth in Section 536.40(b) must be made orally and in writing at the time a consumer applies for an extension of credit in connection with which an insurance product or annuity is solicited, offered, or sold.

Note special rules for disclosures in connection with:

1. Direct mail insurance/annuity sales and credit applications                      Section 536.40(c)(2)
2. Telephone insurance/annuity sales and credit applications                      Section 536.40(c)(3)
3. Electronic media    Section 536.40(c)(4)

### Must be Readily Understandable and Meaningful

[Section 536.40 (c)(5) and (c)(6)]

Disclosures must be readily understandable and provided in a meaningful form. “Readily understandable” means disclosures shall be simple, direct, and designed to call attention to the nature and significance of information provided. The savings association or covered person may use short form insurance disclosures found at Section 536.40 (c)(5) in visual media advertisements and promotional materials.

Ensuring disclosures are “meaningful”, requires using one of the methods described in Section 536.40(c)(6) that calls attention to the significance of the information provided. Disclosures are not in a meaningful form if the savings association or covered person does not provide them in printed material and does not orally disclose the information to the consumer.

### Consumer Acknowledgment

[Section 536.40(c)(7)]

A savings association or covered person must obtain a written acknowledgment of receipt from the consumer at the time insurance or credit disclosures are provided or at the time of the initial purchase by the consumer of an insurance product or annuity. Consumers may acknowledge receipt of disclosures in paper form or in electronic format. However, special rules in Section 536.4(c)(7) apply for transactions conducted by telephone or mail.

## **Privacy of Consumer Financial Information**

### **Regulation P**

**12 CFR 573**

#### Types of Privacy Notices

*Initial* - A financial institution must provide a clear and conspicuous written notice that accurately reflects its privacy policies and practices. The notice must be provided to a customer “not later than when you establish a customer relationship”; for a consumer, “before



## Disclosures/Notices

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you disclose any nonpublic personal information about the consumer to any nonaffiliated third party.” If the institution does not disclose information about consumers beyond the section 14 and 15 exceptions, an initial notice is not required. When an existing customer obtains a new financial product or service, the initial notice requirements are met if (1) a revised notice is provided or (2) the initial, annual or revised notice most recently provided to the customer is accurate as to the new product or service.

*Annual* – A financial institution must provide a clear and conspicuous written notice that accurately reflects the financial institution’s privacy policies and practices not less than annually during the continuation of the customer relationship. “Annually” is defined as at least once in any period of 12 consecutive months during which the relationship exists. The institution may select any 12 consecutive month period, but it must apply it to the customer on a consistent basis. The annual *notice* obligation ceases when the customer relationship ends and the individual becomes a “former customer,” a status conferred differently depending on the type of relationship (e.g., closed-end credit, deposit account) but always in the event that the institution has not communicated with the individual about the customer relationship for a period of 12 consecutive months (other than to provide annual privacy notices or promotional materials).

*Revised* - A revised notice (and corresponding opt out notice) is required when an institution plans to (i) disclose a new category of nonpublic personal information to any nonaffiliated third party; (ii) disclose nonpublic personal information to a new category of nonaffiliated third party; or (iii) disclose *information* about a former customer who was not previously provided an opt out opportunity. A revised notice is not required, however, when the most current notice provided to the customer is accurate as to the proposed new type of information sharing.

*Simplified* - If an institution does not disclose, and does not wish to reserve the right to disclose in the future, nonpublic personal information about customers or former customers to affiliates or nonaffiliated third parties beyond the regulation’s exceptions, a simplified notice will suffice. The *institution’s* simplified notice must state: (1) that it does not share information outside the exceptions, (2) the nonpublic personal information it collects, (3) its policies and practices with respect to safeguarding and maintaining the confidentiality of nonpublic personal information, and (4) any descriptions made regarding the nonaffiliated third parties subject to the exceptions.

*Short Form* - For financial institutions that choose to share information derived from non-customer consumers, the regulation offers a short form option. A clear and conspicuous short form initial notice, delivered *along* with an opt out notice, must state that a full length privacy notice is available upon request and must specify the means by which it can be obtained.



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## COMPLIANCE REQUIREMENTS BY FUNCTIONAL AREA Designations

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### **Bank Secrecy Act**

#### **BSA Implementing Regulations**

**31 CFR 103**

**12 CFR 563.177 and 563.180**

Designated Person to Coordinate/Monitor BSA Compliance [12 CFR 563.177(c)(3)]

One of the four minimum components of an institution's BSA Compliance Program must include the designation of an individual(s) responsible for coordinating and monitoring day-to-day compliance under the BSA. The designation of the BSA Compliance Officer must be approved by the board of directors and noted in the minutes of the institution.

### **Community Reinvestment Act**

#### **Regulation BB**

**12 CFR 563e**

Wholesale or Limited Purpose Institutions [Section 563e.25(b)]

In order to receive a designation as a wholesale or limited purpose savings association, an institution must file a request, in writing, with the OTS at least three months prior to the proposed effective date of the designation. If OTS approves the designation, it remains effective either until it is revoked by the institution or one year after OTS notifies the institution that it is revoking the designation.

Assessment Area Delineation [Section 563e.41]

Each savings association must designate one or more assessment areas within which the OTS evaluates its CRA performance. The parameters for appropriately delineating an institution's assessment area(s) are set forth in detail in Section 563e.41.

### **Consumer Protection for Depository Institution Sales of Insurance** **12 CFR 536**

Physical Location of Insurance/Annuity Sales Activities [Section 536.50(a)]

Each savings association must designate, identify, and physically segregate, "to the extent practical", the area(s) where insurance or annuity sales activities take place. A savings association must clearly, delineate and distinguish these areas from the location where retail deposits activities routinely occur.



## Designations

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### Qualifications and Licensing Requirements

[Section 536.60]

A savings association may not permit any person to sell insurance products or annuities in any branch office or on its behalf, unless the person is appropriately qualified and licensed under applicable State licensing standards.



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## COMPLIANCE REQUIREMENTS BY FUNCTIONAL AREA

### Written Programs/Documentation

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#### Equal Credit Opportunity Act

##### Regulation B

12 CFR 202

##### Written Applications

[Section 202.5(e)]

A creditor must take written applications for credit primarily related to the purchase or refinancing of a principal residence occupied or to be occupied by the applicant as a principal residence where the extension of credit is secured by the residence.

Note that information entered directly into and retained by a computerized system qualifies as a written application.

##### Special-Purpose Credit Program

[Section 202.8(a)]

Special-purpose credit programs offered by a for-profit organization must be in writing.

#### OTS Nondiscrimination Regulations

12 CFR 528

##### Loan Underwriting Standards

[12 CFR 528.2a(b)]

Institutions must have and provide a clearly written nondiscriminatory statement of loan underwriting standards to members of the public upon request, at each of its offices. These standards shall at least annually be reviewed ensuring the business practices implementing them institute equal opportunity in lending.

#### Expedited Funds Availability Act

##### Regulation CC

12 CFR 229

##### Procedures for Employee Training and Compliance

[Section 229.19(f)]

An institution must establish and maintain written procedures to ensure compliance with the regulation. It must also provide a copy of these to all employees who perform duties subject to the requirements of the regulation.



## Written Programs/Documentation

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### **Bank Secrecy Act**

#### **BSA Implementing Regulations**

**31 CFR 103**

**12 CFR 563.177 and 563.180**

#### Written BSA Compliance Program

[Section 563.177(b) and (c)]

Institutions must establish and maintain a written compliance program (approved by the board of directors and noted in the minutes of the institution) designed to assure and monitor compliance with the BSA and its implementing regulations, that must include at a minimum: (i) a system of internal controls, (ii) daily coordination and monitoring by a designated individual, (iii) independent testing of compliance, (iv) training for appropriate personnel.

### **Community Reinvestment Act**

#### **Regulation BB**

**12 CFR 563e**

#### Public File

[Section 563e.43]

An institution must maintain a public file in accordance with Section 563e.43. The public file must include written comments received from the public, the public section of the most recent CRA Performance Evaluation, a list of the institution's branches, a map of each assessment area, and other information about the institution's operations and services as described in Section 563e.43. Note variations in the requirements, depending upon whether the institution is (a) "small" or "large", (b) is required to report HMDA data, (c) has a strategic plan, or (d) has less than a satisfactory rating.

The institution must make the file available to the public for inspection upon request and at no cost. A complete public file must be kept at the main office and, if the institution is an interstate institution, at one branch office in each state.

The institution must make the following information publicly available at each branch: (1) a copy of the most recent CRA Performance Evaluation and a list of services provided by the branch and (2) within five days of a request from the public, a copy of all the information in the public file relating to the assessment area where the branch is located.

Upon request an institution must provide copies of the information in its public file, either on paper or electronically, whichever is acceptable to the person making the request prefers. The institution may charge a reasonable fee, not to exceed the cost of copying and mailing.



## Written Programs/Documentation

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### Strategic Plans

[Sections 563e.27 and .43(b)(4)]

For institutions opting to have their CRA performance assessed under an approved strategic plan, the institution must include the plan in its public file. An institution need not include information submitted to OTS on a confidential basis in conjunction with the plan.

### **Privacy of Consumer Financial Information**

#### **Regulation P**

**12 CFR 573**

- Notices must be in writing; oral description of notice insufficient 573.9(d)
- “Reasonable expectation of actual notice” [for electronic notices], post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service 573.9(b)(1)(iii)
- “Retention or accessibility of notices for customers” [for electronic notices], make the current privacy notice available on a web site (or a link to another web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the web site 573.9(e)(2)(iii)
- Joint marketing agreements under section 13: opt out requirements are n/a if (1) notice given and (2) contractual agreement entered into w/ 3<sup>rd</sup> party which prohibits the use of NPPI for reasons other than purpose for which it was communicated and 3<sup>rd</sup> party agrees to maintain confidentiality of info



## Written Programs/Documentation

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## COMPLIANCE REQUIREMENTS BY FUNCTIONAL AREA

### Recordkeeping

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#### Truth in Lending Act

##### Regulation Z

12 CFR 226

##### Record Retention

[Section 226.25]

The creditor is required to retain evidence of compliance with the regulation (other than the advertising requirements of Sections 226.16 and 226.24) for two years after the date the disclosures are required to be made or action is required to be taken. The record retention period may be extended in the event that enforcement proceedings are initiated against the institution.

Although not specified in the regulation, maintenance of other notices and disclosures such as the Servicing Transfer Notice and the Good Faith Estimate for a five-year period is recommended.

#### Real Estate Settlement Procedures Act

##### Regulation X

24 CFR 3500

##### Record Retention

The lender must retain each completed HUD-1 or HUD-1A and related documents for five years after settlement. [Section 3500.10(e)]

Documents provided pursuant to Section 3500.14 (Prohibition Against Kickbacks and Unearned Fees) must be retained for five years from the date of execution. [Section 3500.14(h)]

Documents provided pursuant to Section 3500.15 (Affiliated Business Arrangements) must be retained for five years after the date of execution. [Section 3500.15(d)]

Each servicer must keep records reflecting the handling of each borrower's escrow account for a period of at least five years after the servicer last serviced the escrow account. [Section 3500.17(l)]

The applicant's signed acknowledgment of the Servicing Disclosure Statement must be retained for five years after the date of settlement. [Section 3500.21(c)]

Although not specified in the regulation, maintenance of other notices and disclosures such as the Servicing Transfer Notice and Good Faith Estimate for a five-year period is recommended.



### **Home Mortgage Disclosure Act**

#### **Regulation C**

**12 CFR 203**

#### Record Retention

[Section 203.5]

A copy of the Loan Application Register (LAR) must be retained for a period of at least 3 years.

The modified LAR must be available to the public for a period of 3 years.

The disclosure statement must be available to the public for a period of 5 years.

### **Flood Disaster Protection Act**

#### **OTS Implementing Regulations**

**12 CFR 550**

#### Form and Notices

[12 CFR 572.6, 572.9]

An institution must retain copies of completed Standard Flood Hazard Determination Forms, in either hard copy or electronic form, for as long as it owns the loan.

An institution must retain a record of the receipt of the notices by the borrower and the servicer for as long as it owns the loan. The record of receipt should contain a statement from the borrower indicating that the borrower has received the notice; for example, a borrower's signed acknowledgment on a copy of the notice. The record of receipt may be kept in the form that best suits the institution's business, but must be retrievable within a reasonable period of time.

### **Equal Credit Opportunity Act**

#### **Regulation B**

**12 CFR 202**

#### Record Retention

[Section 202.12]

Applications, supporting information and required notifications generally must be retained for 25 months (12 months for business credit) from date of the notice of action taken. A longer retention period may apply if an investigation or enforcement proceeding is underway. Special rules apply in the case of certain business-credit transactions and self-tests.



### **Electronic Fund Transfer Act**

#### **Regulation E**

**12 CFR 205**

#### Record Retention

[Section 205.13(b)]

The institution must retain evidence of compliance with the requirements of the Act and Regulation E for a period of not less than two years from the date disclosures are required to be made or action is required to be taken. The period may be extended in the event of an investigation, action, or proceeding.

### **Expedited Funds Availability Act**

#### **Regulation CC**

**12 CFR 229**

#### Record Retention

[Section 229.21(g)]

An institution must retain evidence of compliance with the regulation for at least two years. This record-retention period may be extended in the event of civil actions and enforcement proceedings brought against the institution.

### **Truth in Savings Act**

#### **Regulation DD**

**12 CFR 230**

#### Record Retention

[230.9(c)]

An institution must retain evidence of compliance with the regulation for at least two years after disclosures are expired to be made or actions required to be taken. The record retention period may be extended in the event that enforcement proceedings are initiated against the institution.

### **Bank Secrecy Act**

#### **BSA Implementing Regulations**

**31 CFR 103**

#### Monetary Instruments Recordkeeping (\$3,000 to \$10,000)

[31 CFR 103.29]

The institution must maintain records of the issuance or sale of monetary instruments (bank check or draft, cashier's check, money order or traveler's check) involving currency in amounts of \$3,000 to \$10,000, with supporting information as prescribed by Section



## Recordkeeping

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103.29(a). Verify that purchaser is a deposit accountholder or verify purchaser's identity in the manner described at Sections 103.29(a)(1) and 103.29(a)(2).

Contemporaneous purchases of the same or different types of instruments totaling \$3,000 or more must be treated as one purchase. Also multiple purchases totaling \$3,000 or more must be treated as a single purchase where the officer or employee has knowledge that these multiple purchases occurred.

### Records of Persons with Financial Interests in Foreign Accounts [31 CFR 103.32]

Records of accounts required to be reported to the IRS pursuant to 31 CFR 103.24 (Reports of Foreign Financial Accounts) must be retained by each person having a financial interest in or signature or other authority over any such account. These records must contain the information prescribed by Section 103.32.

### Extensions of Credit and Currency Transfers [31 CFR 103.33(a)- (c)]

The institution must maintain a record of each extension of credit in excess of \$10,000, except when the extension is secured by an interest in real property. The record must contain the name and address of the person to whom the extension of credit is made, and the amount, nature or purpose, and date of the credit. (31 CFR 103.33(a))

The institution must maintain a record of each advice, request, or instruction received or given regarding any transaction resulting in the transfer of currency or other monetary instruments, funds, checks, investment securities, or credit of more than \$10,000 to or from any person, account, or place outside the United States. A record must also be maintained if the transaction is later canceled if the record is "normally made." (31 CFR 103.33(b))

The institution must maintain a record of each advice, request, or instruction given to another financial institution or other person located within or without the United States, regarding a transaction intended to result in the transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than \$10,000 to a person, account or place outside the United States. (31 CFR 103.33(c))

### Records of Wire (Funds) Transfer [31 CFR 103.33(e) and (g)]

Financial institutions are required to collect and retain the information specified in Section 103.33(e) and (g) in connection with all wire (funds) transfers of \$3,000 or more. The information to be collected and retained depends upon: (1) the type of financial institution, (2) its role in the wire transfer (originator, intermediary, or beneficiary), (3) the amount of the wire transfer, and (4) the relationship of the parties to the transaction with the financial institution. Certain exemptions to the recording requirements are described at Section



## Recordkeeping

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103.33(e)(6). Note specific requirements on retrievability of information set forth in Section 103.33(e)(4).

### Additional Records

[31 CFR 103.34]

The institution must keep a record of each customer's taxpayer identification number, for each certificate of deposit sold or redeemed, or each deposit or share account opened. Section 103.34(a) contains a number of exceptions, such as for Federal, state or local governments and certain public officials. It also provides alternative methods of complying with the recordkeeping requirements if the institution is unable to obtain the number.

The regulations require a financial institution to keep a number of specific documents relating to deposit accounts and currency transfers. For example, the institution must keep each document granting signature authority over each deposit account and each statement, ledger card, or other record of each deposit account.

### Record Retention Period

[31 CFR 103.38]

All records required to be retained by Part 103 must be retained for a period of 5 years. Records required by Subpart C to be retained may be those made in the ordinary course of business by an institution. If no record is made in the ordinary course of business in connection with any transaction where records are required to be retained, a record must be prepared in writing by the institution.

All records retained by Part 103 must be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record, and the amount of time expired since the record was made. Note that Section 103.33 contains specific requirements on retrievability in connection with information that must be retained in connection with wire (funds) transfers. Note also that Section 103.34 requires the institution to retain either the original or a microfilm or other copy or reproduction of each required record.

## **Community Reinvestment Act**

### **Regulation BB**

**12 CFR 563e**

#### Data Collection and Maintenance

[Section 563e.42]

Savings associations, other than small savings associations, must collect and maintain in machine readable form, certain data relating to its small business or small farm loan originations and purchases until the completion of its next CRA examination, as specified in Section 563e.42(a). In addition, institutions are allowed to collect and maintain certain additional information related to other types of lending, including data on consumer loans,



## Recordkeeping

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affiliate lending, and consortium or third party lending, as specified in Section 563e.42(c), (d) and (e).

### **Consumer Protection for Depository Institution Sales of Insurance      12 CFR 536**

#### Consumer Acknowledgments      [Section 536.40 (c)(7)]

In order to establish compliance with Part 536, a savings association or covered person must retain the written acknowledgment by the consumer that the consumer received the written disclosures. Additionally, for telephone transactions that permit consumers to orally acknowledge receipt of disclosures, the savings association or covered person must retain sufficient documentation demonstrating the acknowledgment was received and reasonable efforts were used to obtain a written acknowledgment.

#### Record Retention      12 CFR 563.170 (c)

Although the regulation does not establish any record retention requirements, applicable regulatory reporting standards would apply. These standards apply for disclosures and written acknowledgments. These types of records should be retained until the savings association's next regularly scheduled examination for compliance with the regulation.



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## COMPLIANCE REQUIREMENTS BY FUNCTIONAL AREA

### Advertising

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#### Truth in Lending Act

##### Regulation Z

12 CFR 226

##### Open-End Credit Advertising Requirements

[Section 226.16]

The basic components of the open-end credit advertising requirements are as follows:

Available Terms: Advertisements may only state those credit terms that actually are or will be available.

Triggering Terms: If any of the terms required to be disclosed under Section 226.6 (Initial Disclosure Statement) is included in an advertisement, the advertisement must also clearly and conspicuously set forth (i) any minimum, fixed, transaction, activity or similar charge that may be imposed; (ii) any applicable periodic rate (and if the plan provides for a variable period rate, that fact must be disclosed); and (iii) any membership or participation fee that could be imposed.

Catalogues and multiple-page advertisements: If a catalogue or multiple-page advertisement that gives information in a table or schedule in sufficient detail to allow determination of the disclosures required by paragraph (b) of Section 226.16, it will be considered a single advertisement if the table or schedule is clear and conspicuous and any Section 226.6 terms appearing elsewhere clearly refer to the page on which the table or schedule begins.

Additional requirements for home equity plans: Describes requirements for home equity plans relating to: (i) advertisement of terms requiring additional disclosure (triggering terms); (ii) discounted and premium rates; (iii) balloon payments; (iv) tax implications; and (v) misleading terms.

##### Closed-End Credit Advertising Requirements

[Section 226.24]

The basic components of the closed-end credit advertising requirements are as follows:

Available Terms: Advertisements may only state those credit terms that actually are or will be available.

Advertisement of Rate of Finance Charge: If a credit advertisement states a rate of finance charge, it must state the rate as an “annual percentage rate” using that term. If the APR may be increased after consummation, that fact must be stated. The advertisement may also state a simple annual rate or periodic rate in conjunction with, but not more conspicuously than, the APR.



**Triggering Terms:** If an advertisement sets forth: (i) the amount or percentage of any downpayment, (ii) the number of payments or period of repayment; (iii) the amount of any payment; or (iv) the amount of any finance charge, the following terms must also be included in the advertisement: (a) the amount or percentage of the downpayment, (b) the terms of repayment, (c) the “annual percentage rate,” using that term and the fact that the rate may be increased after consummation (if applicable).

**Catalogues and multiple-page advertisements:** If a catalogue or multiple-page advertisement that gives information in a table or schedule in sufficient detail to allow determination of the disclosures required by paragraph (c)(2) of Section 226.24, it will be considered a single advertisement if: (i) the table or schedule is clearly set forth and (ii) any statement of the credit terms in paragraph (c)(1) of Section 226.24 appearing elsewhere in the catalogue or advertisement clearly refers to the page on which the table or schedule begins.

### **Equal Credit Opportunity Act**

#### **Regulation B**

**12 CFR 202**

##### No Discouraging Applications on a Prohibited Basis

[Section 202.5]

A creditor is not permitted to make statements that discourage applicants or prospective applicants on a prohibited basis from making or pursuing an application.

### **OTS Nondiscrimination Regulations**

**12 CFR 528**

##### Nondiscriminatory Advertising

[Section 528.4]

An institution may not directly or indirectly engage in any form of advertising which implies or suggests a policy of discrimination or exclusion in violation of the FHA, the ECOA, or the nondiscrimination requirements of 12 CFR 528 et seq. Advertisements, other than for savings, must include a facsimile of the prescribed equal housing lender logotype and legend.



### Electronic Fund Transfer Act

#### Regulation E

**12 CFR 205**

#### Unsolicited Distribution of Access Devices

[Section 205.5(b)]

An institution may distribute an access device to a consumer on an unsolicited basis provided that the device is not validated, required disclosures are made and the device may be validated only in response to the consumer's oral or written request. In addition, the access device must be accompanied by a clear explanation that the device is not validated and how the consumer may dispose of it if validation is not desired.

### Truth in Savings Act

#### Regulation DD

**12 CFR 230**

#### Advertising Requirements

[Section 230.8]

Advertisements, defined as commercial messages in any medium that directly or indirectly promote the availability of, or a deposit in, an account, must meet certain regulatory requirements. Specifically, advertisements: (i) may not be misleading or inaccurate; (ii) must state rates of return as APY; (iii) must include additional disclosures if APY is stated; (iv) must provide additional information if a bonus is stated; and (v) may utilize abbreviated disclosure rules if advertisement is made through certain types of media.

Advertisements are not permitted to refer to or describe an account as "free" or "no cost" if any maintenance or activity fee may be imposed on the account. In addition, the word "profit" shall not be used in referring to interest paid on an account.

### OTS Advertising Regulation

**12 CFR 563**

#### Advertising

[Section 563.27]

Savings associations are not permitted to use advertising or make any representation which is inaccurate in any particular or which in any way misrepresents its services, contracts, investments, or financial condition.



### **Consumer Protection for Depository Institution Sales of Insurance      12 CFR 536**

#### Advertising Requirements      [Section 536.40 (c)]

Insurance disclosures may be provided in a short form using the language specified in paragraph 536.40 (c) (5). These short form insurance disclosures may be used in visual media, such as television, radio, ATM screens, signs, posters and written advertisements and promotional materials, such as brochures. There is no short form language for credit disclosures.

#### General Rule      [Section 536.50 (d)]

Disclosure requirements do not apply to advertisements and promotional material of a general nature, describing or listing services or products offered.

### **OTS Advertising Regulation      12 CFR 563**

#### Advertising      [Section 563.27]

Savings associations are not permitted to use advertising or make any representation which is inaccurate in any particular or which in any way misrepresents its services, contracts, investments, or financial condition.



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## COMPLIANCE REQUIREMENTS BY FUNCTIONAL AREA

### Reports

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#### Home Mortgage Disclosure Act

##### Regulation C

12 CFR 203

##### Reporting Requirements

[Section 203.5(a)]

The lender must submit its complete loan application register (LAR) in the prescribed electronic format to the OTS by March 1 following the calendar year for which the loan data is compiled.

#### Equal Credit Opportunity Act

##### Regulation B

12 CFR 202

##### Reporting Credit Information

[Section 202.10]

A creditor reporting credit information to a consumer reporting agency or in response to a credit inquiry concerning an account designated to reflect the participation of both spouses, must furnish the information in a manner that enables access to or provides the information for the particular spouse in question.

#### Bank Secrecy Act

##### BSA Implementing Regulations

31 CFR 103

12 CFR 563.177 and 563.180

##### Currency Transaction Reports

[31 CFR 103.22]

The institution must file with the IRS a completed Currency Transaction Report (CTR) (IRS Form 4789) for each transaction in currency (deposit, withdrawal, exchange or other payment or transfer) of more than \$10,000 within 15 days after the date of the transaction. Multiple transactions totaling more than \$10,000 during any one business day are treated as a single transaction if the institution has knowledge that they are by or on behalf of any person. Certain types of currency transactions, such as those involving “exempt persons” or those generated by particular retail or commercial customers meeting specified criteria for exemption, need not be reported. However, designations of “exempt persons” are made by filing IRS Form 4789, with the appropriate information provided. The exemption filings vary by customer type as described in Section 103.22.

*Note:* For any transaction requiring a CTR, the institution must verify and record the name and address of the individual presenting the transaction, and record the identity, account



number, and social security number (if any) of any person or entity on whose behalf the transaction is undertaken.

### Currency and Monetary Instrument Report

[31 CFR 103.23]

The institution must file, with the appropriate U.S. Customs officer or the Commissioner of Customs, a completed Currency and Monetary Instrument Report (CMIR) (U.S. Customs Form 4790) for each shipment of currency or other monetary instrument(s) in excess of \$10,000 out of or into the U.S. except via the postal service or common carrier. For transport into or out of the U.S., the CMIR should be filed at the time of entry into or departure from the U.S. For receipt from outside the U.S. (where no report was filed), the CMIR should be filed within 15 days of receipt of the monetary instruments.

### Reports of Foreign Financial Accounts

[31 CFR 103.24]

Each person subject to U.S. jurisdiction with a financial interest in, or signature authority over, a bank, securities, or other financial account in a foreign country must file a Report of Foreign Bank Financial Accounts (Treasury Form 90-22) concerning such relationship with the IRS on an annual basis.

### Suspicious Activity Report

[31 CFR 103.21]

The institution must file a completed Suspicious Activity Report (OTS SAR Form 1601) for any transaction involving \$5,000 or more when the institution knows, suspects, or has reason to suspect that a transaction: (i) involves money laundering; (ii) is designed to evade regulations promulgated under the BSA; or (iii) has no business or apparent lawful purpose or is not the type that the customer would normally be expected to undertake. The SAR must be sent to the Financial Crimes Enforcement Network (FinCEN) at the Treasury Department within 30 days after the initial detection of facts giving rise to an SAR filing. (Note that if no suspect was initially identified, filing may be delayed for an additional 30 calendar days to identify a suspect).

## **Community Reinvestment Act**

### **Regulation BB**

**12 CFR 563e**

### Reporting Requirements

[Section 563e.42(b)]

A “large” institution must report certain data annually by March 1 to the OTS in machine readable form covering: (1) all small business and small farm loans originated or purchased by the institution; (2) the aggregate number and dollar amount of community development loans originated or purchased; and (3) certain additional information for



## COMPLIANCE REQUIREMENTS BY FUNCTIONAL AREA Reports

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institutions subject to HMDA. The specific form of the data that must be submitted by the institution is described in detail in Section 563e.42.

### **Disclosure and Reporting of CRA-Related Agreements**

**12 CFR 533**

CRA Sunshine Regulation

### Filing of Annual Reports

[Section 533.7]

Each NGEF and each insured depository institution or affiliate that is a party to a covered agreement (entered into on or after May 12, 2000) must file an annual report with each relevant supervisory agency concerning the disbursement, receipt, and use of funds or other resources under the covered agreement(s), no later than six months following the end of the fiscal year covered by the report. The annual report must include the information specified in 533.7(d) and (e).



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## COMPLIANCE REQUIREMENTS BY FUNCTIONAL AREA

### Enforcement/Liability

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#### Truth in Lending Act

##### Regulation Z

12 CFR 226

##### Administrative Enforcement

[TILA Section 108]

The TILA authorizes federal regulatory agencies to order financial institutions to make monetary or other adjustments to the accounts of consumers where the finance charge or APR was inaccurately disclosed. The Act generally requires the agencies to order restitution when the understatement of the APR or finance charge results from a clear and consistent pattern or practice of violations, gross negligence, or a willful violation intended to mislead the consumer.

The Joint Notice of Statement of Interagency Enforcement Policy, issued on July 11, 1980, summarizes and explains the reimbursement provisions of the TILA. It also describes corrective actions that the agencies believe will be appropriate and generally intend to take in situations where the act gives the agencies the authority to take equitable remedial action. If a creditor does not voluntarily correct violations, the agencies will utilize their cease-and-desist authority to require correction.

##### Criminal Liability

[TILA Section 112]

Anyone who willingly and knowingly fails to comply with any requirement of the TILA will be fined not more than \$5,000 or imprisoned not more than one year, or both.

##### Civil Liability

[TILA Sections 130 and 131]

If a creditor fails to comply with any requirements of the TILA, other than with the advertising provisions, it may be held liable to the consumer for actual damages and court costs and reasonable attorney fees. The creditor may also be held liable for other damages arising out of individual or class actions if certain requirements of the TILA are violated.

#### Real Estate Settlement Procedures Act

##### Regulation X

24 CFR 3500

##### Failure to comply with RESPA Section 8 Prohibitions

[Sections 3500.14, .15, .19]

Liability for failure to comply with RESPA Section 8 (24 CFR Sections 3500.14, 3500.15, and 3500.19) prohibition against kickbacks and unearned fees: (1) a fine of not more than \$10,000 or imprisonment for not more than one year, or both; (2) civil liability equal to three times the amount of any charge paid for such settlement service; and (3) the possibility that court costs and attorney's fees can be recovered.



## Enforcement/Liability

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### Failure to comply with mortgage loan servicing provisions

[Section 3500.21]

Liability for failure to comply with any provision of Section 6 of RESPA (24 CFR 3500.21) involving the mortgage servicing transfers:

- (1) In the case of an individual action, an amount equal to the sum of:
  - A. Actual damages;
  - B. Additional damages as the court may allow, in the case of a pattern or practice of noncompliance, not to exceed \$1,000; and
  - C. The costs of the action and any reasonable attorney's fees incurred in connection with the action may also be awarded.
- (2) In the case of a class action, an amount equal to the sum of:
  - A. Actual damages;
  - B. Additional damages as the court may allow, in the case of a pattern or practice of noncompliance, in an amount not greater than \$1,000 for each member of the class, but not to exceed the lesser of \$500,000 or 1% of the net worth of the servicer; and
  - C. The costs of the action and any reasonable attorney's fees incurred in connection with the action may also be awarded.

### Failure to submit Escrow Account Statements

[Section 3500.17]

Liability under Section 10 of RESPA (24 CFR 3500.17) for failure to submit to a borrower an initial or annual escrow account statement as required:

The lender or escrow servicer is subject to a civil penalty of \$55 for each such failure. The total amount imposed on a lender or escrow servicer for inadvertent failures during any 12-month period may not exceed \$110,000. Intentional violations are subject to a penalty of \$110 for each failure, with no limit on the total amount of the penalty.

### Liability for Directing use of a Particular Title Company

[Section 3500.16]

Liability under Section 9 of RESPA (24 CFR 3500.16) for lenders holding legal title to property being sold who directly or indirectly require the borrower to purchase title insurance from any particular title company as a condition for selling the property:

Three times all charges made for such title insurance to the buyer.



### Home Mortgage Disclosure Act

#### Regulation C

**12 CFR 203**

#### Administrative Enforcement

[Section 203.6]

Violations of Regulation C are subject to administrative sanctions as provided in Section 305 of the Act, including the imposition of civil money penalties, where applicable.

### National Flood Insurance Act

#### Failure to Comply With Statutory Requirements

[42 USC 4012a(f) and (g)]

The National Flood Insurance Act, as amended, provides for the assessment of civil money penalties for violations of the purchase, escrow, notice or forced placement requirements. If an institution is found to have a pattern or practice of committing violations of those requirements, the appropriate Federal supervisory agency shall assess civil money penalties in an amount not to exceed \$350 per violation, with the total amount against any one institution not to exceed \$100,000 in any calendar year.

In addition, the Act provides that the appropriate Federal supervisory agency may require an institution to take such remedial actions as are necessary to ensure that it complies with the national flood insurance program if the agency determines that: (1) the institution has engaged in a pattern and practice of noncompliance in violation of the regulatory requirements (i.e., 12 CFR Part 572); and, (2) the institution has not demonstrated measurable improvement in compliance despite the assessment of civil money penalties.

### Equal Credit Opportunity Act

#### Regulation B

**12 CFR 202**

#### Administrative Enforcement Authority

[Section 202.14]

The OTS may enforce the ECOA and Regulation B against savings associations under Section 8 of the Federal Deposit Insurance Act. When the OTS has a reason to believe that an institution has engaged in a pattern or practice of discrimination in violation of the ECOA, the matter must be referred to the Department of Justice.

#### Penalties and Liabilities

[Section 202.14]

Regulation B provides actual damages and punitive damages of up to \$10,000 in individual lawsuits and up to the lesser of \$500,000 or one percent of the institution's net worth in



class action suits. Court costs and reasonable attorney fees may also be awarded to an aggrieved applicant in a successful action.

### **Fair Housing Act/OTS Nondiscrimination Regulations**

#### Enforcement

[Sections 810, 813 and 814 of the FHA]

An aggrieved person may pursue remedies for discrimination under the FHA either before an administrative tribunal or in federal court. Administrative remedies may include permanent or temporary injunctions, restraining orders, or other relief including monetary damages and civil penalties. In civil actions, the court may grant relief as it deem appropriate, including any permanent or temporary injunction, temporary restraining order, or other similar remedy. The court may also award actual and punitive damages. In addition, the Attorney General may bring a civil action against any person(s) when reasonable cause exists to believe such persons(s) are engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by the Fair Housing Act.

### **Electronic Fund Transfer Act**

#### **Regulation E**

**12 CFR 205**

#### Civil Liability

[EFTA Section 915]

An institution may be liable under the Act for (1) actual damages and statutory damages between \$100 and \$1,000 in the case of individual actions or (2) actual damages and statutory damages up to the lesser of \$500,000 or 1% of the institution's net worth in the case of class action suits. In both successful individual and class actions, court costs and reasonable attorney fees may be recovered by the consumer.

#### Criminal Liability

[EFTA Section 916]

Criminal penalties run from a \$5,000 fine and one year's imprisonment for knowing and willful failures to comply with the EFTA, to a \$10,000 fine and 10 year's imprisonment for the fraudulent use of a debit instrument.



### **Expedited Funds Availability Act**

#### **Regulation CC**

**12 CFR 229**

##### Civil Liability

[Section 229.21; Section 229.38]

Civil liability may be imposed against an institution for failure to comply with the regulatory requirements in an amount equal to actual damages sustained, additional amounts of up to \$1,000 per individual action, and reasonable attorney's fees. In the case of a class action, total recovery may not exceed the lesser of \$500,000 or one percent of the net worth of the institution.

Civil liability may also be imposed in the check collection process for failure to exercise ordinary care or act in good faith [§ 229.38]. A paying bank faces liability for the failure to make timely return of a check.

### **Truth in Savings Act**

#### **Regulation DD**

**12 CFR 230**

##### Administrative Enforcement Authority

[Section 230.9]

The OTS may enforce the TISA and Regulation CC against any thrift institution under Section 8 of the Federal Deposit Insurance Act.

### **Bank Secrecy Act**

#### **BSA Implementing Regulations**

**31 CFR 103**

**12 CFR 563.177 and 563.180**

##### Enforcement

[31 CFR 103.46]

The Secretary of the Treasury has overall authority for enforcement and compliance under Part 103. Authority to examine institutions to determine compliance with the requirements of Part 103 is delegated to the financial regulatory agencies.

##### Civil and Criminal Penalties

[31 CFR 103.47 and 49]

Civil penalties of up to \$100,000 can be assessed against an institution and participating directors, officers, or employees, depending on such factors as the size of the transaction and whether the violation was willful. Criminal penalties to both the institution and indi-



viduals involved may include fines of up to \$500,000 and up to 10 years in prison for those involved in willful violations and/or in patterns of illegal activity.

### **Community Reinvestment Act**

#### **Regulation BB**

**12 CFR 563e**

#### Effect of CRA Performance on Applications

[Section 563e.29]

The OTS takes into account, among other factors, an institution's record of performance under CRA when considering an application by the institution for: (1) establishing a domestic branch or other facility that would be authorized to take deposits; (2) the relocation of the main office or a branch; (3) the merger or consolidation with or the acquisition of the assets or assumption of the liabilities of an institution requiring OTS approval under the Bank Merger Act; (4) a Federal thrift charter; and (5) acquisitions subject to Section 10(e) of the Home Owners' Loan Act.