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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.